



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

## **Comments of the Northern Ireland Human Rights Commission on the Fourth Periodic Report of the United Kingdom to the United Nations Committee Against Torture**

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### **Introduction**

1. The Northern Ireland Human Rights Commission (the NIHRC) is an independent statutory body created by the United Kingdom Parliament through the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness in Northern Ireland of law and practice relating to the protection of human rights,<sup>1</sup> advising on legislative and other measures which ought to be taken to protect human rights,<sup>2</sup> advising on whether proposed legislation is compatible with

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<sup>1</sup> Northern Ireland Act 1998, s.69(1).

<sup>2</sup> *Ibid*, s.69(3).

human rights<sup>3</sup> and promoting understanding and awareness of the importance of human rights in Northern Ireland.<sup>4</sup> In all of that work the NIHRC bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding or “soft law” standards developed by the international human rights systems.

2. The NIHRC is at present the only statutory human rights agency in the United Kingdom. It conforms, as far as is possible given the limitations of its statutory powers and resources, with the UN-endorsed Paris Principles<sup>5</sup> and so, notwithstanding its sub-national jurisdiction, it is accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (the ICC).
3. The NIHRC engages extensively with the Council of Europe and United Nations human rights systems. In that context, it wishes to make the following observations to the Committee Against Torture on the Fourth Report of the United Kingdom under the Convention Against Torture (CAT). The NIHRC would be very pleased to provide any clarification, further information, or other assistance to Committee experts before, during or after the forthcoming session at which the UK Report will be considered and which the NIHRC will attend. The NIHRC and other accredited national human rights institutions (NHRIs) are always willing to avail of any opportunity to assist the treaty monitoring process and the wider work of the Committee.
4. The NIHRC’s mandate includes providing advice to government on the scope for enacting a Bill of Rights for Northern Ireland, “drawing as appropriate on international instruments and experience”.<sup>6</sup> The NIHRC has consulted widely on this matter, and in its latest proposals it puts forward a draft Bill of Rights that would not only incorporate all of the European Convention of Human Rights, including the Article 3 prohibition of torture and various Protocols,<sup>7</sup> into domestic law but would add certain other provisions of direct relevance to the CAT. These include provisions on states of emergency, the incorporation by reference of the UN Convention on the Rights of the Child, additional protections of the rights of detained persons and prisoners, and a right to dignity and physical integrity. **The NIHRC requests that the Committee express its support for the enactment of a strong and inclusive Bill of Rights for Northern Ireland.**

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<sup>3</sup> *Ibid*, s.69(4).

<sup>4</sup> *Ibid*, s.69(6).

<sup>5</sup> The *Principles relating to the status and functioning of national institutions for protection and promotion of human rights institutions*, as approved in GA Resolution 48/134 of 20 December 1993.

<sup>6</sup> Northern Ireland Act 1998, s.69(7), referring to the Belfast (Good Friday) Agreement provisions on human rights.

<sup>7</sup> The Convention is already largely incorporated, including Article 3, by way of the Human Rights Act 1998, and elements of the CAT are given effect in the criminal law of the United Kingdom (see paragraph 12 below) but the Bill of Rights, which is intended to operate at a level higher than ordinary law, would provide for the further entrenchment of these rights in Northern Ireland.

## Positive developments

5. The Committee may wish to note, as one significant advance since it last examined the United Kingdom's compliance with the CAT, the creation of the Northern Ireland Human Rights Commission. The Commission, which opened its doors on 1 March 1999, is one of the fruits of the peace process in Northern Ireland, and the years since the last examination have seen a great reduction in political violence in the region along with a reduction in the number of alleged abuses of state power. There have been very significant reforms in policing and in the criminal justice system, and new governance structures have been devised, although at the time of writing the region is once again under direct rule from London.
6. The NIHRC has worked to protect and promote human rights in the region over the past five-and-a-half years, in challenging political conditions and when international circumstances, particularly since 2001, have not favoured the human rights agenda. As the first body of its kind in the United Kingdom the NIHRC was in a sense experimental, and needed to assess the adequacy of its powers and resources in terms of the tasks set for it. Unfortunately the UK government has yet to provide a definitive response to a statutory review of powers submitted by the NIHRC more than three years ago, which identified a number of impediments to its effective functioning. The institution has never had an appropriate level of funding and lacks key powers, such as the ability to require production of documents or—a CAT-related matter on which it is at present litigating—the power to enter places of detention. The NIHRC had been permitted to enter until earlier this year, but has recently been denied entry twice (to Rathgael and Maghaberry prisons, referred to further below). **The Committee should ask the UK to address without further delay the deficiencies in the NIHRC's powers and resources.**
7. The Committee may also wish to welcome the attention being given to improving human rights protection in the other UK jurisdictions. However, while there is now a proposal to establish a combined equality and human rights commission for England, Scotland and Wales, it seems unlikely that this body will have the full range of powers and functions attributable to a normal NHRI. There is a separate proposal to create a human rights commission for Scotland; the relationship with the other proposal is unclear, and it is again unlikely that the Scottish commission, if created, would be Paris Principles-compliant. **The NIHRC urges the Committee to call on the United Kingdom to establish Paris Principles-compliant human rights institutions, with adequate powers and resources, to cover all of its metropolitan jurisdictions and as many as practicable of the Crown dependencies and overseas territories.**
8. The state's recent signature and ratification<sup>8</sup> of the Optional Protocol to the Convention Against Torture (OP-CAT) is a most welcome development. However, the initial list of National Preventive Mechanisms provided by the UK with the

