

CAJ's Submission no. S450

**CAJ's submission to the United Nations Committee Against Torture
On the List of Issues for the UK**

January 2016

Submission from the Committee on the Administration of Justice (CAJ) to the United Nations Committee Against Torture on the List of Issues for the UK.

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Introduction

1. The Committee on the Administration of Justice (CAJ) is an independent human rights NGO with cross community membership in Northern Ireland and beyond. It was established in 1981 and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its international human rights obligations.
2. CAJ files this submission on the List of Issues Prior to Reporting (LoIPR) for the Committee against Torture's 57th Session from 18 April – 13 May 2016. This is to be read in conjunction with the submission from CAJ on the UK's 5th periodic report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment dated April 2013.¹
3. CAJ notes the Concluding Observations on the fifth period report of the United Kingdom, adopted by the Committee at its fiftieth session (6-31 May 2013) and wishes to address in particular a number of areas of particular concern:
 - **Closed Material Procedures and the growth of the 'National Security' doctrine (Articles 2, 12, 13, 14, 15, 16)**
 - **An apparatus of impunity? - Transitional Justice in Northern Ireland (Articles 2, 12, 13, 14 and 16)**
 - **Prison Reform in Northern Ireland (Article 16)**
 - **The planned repeal of the Human Rights Act 1998 (Article 2)**
 - **Use of Intelligence Sources in conformity with the Convention (Articles 2 and 3)**

¹ Submission from CAJ on the UK's 5th periodic report under the Convention Against Torture dated April 2013. http://www.caj.org.uk/files/2013/04/26/S407_CAJS_Submission_to_UNCAT_on_the_5th_Periodic_UK_Report,_April_2013.pdf

Closed Material Procedures and the growth of the ‘National Security’ doctrine

4. CAJ welcomed the Committee’s recommendation in 2013 that ‘all measures used to restrict or limit fair trial guarantees based on national security grounds be fully compliant with the Convention’². CAJ is particularly concerned with the growth of secret courts and the broader growth of the undefined ‘national security’ doctrine. The UK has extended ‘national security’ exemptions to a range of accountability bodies with a role in Northern Ireland which has resulted in the restriction of disclosure of official records. When most justice powers were transferred from the UK government to the Northern Ireland administration in 2010 the implementation statute contained 45 references to national security, providing for a raft of exemptions, on national security grounds, to justice powers.³ One official policy document has in fact sought to designate the whole of ‘the past’ in Northern Ireland as a national security matter with the purpose or effect of preventing access to documents.⁴ There is no statutory definition of ‘national security’. As the MI5 website clarifies “It has been the policy of successive Governments and the practice of Parliament not to define the term, in order to retain the flexibility necessary to ensure that the use of the term can adapt to changing circumstances.”⁵
5. Through the Justice and Security Act 2013 the UK has extended the use of closed material procedures to civil proceedings involving sensitive material, including claims for damages and to historical conflict-related cases in Northern Ireland. This is despite inadequate safeguards remaining in place, in particular, the heavily criticised special advocate system. This affects cases where agents of the state may have been involved in human rights violations and has already impacted on conflict related cases whereby victims’ relatives have taken civil claims against the state.
6. We note the concerns raised in August 2015 by the Human Rights Committee in its Concluding Observations on the seventh periodic report of the United Kingdom on the International Covenant on Civil and Political Rights (ICCPR) and its recommendation that:

² Committee Against Torture Concluding Observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session (6-31 May 2013), Paragraph 12(c).

³ Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010.

⁴ CAJ ‘The Apparatus of Impunity?’ January 2015, pages 38-39
http://www.caj.org.uk/files/2015/01/30/No._66_The_Apparatus_of_Impunity_Human_rights_violations_and_the_Northern_Ireland_conflict_Jan_2015_1.pdf

⁵ CAJ, ‘The Apparatus of Impunity? Human rights violations and the Northern Ireland conflict: a narrative of official limitations on post-Agreements investigative mechanisms’ 2015, 30

The State party should: (a) Ensure that any restrictions or limitations on fair trial guarantees that are based on national security grounds, including the use of closed material procedures, are fully compliant with its obligations under the Covenant, and particularly that the use of closed material procedures in cases involving serious human rights violations does not create obstacles to the establishing of State responsibility and accountability or compromise the right of victims to a fair trial and an effective remedy.⁶

7. Also of particular significance are the Preliminary Observations and Recommendations of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on his visit to the United Kingdom of Great Britain and Northern Ireland in November 2015, when assessing the various initiatives undertaken to deal with the legacies of the violations and abuses during the period that is widely referred to as ‘the Troubles’ in Northern Ireland:

Although everyone must acknowledge the significance of national security concerns, it must also be acknowledged that particularly in the days we are living in, it is easy to use ‘national security’ as a blanket term. This ends up obscuring practices which retrospectively, it is often recognized (unfortunately, mostly privately), were not especially efficient means of furthering security. In particular, national security, in accordance with both national and international obligations, can only be served within the limits of the law, and allowing for adequate means of comprehensive redress in cases of breaches of obligations.⁷

The Committee may wish to raise with the UK the growing use of Closed Material Procedures in Northern Ireland and the detrimental impact this will have on fair trial guarantees and in investigating ‘legacy matters’ in Northern Ireland.

The Committee may wish to further press the UK on how it can ensure it is compliant with its duties under Articles 12-14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the context of the ever increasing ‘national security’ limitations on powers of competent investigatory and oversight bodies.

⁶ CCPR/C/GBR/CO/7, 17 August 2015

⁷ Preliminary observations and recommendations by the Special Rapporteur on his visit to the United Kingdom of Great Britain and Northern Ireland, London, 18 November 2015
<http://www.ohchr.org/CH/NewsEvents/Pages/DisplayNews.aspx?NewsID=16778&LangID=E>

An apparatus of impunity? Transitional justice (articles 2, 12, 13, 14 and 16)

8. CAJ endorsed the Committee's previous Concluding Observations on the fifth periodic report of the UK in 2013 which identified inconsistencies in investigations where military officials are involved and recommendation that the UK:

Develop a comprehensive framework for transitional justice in Northern Ireland and ensure that prompt, thorough and independent investigations are conducted to establish the truth and identify, prosecute and punish perpetrators.⁸

9. CAJ wishes to also draw to the Committee's attention developments that relate to Northern Ireland in relation to the requirement for independent, impartial, thorough and effective investigations into serious allegations of torture and ill-treatment.
10. Firstly there have been significant developments into the torture cases known as the 'hooded men'. As the Committee will recall in 1978 the European Court of Human Rights in *Ireland v UK*⁹ found that detainees in Northern Ireland in 1971 who had been subjected to 'in-depth interrogation' techniques¹⁰ suffered inhuman and degrading treatment, but not torture. This has been interpreted by many governments, incorrectly, to justify actions which might otherwise be considered to come within the definition of 'torture' in international law including in Iraq, Afghanistan and around the world.
11. In December 2014 the Irish Government lodged an application before the European Court seeking a revision of this judgment. Fresh evidence has been discovered at the British National Archives which suggests that the UK government deliberately misled the Court when the case was first heard by it and which could have led to the Court finding that the treatment being considered in fact constituted torture.¹¹ Domestic proceedings have also been issued on behalf of those subjected to 'in-depth interrogation' addressing the failure of the State party to carry out full independent and effective investigations into their treatment.¹²

⁸ Paragraph 23, Committee Against Torture Concluding Observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session (6-31 May 2013)

⁹ *Ireland v UK* app no. 5310/71 (18/01/1978)

¹⁰ Which included 'five techniques' of wall standing, hooding, being subjected to 'white Noise', starvation and sleep deprivation.