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<sup>8</sup> Signed 26 June 2003, ratified 10 December 2003.

instrument of ratification is unreliable, in that it omits a number of bodies with obviously relevant responsibilities and includes some errors and outdated information. The NIHRC has raised this with officials and expects an updated and accurate list to be supplied to the UN before the Protocol takes effect. The NIHRC has also recommended the co-ordination of the many national, regional and local organisations involved in the preventive role, with a central contact point and a programme of training and awareness raising around OP-CAT and torture prevention. The NIHRC itself wishes to have a role under OP-CAT but it has not been so designated by the UK and, as noted above, lacks the power to insist upon entry into places of detention.

9. There has very recently been a major advance in the English courts in terms of civil liability for torture. Four UK nationals (one also having Canadian citizenship), who alleged that they had been tortured in another State party to CAT, Saudi Arabia, were on 28 October 2004 permitted by the Court of Appeal to proceed with civil suits against named Saudi officials. However the court at the same time rejected an appeal against the decision to prevent one of the alleged victims from suing Saudi Arabia, on the basis of the State Immunity Act 1978, a statute previously criticised by the Committee.<sup>9</sup> **The Committee should call on the state to legislate to protect the right to sue individual torturers, regardless of the outcome of any appeal to the House of Lords in the case referred to, and to re-examine the question of state immunity with a view to establishing universal civil law jurisdiction over acts of torture.**
10. An Afghan national, Faryadi Sarwar Zardad, is at present being tried in London for offences allegedly committed in Afghanistan in 1992-96, of conspiracy to torture and conspiracy to take hostages. It would be inappropriate to comment while the case is at hearing save to say that the NIHRC warmly welcomes the indication that the United Kingdom is prepared to break new ground in prosecuting in one country offences of torture allegedly committed in another.
11. The Northern Ireland Human Rights Commission has in the past experienced some difficulty in interacting with the various London-based government departments responsible for reporting under other human rights treaties.<sup>10</sup> On this occasion,

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<sup>9</sup> See 1998 Concluding Observations on the UK, paras. 76(f), 77(b). As the Committee will be aware, the same Act was relied on to deny Sulaiman Al-Adsani, a victim of torture, the right to bring an action against the government of Kuwait in the English courts (*Al-Adsani v. Government of Kuwait* (1996), 107 ILR 536). The consistency of state immunity with the ECHR was only narrowly upheld in the European Court of Human Rights (*Al-Adsani v. UK*, judgment of 21 November 2001).

<sup>10</sup> The United Kingdom is unusual in that human rights treaty reporting responsibilities are widely dispersed rather than being centralised, as in many other states, in the justice or foreign affairs ministry. In the case of the CAT, the Department for Constitutional Affairs (DCA) is the lead department in the reporting process, although several other departments have more direct responsibilities in relation to the treaty obligations. In the present treaty reporting process the DCA has consulted extensively with the NIHRC and the human rights NGOs. The NIHRC has also liaised with NGOs in relation to this submission and, while it has sought to avoid duplication on matters amply covered in NGO submissions, there are of course many shared concerns. The NIHRC would also draw the Committee's attention to a submission from the recently

however, there was good co-operation; it was provided with a draft of the Fourth UK Report, and submission of the Report was delayed to take account of the extensive comments it made, and additional comments from the NGO community. The NIHRC believes that timely consultation with national human rights institutions, and of course the NGO sector, can greatly assist the work of treaty bodies by improving the accuracy and quality of Reports, and building a constituency of interest to help ensure effective lobbying for implementation of the Committee's recommendations. **It asks the Committee to encourage the United Kingdom to engage in a constructive and more timely manner with relevant institutions and NGOs in preparing future Reports and, more importantly, in devising action plans to attend to the Committee's Concluding Observations.**

### **Incorporation and right of petition**

12. Despite the valuable experience gained since the effective incorporation of the ECHR by means of the Human Rights Act 1998, including the torture prohibition in Article 3, the United Kingdom generally maintains its refusal to incorporate other human rights instruments into domestic law. Key provisions of the Convention Against Torture have of course been given effect through sections 134-138 of the Criminal Justice Act 1988, and, with the utmost respect to the Committee, the NIHRC shares the view of the UK government (Report, para. 17 *et seq.*) that given the wider legal context, and in particular the enforceability of the European Convention right, the Act is not in conflict with the Convention. **The Committee may wish to reconsider its objection to the 1998 Act but should urge the UK to review its general reluctance to incorporate human rights instruments to which it is party.**

13. The NIHRC regrets that the United Kingdom has decided not to change its position on the right of individual communication under Article 22.<sup>11</sup> The state has indicated, however, that it will review this position two years after its imminent ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women.<sup>12</sup> **The NIHRC calls on the Committee to urge the United Kingdom to grant the right of individual petition without further delay.** This is particularly important and urgent at a time when the state acknowledges that it is interning individuals indefinitely and without trial, in some cases on the basis of 'evidence' which may have been obtained through torture.

### **Torture evidence and intelligence**

14. The List of Issues drawn up by the Committee indicates (at paragraph 22) particular concern that the Special Immigration Appeals Commission (SIAC) may consider 'evidence' extracted under torture, so long as the torture is not inflicted by agents of

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established Northern Ireland Commissioner for Children and Young People (NICCY), an independent public agency comparable to an NHRI.

<sup>11</sup> List of Issues, paragraph 21.

<sup>12</sup> The NIHRC understands that the intention is to deposit the instrument of ratification on Human Rights Day, 10 December 2004.

the United Kingdom.<sup>13</sup> This is tantamount to sub-contracting torture. The Northern Ireland Human Rights Commission regards the exploitation of the fruits of torture in any judicial or administrative proceedings as an insult to justice, and a clear breach of Article 15 of the Convention among other international obligations. The right not to be tortured is a fundamental, universal, non-derogable and absolute right, and no state should countenance the admissibility of torture evidence in any judicial proceedings.<sup>14</sup> **The NIHRC urges the Committee to condemn the state's apparent willingness to admit torture evidence in SIAC or any other court or tribunal, and to call on the UK to enact a statute prohibiting the consideration of any such evidence**, regardless of the outcome of any appeal in this matter before the state's highest court (the House of Lords).

15. The United Kingdom has reportedly received and processed intelligence material that was derived from torture in at least one other State Party to the CAT, namely Uzbekistan – a state that has recently been the subject of a highly critical report from the UN Special Rapporteur on Torture.<sup>15</sup> The then UK Ambassador to Uzbekistan strongly expressed his opposition to the acceptance of such material by British authorities and was subsequently removed from his post. **The Committee should ask the United Kingdom to state whether and to what extent its diplomatic and intelligence services solicit, receive, process, rely on and act upon information that they have reason to believe has been derived from torture.**

#### **Anti-terrorism measures and states of emergency**

##### *Internment under ACTSA*

16. The NIHRC shares the abhorrence of many at the fact that Part IV of the Anti-terrorism, Crime and Security Act 2001 (known as ATCSA) permits the indefinite detention without trial of a certain category of detainee, *i.e.* non-UK citizens who cannot be deported because of a legal impediment derived from an international obligation (such as the danger that they might face torture in their home country) or because of a practical consideration. This provision has not so far been used in Northern Ireland, although it applies throughout the state; all the detentions to date have been in England. **The Committee should state its views on whether a State Party to the CAT may indefinitely intern an individual because of any consideration derived from the CAT obligations.**

17. All of those interned under ATCSA since 2001, at Belmarsh prison, have been Muslim males, of various nationalities. (In Northern Ireland, two Muslim males are currently detained, one since January 2004, under a different statute, the Terrorism

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<sup>13</sup> Following the August 2004 Court of Appeal ruling in *A and others v. Secretary of State for the Home Department*, [2004] EWCA 1123.

<sup>14</sup> From paragraph 12, General Comment no. 20 of the Human Rights Committee (1992, regarding Article 7 of the ICCPR): "It is important for the discouragement of violations under Article 7 that the law must prohibit the use or admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment."

<sup>15</sup> E/CN.4/2003/68/Add.2.