¹¹ 'Ireland to clash with UK at human rights court over hooded men judgment', the guardian, 2 December 2014

¹² <http://www.irishtimes.com/news/crime-and-law/the-torture-centre-northern-ireland-s-hooded-men-1.2296152>

12. Since the last Concluding Observations there have been further detrimental developments in relation to the broader question of dealing with the legacy of the conflict in Northern Ireland. CAJ is concerned that Northern Ireland is witnessing such a level of official obstruction of legacy investigations that a concerted effort to cover up human rights violations is taking place. To date there has been no overarching legacy commission or transitional justice mechanism to deal with the legacy of the Northern Ireland conflict. Instead a number of criminal justice-system mechanisms examine unresolved conflict-related deaths. To date the existing mechanisms for dealing with the past since the Belfast/Good Friday Agreement have not resulted in a single conviction for any members of the security forces.
13. In January 2015 CAJ, as part of an academic partnership with the Queens University Belfast, published a landmark research report entitled the ‘Apparatus of Impunity?’ which examined the undermining and unravelling of the package of measures agreed by the UK with the Council of Europe Committee of Ministers in following a series of damning European Court judgements in 2001-2003.¹³ The package included changes to the inquest and prosecution systems. It also included reference to public inquiries, the PSNI Historical Enquiries Team (HET) and the Police Ombudsman’s role in investigating the past. Serious limitations however became apparent in relation to these mechanisms which have militated against their capacity to provide accountability for human rights violations. Elements of the package did not have the necessary independence, effectiveness or impartiality to investigate state actors. Even those mechanisms which have been independent have faced limitations on their powers, delay or obstruction in undertaking their work. This includes the ‘lowering of independence’ and suspension of the Police Ombudsman’s Office role in dealing with conflict-related cases; the disbandment of the Police Service of Northern Ireland (PSNI) ‘Historical Enquiries Team’ (HET) following an official inspection finding that cases where agents of the state were involved in killings had been given such preferential treatment that the HET had been operating unlawfully. It also emerged that the HET did not refer one single ‘state involvement’ case for full investigation following its initial review. The standing down of the HET saw its replacement with an Legacy Investigations Branch (LIB) within the PSNI which the human rights committee of the UK Parliament found, as part of the PSNI, lacked the requisite investigative independence to deal with cases involving the state.¹⁴

¹³ CAJ ‘The Apparatus of Impunity?’, January 2015

¹⁴ JCHR Human Rights Judgments Seventh Report of Session 2014–15, HL Paper 130HC 1088, 11 March 2015, paragraph 3.7

14. Despite the Committee's recommendation the UK has also failed to conduct a public inquiry into the murder of human rights lawyer Pat Finucane in 1989. Despite objections by the family it provided only a limited review of the papers by a government appointed lawyer Desmond De Silva and while it found evidence of collusion between the killers and the security forces, it failed to meet the requirements of an independent effective investigation and is the subject of judicial review proceedings.
15. CAJ continues to express concern at the protracted delays and current limitations within the inquest system undermining its ability to provide prompt and effective investigations into conflict related deaths. There are currently 55 legacy inquests involving 96 deaths pending before the Coroners Courts which have been opened but not completed, primarily due to a lack of resources and delays in the state disclosing information.
16. There have been both recent domestic and European Court of Human Rights (ECtHR) decisions which have found the UK to be in breach of its human rights obligations in relation to legacy inquests.¹⁵ CAJ is concerned at the detrimental impact of these protracted delays on the next of kin, many of whom now suffer ill health or advancing old age. On 1 November 2015 the Lord Chief Justice assumed Presidency of the Coroners Service and it is anticipated that complex legacy cases will require a High Court judge to hear the case and others will need to be heard by a County Court judge. One of the serious obstacles to progressing legacy inquests which remains however is the delay in disclosing documents by the police service (PSNI).
17. At the end of 2014 the UK and Irish Governments and the five parties in the power-sharing Northern Ireland Executive reached and published a political agreement, the Stormont House Agreement (SHA), which provides for a new set of mechanisms to deal with the past, namely:
 - An Historical Investigations Unit (HIU) 'an independent body to take forward investigations into outstanding Troubles-related deaths' to take over the work of the HET and Police Ombudsman;
 - An Independent Commission on Information Retrieval (ICIR), 'to enable victims and survivors to seek and privately receive information about the deaths of their next of kin'
 - An Oral History Archive 'to provide a central place ...to share experiences and narratives related to the Troubles'

¹⁵ Concurring Opinion of Judge Kalaydjieva in *McCaughey & Others v the UK and Hemsworth v the UK*, 16 July 2013

- An Implementation and Reconciliation Group ‘to oversee themes, archives, and information recovery’;

18. In light of the complexity of the provisions within the SHA, and the experience during the peace process of commitments in Agreements being lost when translated into legislation, CAJ in partnership with academics developed a shadow bill designed to implement the SHA in an ECHR compliant manner. The Drafting Group consisted of CAJ practitioners and academics from the two universities in Northern Ireland, Queens University Belfast (QUB) and the Transitional Justice Institute (TJI) of the Ulster University (UU). This group instructed an experienced draftsman to produce the shadow legislation. Following a conference in May 2015 focusing on a draft the final unofficial ‘Model Bill’ for SHA implementation was launched in Belfast on the 16 September 2015. September also saw the launch of the ‘Gender Principles for Dealing with the Legacy of the Past’ at the Northern Ireland Assembly by the Legacy Gender Integration Group in which we participated.¹⁶
19. One of the limitations of the Stormont House Agreement is that the remit of the Historical Investigations Unit was limited to the investigation of unresolved conflict-related deaths and did not extend to investigating torture and other matters protected by the Convention. However, the SHA does commit to all mechanisms being human rights compliant, and further to the Human Rights Act 1998, many of the same legally binding procedural duties for independent and effective investigations, provided for by Article 2 ECHR are of course also duties under Article 3 ECHR which deals with the prohibition of torture. In the unofficial Model Bill we therefore addressed this by providing for an extension to the remit of the Historical Investigations Unit to ensure it could discharge its duties to investigate legacy torture cases. We pointed out to the UK government that this would be a more effective change than having to establish a separate body to deal with such matters. However, the policy position from the UK government has remained that it will NOT extend the remit of legacy investigations bodies to cover matters protected by the Convention.
20. In late July 2015 the UN issued its Concluding Observations on the UK’s compliance with the ICCPR stating that the UK should:

Ensure, as a matter of particular urgency, that independent, impartial, prompt and effective investigations, including those proposed under the Stormont House

¹⁶ The Model Bill, as well as explanatory notes, a conference report and the Gender Principles can be viewed at: <http://www.caj.org.uk/contents/1289>

Agreement, are conducted to ensure a full, transparent and credible account of the circumstances surrounding events in Northern Ireland with a view to identifying, prosecuting and punishing perpetrators of human rights violations, in particular the right to life, and providing appropriate remedies for victims.

In specific reference to the HIU the UN stated:

Ensure, given the passage of time, the establishment and full operation of the Historical Inquiries Unit as soon as possible; guarantee its independence in a statute; secure adequate and sufficient funding to enable the effective investigation of all outstanding cases and ensure its access to all documentation and material relevant for its investigations.

21. In November 2015 negotiations concluded between the British and Irish governments and Northern Ireland parties and the above new agreement was published. Save for a section on paramilitarism the stated objective of this new Agreement (also known as '*A Fresh Start*') was the implementation of the SHA. Whilst other elements of the SHA were taken forward, most notably those on finances and social security, legacy elements were not included in the new Agreement and have essentially been 'parked'. There is wide consensus that the stumbling block was the UK Government's insistence on maintaining a ministerial 'national security' veto within the legislation.
22. On 18 November 2015 Pablo de Greiff the United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence issued preliminary observations and recommendations at the conclusion of his 10 day visit to the UK. He spent several days in Northern Ireland as the aim of his visit was to offer an objective assessment of the various initiatives undertaken to address the legacy of the violations and abuses during 'the Troubles' in Northern Ireland. In his concluding remarks he noted that 'the legacies of the past have not been successfully or comprehensively addressed on any of [the] four dimensions (truth, justice, reparations and guarantees of non-recurrence).' As alluded to earlier in this submission in relation to 'national security' he also recommended that:

Any future arrangements for truth-disclosure and for justice will need to take on board the fact that none of the stakeholders can assume the position of neutral arbiters of 'the troubles' and therefore will have to incorporate procedures to guarantee both the reality and the appearance of independence and impartiality.