Act 2000.) In one case, the mental and physical health of a Belmarsh internee (an Algerian identified as ‘G’) deteriorated so severely that in January 2004 he was removed to house arrest, where he remains at the time of writing. Another internee, Mahmoud Abu Rideh, was removed to Broadmoor high security psychiatric hospital because of the deterioration in his mental health at Belmarsh; although the hospital authorities have said that he is no longer ill enough to remain in Broadmoor, they also believe that if returned to Belmarsh his condition will again worsen, so that in effect he is trapped between hospital and prison. Two internees have been released without charge, one after almost three years, while nine remain at Belmarsh. The prospect of indefinite detention for life (in high security conditions, in a foreign country, without charge, trial or effective appeal to an independent court) is bound to have adverse effects on the mental health of detainees, and in the case of ‘G’ the SIAC chairman explicitly recognised that the detainee’s mental illness had been *caused* by that treatment. This immediately engages the Convention Against Torture and the corresponding provisions of other human rights instruments.<sup>16</sup> It should be noted that the wives of several of the internees have also been diagnosed as having mental health problems brought on by their husbands’ situation; this naturally adds to the mental distress suffered by their husbands.

18. We are aware that a respected UK NGO, Physicians for Human Rights, has raised concerns about the adequacy of medical and psychiatric care for the internees, but if it is the *fact* of internment that causes illness then it is difficult to see how improved services and facilities for internees could greatly help. While Article 1 of the Convention Against Torture states that torture “does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”, the aggravating factor that the relevant provisions of Part IV of the Act are indefinite in duration and discriminatory (against non-nationals) ought to bring them within the scope of Article 1, and has certainly been widely criticised.<sup>17</sup>
19. The very negative effects of internment without trial in Northern Ireland during the early 1970s gives the Northern Ireland Human Rights Commission a particular insight into the potential effects of the reintroduction of internment under ATCSA.

*The protection of human rights in the fight against terrorism*

20. The application of ATCSA obliged the United Kingdom to derogate yet again from the relevant provisions of both the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR).<sup>18</sup> In doing so it relied on the supposed existence of “a public emergency threatening the life of

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<sup>16</sup> UN HRC General Comment no. 20, para 5: “The prohibition in Article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim.”

<sup>17</sup> See February 2004 report of the UK Parliamentary Joint Committee on Human Rights; December 2003 report of the Privy Counsellor Review Committee (the Newton Committee), and 2003 Concluding Observations on the UK by the UN Committee on the Elimination of Racial Discrimination.

<sup>18</sup> List of Issues, para. 9.

the nation”, a threshold which no other State party to the ECHR had recognised as having been reached so as to justify derogation.

21. The NIHRC readily acknowledges the right and duty of the state to protect the public from politically motivated violence, and specifically recognises the increased threat from certain forms of terrorism, but it does not accept that the United Kingdom is currently facing an emergency threatening the life of the nation such as would justify suspension of fundamental rights. The abiding nature of the declared emergency is disturbing—when will the ‘war against terrorism’ ever be ‘won’? Especially in the light of the experience of derogation notices under previous forms of counter-terrorism legislation (the previous notice lasted nearly 12 years), there must be a form of regular review of the need for the derogation.
22. In furtherance of the statutory duties referred to at paragraph 1 above, the NIHRC recently advised the UK government of a number of changes to the law that might present a realistic alternative to the more offensive aspects of ATCSA, including the following:<sup>19</sup>
  - evidence obtained from intercepted telephone calls should be allowed to be used in court;
  - statutory rules or codes of practice should be developed setting out in detail the conditions under which prosecutions may be based on the evidence of anonymous witnesses, informers, accomplices and under-cover state agents;
  - mechanisms for reviewing anti-terrorist legislation should also review measures taken for contingency planning in the event of a serious terrorist attack; and
  - serious consideration should be given to extending to Northern Ireland the anti-jury tampering measures contained in the Criminal Justice Act 2003 applicable in England and Wales.
23. The NIHRC also made a number of recommendations aimed at protecting the human rights of persons detained for alleged terrorist offences.<sup>20</sup> Amongst these are the following:
  - the law should be amended to make it clear that no court anywhere in the United Kingdom can admit evidence which the relevant authorities cannot show to have been obtained without the use of torture;
  - the 14-day maximum detention period under the Terrorism Act 2000 should be kept in force only while this can be justified as an ‘emergency’ measure under the European Convention on Human Rights;
  - the conditions of detention for those detained under the Terrorism Act 2000 should be subjected to much closer regulation than is at present the case;
  - detainees and their legal representatives should be excluded from release hearings only on clearly identified grounds;

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<sup>19</sup> *Home Office Discussion Paper on Counter-terrorism Measures: Reconciling Security and Liberty in an Open Society, Response of the Northern Ireland Human Rights Commission, August 2004*, available on [www.nihrc.org](http://www.nihrc.org).

<sup>20</sup> *ibid.*



- the work undertaken by the Independent Commissioner for Detained Terrorist Suspects in Northern Ireland should also be undertaken in other parts of the United Kingdom;
- sections 72 and 73 of the Terrorism Act 2000, which set maximum periods for remands and other court processes, should be brought into force;<sup>21</sup>
- section 108 of the Terrorism Act 2000, which allows police assertions to be used as evidence of membership of specified organisations, should be repealed; and
- consideration should be given to establishing an independent standing committee to investigate and report on any proposed introduction of anti-terrorist legislation, how it is operating in practice, whether it should be renewed and whether it is compatible with all of the United Kingdom's international human rights obligations.

### **Northern Ireland-specific issues**

24. The NIHRC draws the Committee's attention to an inaccuracy in the UK Report (at paragraph 183). Contrary to what is asserted in the Report (and was also asserted in the course of the last UK examination under the ICCPR, in 2001), about the interrogation centre at Gough Barracks in Armagh having closed in September 2001, it has been used for short periods on several occasions since then, while the Antrim facilities were out of service. The centre has now, we have been told, been finally decommissioned. **The UK should be asked for yet another assurance on this point.**
25. The NIHRC shares the concern indicated in the Committee's List of Issues (para. 17) about the use of prisons for holding immigration detainees, including in some cases asylum applicants. The practice has mostly been discontinued in the rest of the state, but in Northern Ireland all immigration detainees were until very recently held in Maghaberry high-security prison. Male detainees have now been removed to an annex of the lower-category Belfast prison (although recently some were returned to Maghaberry temporarily, allegedly because of staff shortages). Female detainees have also been transferred and are now held alongside sentenced and remand women prisoners in a prison facility sharing a site with Hydebank Wood Young Offenders Centre (which has an almost entirely male population). Prison facilities are quite unsuitable for immigration detention and there have been allegations, which the NIHRC has taken up with the Prison Service, of disrespectful language and behaviour towards Muslim detainees in Maghaberry.

### *Northern Ireland emergency legislation*

26. With reference to paragraph 4 of the List of Issues, the NIHRC does not believe that there is continuing justification for the use of emergency measures in Northern Ireland. Since the Belfast, or Good Friday, Agreement of 1998, the level of

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<sup>21</sup> This being particularly relevant in Northern Ireland, where the 2000 Act, rather than ATCSA, is being used to much the same effect in the case of a Filipino who has been detained for almost a year and an Algerian originally detained for alleged immigration offences.

politically motivated violence and other phenomena associated with the Northern Ireland conflict has diminished to the extent that the criteria for emergency measures are clearly not satisfied. In terms of democratic institutions, the region has some prospect of achieving stability and moving from direct rule from London to a restored regional Assembly and Executive. The UK government has not yet announced a promised programme of security normalisation with an accompanying timetable, but substantial steps have been taken to move towards more normal, community-based policing. There is reason to hope for significant advances in the peace process over the coming months, if not weeks, and it is important that any reduction in the perceived threat from armed groups is matched by a reduction in the extraordinary measures deployed by the state to counter that perceived threat. Specifically, **the state of emergency that has been in effect in Northern Ireland in one form or another for more than 80 years should be discontinued, the use of the Army in routine policing should end, and the remaining elements of counter-terrorist legislation peculiar to Northern Ireland, contained in Part VII of the Terrorism Act 2000, should be discontinued or repealed.**

#### *Paramilitary activities*

27. The Committee will be aware of the numerous allegations of collusion between security forces and illegal paramilitary organisations in Northern Ireland that have emerged over the past 35 years. Some of these allegations relate to police or army instigation of or collaboration in specific murders and other attacks, while others relate to systemic collusion in the sense of attempts by security agencies and special Army units to facilitate, inform, control and direct the activities of illegal armed groups. The collusion allegations primarily involve Loyalist paramilitary organisations, but relate also to criminal activities by state agents in Republican groups. The obligations assumed by the UK under the CAT clearly extend to prohibiting any knowing collusion in the unlawful use of force, and, equally, to preventing unofficial involvement in such activity by state agents.<sup>22</sup> **The Committee should require of the UK an assurance that all allegations of collusion will be thoroughly investigated and that no such activity will be tolerated.**
28. In a very few instances, following an official review carried out by a retired Canadian judge, inquiries have been announced or are under consideration into high-profile murders in which such collusion is alleged. These are cases in which the ordinary criminal justice system has failed to uncover the full facts, and where the families of the victims are prepared to forego their just expectation of a rigorous application of the criminal law in favour of a process that stands a chance of revealing the truth. **The NIHRC urges the Committee to regard issues of collusion as falling firmly within the scope of Article 1, and to press the United Kingdom for rapid progress in establishing the inquiries and endowing them with the independence,**

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<sup>22</sup> From paragraph 2, General Comment no. 20 of the Human Rights Committee (1992, regarding Article 7 of the ICCPR): “It is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against [torture], whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.”