This will also involve means for adjudicating issues concerning disclosure in a way that is credible to all. Although everyone must acknowledge the significance of national security concerns, it must also be acknowledged that particularly in the days we are living in, it is easy to use ‘national security’ as a blanket term. This ends up obscuring practices which retrospectively, it is often recognized (unfortunately, mostly privately), were not especially efficient means of furthering security. In particular, national security, in accordance with both national and international obligations, can only be served within the limits of the law, and allowing for adequate means of comprehensive redress in cases of breaches of obligations.¹⁷

23. Following a visit to Northern Ireland in January 2016 Nils Muižnieks the Council of Europe Commissioner for Human Rights noted the fact that the European Convention on Human Rights has a particular resonance in Northern Ireland where it is part of the Good Friday Agreement, and where the Human Rights Act underpins key policing institutions:

I urge the UK government and other parties concerned to return to negotiations on mechanisms for dealing with the past in the Stormont House Agreement, including setting up the Historical Investigations Unit, as soon as possible. Disagreements over the national security veto concerning disclosure of information need to be resolved.¹⁸

24. CAJ is lobbying on the content of legislation designed to implement the Stormont House Agreement but its future is uncertain. Of particular concern to the Committee will be the exclusion from the proposed institutions of any investigation into allegations of torture or ill-treatment.

The Committee may wish to question the UK on how it now intends to insure the implementation of the Committee’s previous recommendation to develop a “comprehensive framework for transitional justice in Northern Ireland and ensure that prompt, thorough and independent investigations are conducted to establish the truth and identify, prosecute and punish perpetrators”.

¹⁷ Preliminary observations and recommendations by the Special Rapporteur on his visit to the United Kingdom of Great Britain and Northern Ireland, London, 18 November 2015
<http://www.ohchr.org/CH/NewsEvents/Pages/DisplayNews.aspx?NewsID=16778&LangID=E>

¹⁸ ‘UK: Forthcoming reforms to human rights law must not weaken protection’
<http://www.coe.int/en/web/commissioner/-/uk-forthcoming-reforms-to-human-rights-law-must-not-weaken-protection>

Prison Reform in Northern Ireland (Article 16)

25. Successful institutional reform of policing and other criminal justice institutions is often held up as one of the good news stories of the Northern Ireland peace process. An area where progress in reform has been much slower has been the process of prison reform. The Hillsborough Agreement in February 2010, which provided for the transfer of competence for most justice matters from the UK Government to the Northern Ireland Assembly and Executive in Belfast, committed to an independent strategic review of the ‘conditions of detention, management and oversight of all prisons’ in Northern Ireland. This review published its final report in October 2011 (the Owers Report). A four year programme of implementation was put into place due to conclude in 2015.
26. Notwithstanding the progress made through the prison reform process, very serious issues remain in relation to Northern Ireland’s prisons. In November 2015 a highly critical official inspection of Northern Ireland’s largest prison – the high security Maghaberry jail– called for urgent action and warned of the risk of “serious disorder or loss of life”. The jail holds prisoners ranging from segregated paramilitary prisoners to persons serving short sentences and those awaiting trial. The report was conducted by the official Criminal Justice Inspectorate and Her Majesty’s Inspectorate of Prisons, both of whom form part of the National Preventative Mechanism (NPM). Inspectors were also “very concerned that aspects of health care provision had deteriorated since the previous inspection.” The report concluded:

Safety underpins much of what happens in a prison and in our view the leadership of the prison had failed to ensure Maghaberry Prison was safe and stable. We had real concerns that if the issues identified in this report were not addressed as a matter of urgency, serious disorder or loss of life could occur.¹⁹

27. The Committee’s previous Concluding Observations “welcomes the Northern Ireland Minister of Justice’s plan to construct a separate custodial facility for women prisoners in Northern Ireland.”²⁰ The lack of a women’s prison has been a serious human rights issue for decades. The Minister of Justice in the most recent (2015) Annual Report of the

¹⁹ Criminal Justice Inspection Northern Ireland ‘Report on an unannounced inspection of Maghaberry Prison’ November 2015. See also: Niall McCracken, *05 November 2015 ‘Inspectors warned of “serious disorder or loss of life” risk at Maghaberry Prison’ The Detail*

²⁰ Committee Against Torture, Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, adopted by the Committee at its fiftieth session (6-31 May 2013), paragraph 32.