**transparency, resources, domestic and international credibility and other attributes required to ensure that they are capable of arriving at the truth.** An adequate legislative basis for such inquiries already exists, and the state must not delay and weaken the process by unnecessarily preparing special legislation giving the inquiries limited powers.

29. The Committee will be aware that in Northern Ireland, one of the most frequent forms of human rights abuse involves what are called ‘punishment attacks’. Paramilitary organisations operating in certain areas where there are high levels of anti-social behaviour, and a lack of confidence in the Police Service of Northern Ireland, administer beatings or shootings as a form of summary ‘justice’ and to maintain their control over the area. Many of these vigilante attacks (running at about 300 per year) involve extreme violence, and sometimes they result in death or permanent disability. Despite the fact that these violations are not carried out or instigated by public officials, it is not clear that the state is doing enough to protect, in particular, young people from this routine and terrible violation of their human rights. **The Committee should urge the United Kingdom to do everything possible to prevent punishment attacks.** In particular, it should be asked to support the development of community-based restorative justice projects, and to increase efforts to secure wider confidence in the police and criminal justice system. Assurances should also be sought that the recent extension to Northern Ireland of legislation providing for ‘anti-social behaviour orders’ (ASBOs) will be applied, if at all, in a way that will minimise the risk that persons subject to such orders will as a consequence be targeted for punishment attacks. The government is well aware of concerns that young males, the group most likely to be subject to ASBOs in other UK jurisdictions, will in Northern Ireland be vulnerable to torture by paramilitaries if their personal details are publicised when the ASBO is issued.

#### *Public order and policing*

30. The Committee experts will be aware of the horrific events at Holy Cross Girls’ Primary School, Belfast, over several months in 2001, when children walking to and from a Catholic school were blockaded, attacked and harassed by local Protestant residents and their sympathisers. The NIHRF funded an unsuccessful legal action by a parent who challenged the policing of the events, relying on the ECHR prohibition of torture and inhuman or degrading treatment (Article 3).<sup>23</sup> **The United Kingdom should be asked to give an account of successful prosecutions arising from the events at Holy Cross School, and assurances that adequate contingency plans are in place to police any comparable incidents.**
31. The Committee has commented (recommendation (d) of the 1998 Concluding Observations) on the use of plastic bullets, officially termed ‘baton rounds’, for crowd control in Northern Ireland. Although neither the police nor the Army have used this weapon in public order situations since 2002, a large quantity of ammunition is held by both forces and is still being used for training purposes. The NIHRF, while

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<sup>23</sup> *In the matter of an application by ‘E’ for Judicial Review*, 2004 NIQB 35.

welcoming the state's commitment in principle to discontinuing use of this weapon at an early date, has expressed concern about the process of evaluating and introducing less lethal alternatives. One alternative already in service (and used on around 20 occasions since its introduction in August 2004) is a hand-held CS spray. There have been allegations that this spray has been used in unsafe ways, for example on persons already under restraint, and at the time of writing one police officer is under investigation for alleged misuse.

### *Mental health*

32. The legal protections for persons compulsorily detained in psychiatric hospitals in Northern Ireland have long been a matter of concern for the NIHRC. In particular, there is a problem with the role of the medical member of the Mental Health Review Tribunal, the body which determines applications for the release of such patients. The medical member interviews the patient prior to the hearing, but then participates in the decision making, effectively judging his or her own evidence. The NIHRC is concerned that this procedure breaches the right to a fair hearing.
33. There is, however, a very wide-ranging review under way of mental health provision in Northern Ireland, including the need for legislative reform. The Northern Ireland Human Rights Commission is contributing to the review. Among the issues which have been of concern to the NIHRC are procedures for determining consent (particularly in relation to electro-convulsive therapy); the inadequacy of mental health services for young people (in general, and in specialisms such as the treatment of eating disorders); the limited capacity of the Mental Health Commission to effect real improvement in standards of care, given the workload imposed on it by the very high proportion of legally defective detentions; the issue of delays in providing access to review procedures after compulsory admission for assessment under the Mental Health (Northern Ireland) Order 1986; dementia care, and protection from abuse of older people in residential and nursing homes. The review will report in phases over the next year or two and the NIHRC will strive to ensure that so very thorough a review is not frustrated by 'cherry-picking' of only those outcomes that have fewest resource implications. It is already clear to the Commission that major investment will be needed to provide mental health services that respect the human rights of detained patients and other vulnerable groups. **The Committee should ask to be informed of the outcomes of this review in all areas touching on the Committee's competence and, in particular, should request assurances that sufficient resources will be made available to ensure equivalence of psychiatric care, including counselling and suicide/self-harm prevention programmes, for prisoners.**

### *Physical punishment of children in the home*

34. The lower house of the UK Parliament on 2 November 2004 endorsed legislative proposals for England and Wales which would remove the defence of 'reasonable chastisement' in relation to serious assaults on children, but will continue to allow

children to be smacked. The NIHRC regrets that this measure falls short of an absolute prohibition of the physical punishment of children and that in any case it will not directly impact on the protection of children in Northern Ireland. The direct rule administration has, however, indicated that should the English legislation be adopted, comparable change will be made in Northern Ireland law. **The Committee should ask for an assurance that the law in Northern Ireland will be changed without delay so as to provide at least the same degree of protection as in England and Wales.**

*Prisons – general*

35. Since the last examination of the UK by the Committee, some seven prisoners have died by suicide in Northern Ireland (in some cases inquests are pending). There have also been in the region of 600 *recorded* instances of self-harm, including attempted suicides. **The UK should be asked to clarify why the instances of *recorded* self-harm appear to have doubled since early 2002, and to state whether psychiatric services are available to prisoners fully in accordance with the principle of equivalence of care.**
36. Prisoners in other UK jurisdictions have long had access to complaints systems with a substantial degree of independence: the Prisons and Probation Ombudsman for England and Wales, and the Scottish Prisons Complaints Commission. In Northern Ireland, the complaints system has to date been entirely managed within the Prison Service. The NIHRC has repeatedly called for the creation of an ombudsman service in Northern Ireland, and in September 2004 the Northern Ireland Office announced that, following a consultation on the creation of such an office along with a revised complaints procedure, a Prisoner Ombudsman for Northern Ireland is shortly to be appointed.
37. The arrangements for inspection of prison conditions in Northern Ireland have to date been somewhat unsatisfactory, in that the Prisons Inspectorate (for England and Wales) has carried out inspections on a non-statutory basis, at the invitation of the Northern Ireland Office. However, given the very high quality of work done by the current Chief Inspector and her colleagues, and the degree of co-operation offered to them by the prison management, the system has in practice worked reasonably well. With the creation of a new Criminal Justice Inspectorate for Northern Ireland (CJI) as part of the post-Good Friday Agreement reforms, there will be a transitional period during which it is expected that inspections will be carried out by both Inspectorates, leading in due course to a full transfer of responsibility to the CJI. **The UK should be asked for assurances that future inspections in Northern Ireland will be carried out to the high standards established by the Prisons Inspectorate.**

*Women prisoners*

38. The NIHRC has particular concerns about the regime for women in prison in Northern Ireland. The last official assessment by the Prisons Inspectorate, in 2002,

was highly critical of conditions in Mourne House, then the female part of Maghaberry prison. In July 2003 the NIHRC began to research the extent to which the treatment of women and girls in Maghaberry complied with international human rights law and standards.

39. In October 2004 the NIHRC published a report<sup>24</sup> that found little progress in areas such as healthcare since the 2002 inspection. In fact, the overall regime in Mourne House had deteriorated significantly. There was no Prison Service policy statement or strategy document addressing the particular needs of women and girls in prison, there was no policy regarding the separation of politically affiliated prisoners, no policy regarding the admission of sex offenders alongside women with histories of enduring abuse, and no training provision, policy or programmes for the accommodation, management and protection of child prisoners.
40. As is often the case in UK jurisdictions, a significant proportion of women prisoners appeared to be suffering from mental health problems, and should not have been in prison; a third had been imprisoned for fine defaults; and most of the women were serving sentences of three months or less. Women were regularly locked in cells for 17 hours a day, workshops were permanently closed and education classes rarely held. The only regular organised activity was horticulture, offered to sentenced women only. For many women the regime consisted of being locked alone in their cells with a television for extended periods of time. The right to a meaningful family life was not respected. Women were restricted to brief periods of unlock during which they could make telephone calls to their children. Two women prisoners had died by suicide since the 2002 inspection, and there had been other serious suicide attempts. A 17-year-old girl was being held in isolation, as a result of which the NIHRC researchers became involved in legal proceedings.
41. There was no dedicated governor responsible solely for the management of women in prison and no gender-specific training for prison management or officers. Approximately 80 per cent of prison officers allocated to Mourne House were men and it was not uncommon for the night guard duty to be all male. Several male prison officers were suspended and eventually dismissed for ‘inappropriate relationships’ with women prisoners. Women prisoners coming into contact with male prisoners, using shared transport or in the prison hospital, were routinely subjected to verbal abuse and sexual threats.
42. The ‘special supervision unit’ used for punishment and segregation held distressed and self-harming women and girls in degrading and inhumane conditions. ‘Strip conditions’ comprised a plinth with no mattress and no pillow, a supposedly indestructible gown and blanket, and a pot for a toilet without access to a sink. There was no other furniture and no ‘humanising features’ in the cells. For girls under 18, the conditions constituted a serious breach of international standards on the rights of the child.