Prison Reform Oversight Group, states that there is still a 'plan in place' to construct a new custodial facility for women, but that this is dependent on finance.²¹

The Committee may wish to ask the UK:

- a) The extent the recommendations in the Owers Review into prison reform have been met and how outstanding matters will be taken forward;**
- b) How it intends to make Maghaberry prison safe;**
- c) How it intends to take forward the commitment to construct a separate custodial facility for women prisoners in Northern Ireland;**

The planned repeal of the Human Rights Act 1998 (Article 2)

28. The Human Rights Act 1998 was the UK-wide vehicle for commitments to incorporate the European Convention on Human Rights (ECHR) into domestic law, including the prohibition under Article 3 ECHR of torture and inhuman and degrading treatment. Incorporation of the ECHR into Northern Ireland law is a cornerstone of the constitutional framework introduced as a result of the peace settlement.
29. The [UK] Conservative Party, who became a majority UK government following the elections on 7 May 2015, included a pledge in their election manifesto to repeal the Human Rights Act within 100 days of taking office and replace it with a 'British Bill of Rights.' The latter would clearly not incorporate the ECHR but is designed only to take forward the 'principles' of the ECHR, and allow domestic courts to ignore Strasbourg case-law. The UN Human Rights Committee has expressed concerns that such a development would weaken the degree of protection of rights, including those relating to torture, protected under the ICCPR.²² The UK government set out its legislative programme on the 27 May 2015 and following stiff opposition did not include legislation to repeal the HRA. However it did announce intentions for a consultation on proposals to replace the HRA with a British Bill of Rights. This consultation is still planned and may be imminent.
30. The 1998 bilateral (UK-Ireland) Belfast/Good Friday Agreement, in addition to being approved by referendum, was incorporated as a treaty between the UK and Ireland and lodged with the UN (UK Treaty Series no. 50 Cm 4705). Article 2 of the treaty

²¹ NI Department of Justice 'Prison Review Oversight Group, Third Annual Report, April 2014 - March 2015', Page 2.

²² UN Human Rights Committee 'Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland', 2015, paragraph 5.

binds the UK to implement provisions of the annexed Multi-Party Agreement which correspond to its competency. Paragraph 2 of the Rights, Safeguards and Equality of Opportunity section of this Agreement states:

The British Government will complete incorporation into Northern Ireland law of the European Convention on Human Rights (ECHR), with direct access to the courts, and remedies for breach of the Convention, including power for the courts to overrule [Northern Ireland] Assembly legislation on grounds of inconsistency.

31. This commitment was given legislative effect through the HRA 1998. The Agreement also commits to safeguards to ensure that the Northern Ireland Assembly or public authorities cannot infringe the ECHR. In relation to other provisions of the peace settlement the HRA 1998 is, for example, also key to the framework for the human rights compliance of policing in Northern Ireland. One of the important functions of the Northern Ireland Policing Board, as set out in s3(3)(b)(ii) of the Policing (Northern Ireland) Act 1998, is to monitor compliance with the Human Rights Act 1998. The Police Service of Northern Ireland (PSNI) Code of Ethics, provided for under s52 of the same Act is also designed around the framework of the ECHR as provided for by the HRA 1998. In short the HRA 1998 is fundamental to the peace settlement and its repeal (unless its provisions were simultaneously re-introduced for this jurisdiction) would constitute a flagrant breach of the 1998 Belfast/Good Friday Agreement. The government of Ireland have intervened to insist that the UK continue to comply with its obligations under the treaty.²³

The Committee may wish to seek assurances the UK will not disincorporate the ECHR and hence weaken protections under the Convention.

Use of Intelligence Sources in conformity with the Convention (Articles 2 and 3)

32. In the previous Concluding Observations the Committee welcomed the publication in 2010 of Consolidated Guidance to intelligence officers in relation to overseas detainees, whilst also sounding concerns at the potential for ambiguity in interpretation. The Committee also recommended that the UK should also “ensure

²³ See for example *Scrapping Human Rights Act 'would breach Good Friday agreement'* The Guardian 12 May 2015; and *Government concern about UK plan to scrap Human Rights Act* Irish Times 14 May 2015;

that military personnel and intelligence services are trained with regard to the absolute prohibition of torture and ill-treatment.”²⁴ A long term area of concern in Northern Ireland, particularly during the conflict, has been the role of police and other security service informants within paramilitary organisations, and the rules governing their conduct. It is now known that during the conflict informants (now officially known as Covert Human Intelligence Sources or ‘CHIS’) were permitted, facilitated and even directed to take part in serious crime. This would no doubt include acts which would constitute breaches of the Convention, such as so-called paramilitary punishment shootings/beatings.

33. The report of the independent commission on police reform established as part of the Belfast/Good Friday Agreement (the Patten Commission) recommended in its report that ECHR-compliant Codes of Practice on all aspects of policing, including covert law enforcement, be adopted and that the legal and ethical guidelines governing ‘all aspects of police work...including... the handling of informants’ be publicly available.²⁵ To date no such document setting out the ethical boundaries of informant conduct, which could outlaw the authorisation of conduct incompatible with the Convention, has been published.

34. Following an investigation by the Police Ombudsman uncovering practices of collusion between the police Special Branch and paramilitaries, the PSNI instigated a ‘major review’ of informants in 2003 which resulted in around a quarter of all informants being let go, half of them as they were deemed “too deeply involved in criminal activity”.²⁶ The review also led to a system of Covert Deployment Authorisations, whereby a senior police officer would have to authorise the involvement of an informant in any criminal offence over and above membership or support of a paramilitary organisation.²⁷ Such reforms did not apply to the Security Service MI5 who took over primacy for ‘national security’ covert policing in Northern Ireland in 2005.

²⁴ Committee Against Torture, Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, adopted by the Committee at its fiftieth session (6-31 May 2013), paragraph 32, Paragraph 11.

²⁵ ‘A New Beginning: Policing in Northern Ireland’. The Report of the Independent Commission on Policing in Northern Ireland’ (Patten Report) September 1999, paragraphs 4.8 and 6.38 [Available at: <http://cain.ulst.ac.uk/issues/police/patten/recommend.htm> accessed June 2015]

²⁶ ‘Statement by the Police Ombudsman for Northern Ireland into her investigation into the circumstances surrounding the death of Raymond McCord Jr and related matters’ (Operation Ballast Report), Nuala O’Loan, Police Ombudsman for Northern Ireland, 22nd January 2007, Appendix A, paras 8-10.

²⁷ As above, paras 14-15.

35. There remains controversy as to what types of criminal offences informants are allowed to participate in, and an inconsistent approach by the PSNI in clarifying policy. For example the PSNI have denied that they would ever tolerate drugs dealing in exchange for information.²⁸ However, following the PSNI themselves raising concerns that loyalist paramilitaries had been involved in violent racist attacks, members of the Policing Board sought an assurance that Covert Deployment Authorisations were not granted to allow informants to participate in racist incidents. The PSNI limited its response to stating it would not comment in relation to covert deployments.²⁹
36. Despite the recommendation of the (Patten) Independent Commission on Policing it therefore remains the case that there is no known policy document which prevents the issuing of authorisations which permit informants to be involved in crimes which would constitute breaches of Convention rights. The State Party plans to introduce an Investigatory Powers Bill into the UK Parliament shortly. To date this bill which has been published in draft, will not deal with matters pertaining to the conduct of informants or undercover officers.³⁰

The Committee may wish to ask the UK whether it will introduce binding publicly-available guidance to assure that authorisations for covert activity cannot authorise informants or undercover officers' participation in activities which would constitute human rights violations under the Convention.

²⁸ *Poots says police assure 'no untouchables' over drugs* BBC News Online, 2 July 2013.

²⁹ Northern Ireland Policing Board, Questions to Chief Constable, Racist Crime (Pat Sheehan), September 2014.

³⁰ For further information see CAJ written evidence (IPB0025) 'The Bill and the Northern Ireland peace settlement: should the legislation deal with CHIS and undercover officer conduct too?' published by UK Parliament at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/draft-investigatory-powers-bill-committee/draft-investigatory-powers-bill/written/26117.html>