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<sup>24</sup> *The Hurt Inside: The imprisonment of women and girls in Northern Ireland*, Belfast (NIHRC), October 2004. Copies have been forwarded to the Committee and a PDF version is available at [www.nihrc.org](http://www.nihrc.org).

43. Mourne House was closed in June 2004, and the women were moved to Hydebank Wood prison, on the site of a mostly male Young Offenders Centre. The Commission views this as an entirely inappropriate location for imprisoning women. One prisoner has begun a legal challenge to the conditions at Hydebank citing Article 3 of the ECHR (in relation to the lack of in-cell sanitation and repetitive strip-searching). The transfer fails to address the concerns of the Prisons Inspectorate and women find themselves relocated from one male regime to another. The Human Rights Commission's researchers have, so far, not been allowed into the unit at Hydebank Wood. The denial of access demonstrates the inadequacy of the NIHRC's powers, and **the Committee is asked to recommend that the NIHRC be given the right to enter places of detention. The UK should also be asked to provide a timescale for the provision of in-cell sanitation for women prisoners and/or their return to Mourne House, with, in either case, a gender-appropriate prison regime and staffing.**

### **The conflicts in Iraq and Afghanistan**

44. The statutory remit of the Northern Ireland Human Rights Commission extends only to Northern Ireland, and it does not habitually comment on matters concerning UK foreign policy except in direct relation to human rights treaty obligations. However, the NIHRC was one of the few NHRIs to oppose from the outset the invasion and occupation of Iraq, which it regarded and continues to regard as contrary to international law. Whether the figure for civilian deaths in this unlawful exercise is at the lower end (16,000) or the higher (100,000) of the estimates currently circulating, there can be no doubt that the invasion has led to massive suffering and to countless human rights violations.

45. The NIHRC does not wish to duplicate the numerous representations that the Committee will have before it from human rights NGOs better placed to provide detailed commentary on abuses associated with the Iraq conflict. These include human rights violations by coalition forces, including instances documented by Amnesty International of the apparently unlawful use of lethal force by British forces. The abuse of prisoners in British custody has also been reported by Amnesty International and in the February 2004 report of the International Committee of the Red Cross. The Committee will no doubt have details of those alleged violations which include the hooding of prisoners.<sup>25</sup> The NIHRC is concerned that there has not been more evidence of a determination by the United Kingdom to meet its obligation under Article 5 to establish its jurisdiction over torture offences committed by any UK national. Procedures for investigating, prosecuting and providing redress for the killing or mistreatment of non-combatants are clearly deficient.

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<sup>25</sup> Hooding, as the Committee experts will recall, was one of the practices which led to a finding by the European Court of Human Rights against the UK in relation to inhuman and degrading treatment of prisoners in Northern Ireland in the 1970s.

46. There is no longer any room for doubt over the violation of the Convention Against Torture by the United States of America in its detention facilities in Iraq, notably at Abu Ghraib. To the extent that the United Kingdom forces were aware of the US practices, any transfer to US custody of persons captured by UK forces would be capable of violating the Convention. The Committee should ask the UK to account for the safety of each and every individual who may have passed from UK to US custody in the course of the invasion and occupation.
47. There have been media reports of the use of Diego Garcia, an island in the British Indian Ocean Territory (BIOT) leased as an air base to the United States, as one of several unacknowledged detention centres in which US agencies are alleged to hold and interrogate prisoners. **The Committee is asked to give the United Kingdom another opportunity to deny that it has any knowledge of any such activity, to confirm that it is observing all of its CAT obligations in respect of Diego Garcia and to account for the absence of any reference to the BIOT in the UK Periodic Report.**
48. A number of UK nationals are currently detained by the United States at its base in Guantánamo, Cuba, having been detained in Afghanistan or Pakistan. The NIHRC has no capacity to intervene in these cases but is deeply concerned at the reports of multiple abuses of the human rights of persons detained in Guantánamo, apparently beyond the reach of any effective judicial protection. **The Committee should press the United Kingdom to secure the immediate return of any of its citizens interned in Cuba, and to bring prosecutions against any US officials responsible for breaching their CAT rights, in conformity with Article 5(1)(c).**

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