

## **Submission by the Committee on the Administration of Justice (CAJ) to the UN Committee on the Rights of the Child regarding the List of Issues for the UK's Initial Report on the Optional Protocol to the Convention on the Sale of Children, Child Prostitution and Child Pornography (OPSC)**

1. CAJ is an independent human rights NGO with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies 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 obligations in international human rights law. CAJ is affiliated to the Fédération internationale des ligues des droits de l'Homme (FIDH).
2. CAJ welcomes the opportunity to inform the Committee's List of Issues in relation to the UK examination under the OPSC which is scheduled for the 66th Session (May–June 2014). CAJ will focus on the issue of effective and accountable policing for serious and organised crime in Northern Ireland, including specifically the matters which are protected under the OPSC.

### **Establishment of National Crime Agency: human rights compliance and policing accountability concerns**

3. The UK through the Crime and Courts Act 2013 is establishing a federal police force known as the National Crime Agency (NCA). This force will have a role in tackling serious and organised crime and supersedes other agencies. The NCA will operate across the state party, including in Northern Ireland in support of the Police Service of Northern Ireland (PSNI).
4. CAJ and others have however had concerns about the compatibility of the NCA with the oversight arrangements resultant from the peace settlement in Northern Ireland which were to ensure the human rights compliance of policing. CAJ consequently welcomed a decision by the Northern Ireland Executive (the regional power-sharing government) not to allow the NCA to operate as an unaccountable police force with full police powers and primacy over the PSNI in Northern Ireland.<sup>1</sup> Rather the NCA will now have to operate in Northern Ireland in cooperation with the PSNI who operate under above oversight arrangements.
5. From the outset there has been controversy as to whether the NCA in general will assist or be regressive in tackling the areas of crime relevant to the OPSC. In 2010 the Child Exploitation and Online Protection Centre (Ceop), a police-led body primarily focused on tackling child exploitation on the internet,

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<sup>1</sup> See CAJ statement 'Human rights group welcomes Stormont decision not to introduce 'British FBI' as unaccountable police force into NI' [Available at <http://www.caj.org.uk/contents/1153>]

issued a statement raising concerns that it “does not feel that it is in the best interests of children and young people for Ceop to be assimilated into the National Crime Agency” as the UK government had planned. The Chief Executive of Ceop, Jim Gamble, resigned in protest at the decision.<sup>2</sup> Giving evidence to a UK Parliament inquiry Mr Gamble argued that there was a risk that a multi-agency child focused approach to child protection in Ceop would be lost within an agency (the NCA) focused on dealing with organised crime:

...[Ceop has] social workers working alongside people from NGOs, working alongside police officers, working alongside other specialists from industry and elsewhere... it has a single culture: children first...Pushing us into a National Crime Agency, where the culture will invariably be different, is not going to be best for children nor other vulnerable victims who find themselves part of these crimes. Last year, only 7% of the crimes that we dealt with had any financial benefit accrued to it, whatsoever, and very little of that, you would say, is organised crime....We are going to lose valuable specialist staff; we're going to add bureaucracy; and children will not be as well served.<sup>3</sup>

6. The most prominent human rights concern about the NCA in Northern Ireland has related to its incompatibility with the accountability framework for policing introduced as a result of the peace process. The reforms to policing following the Belfast/Good Friday Agreement 1998 have involved changes that seek to ensure non-recurrence of human rights abuses linked to policing during the conflict. Last year CAJ published a research report raising concerns regarding regression in this framework in relating to the controversial area of covert policing and the running of agents and informants within paramilitary organisations.<sup>4</sup> This includes concerns about informant involvement in serious crime with a degree of immunity from investigation and prosecution. In one high profile case reported elsewhere this includes allegations relating to a security service agent involved in institutional child abuse.<sup>5</sup>
7. The Belfast/Good Friday Agreement 1998, approved by referendum and a bilateral UK-Ireland treaty, established the *Independent Commission on Policing for Northern Ireland* (the Patten Commission) which set out its blueprint for a ‘new beginning to policing’ in its final report.<sup>6</sup> In a subsequent international Agreement between the UK and Ireland in 2001, the UK reaffirmed its commitment to implementing the report.<sup>7</sup> Part of this settlement was local control over policing. A lengthy process, including commitments in further international Agreements<sup>8</sup> was instigated to transfer most powers for policing and justice to the regional government and legislature, which

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<sup>2</sup> See ‘Online child protection chief Jim Gamble resigns’ BBC News Online [available at: <http://www.bbc.co.uk/news/uk-11472033> accessed July 2013].

<sup>3</sup> UK Parliament Official Report (Hansard) Home Affairs Committee - Minutes of Evidence, *Work of the Child Exploitation and Online Protection (CEOP) Centre*, Oral Evidence Tuesday, 12 October 2010.

<sup>4</sup> CAJ ‘The Policing You Don’t See’ December 2012 [Available at: <http://www.caj.org.uk/contents/1139>.]

<sup>5</sup> Moore, Chris ‘The Kincora Scandal: Political cover up and intrigue in Northern Ireland’ (Marino Books April 1996).

<sup>6</sup> ‘A New Beginning: Policing in Northern Ireland’ The Report of the Independent Commission on Policing for Northern Ireland, (the Patten Report), September 1999.

<sup>7</sup> Weston Park Agreement 2001, paragraph 8.

<sup>8</sup> Joint Declaration of the British and Irish Governments 2003 and St Andrews Agreement 2006.

eventually took place in April 2010, further to the 2010 Agreement at Hillsborough Castle between the two largest political parties.

8. Transparency and effective accountability are essential elements in ensuring policing bodies comply with human rights. The Patten Commission set out a new accountability structure for policing, the centrepiece of which was the Northern Ireland Policing Board made up of representatives of the main political parties and independent members, rather than the past position of police being answerable directly to a UK government Minister. The parties to the Belfast/Good Friday Agreement set out on the face of the Agreement that they believed it is essential “that policing structures and arrangements” ensure policing is, among other matters, “*free from partisan political control*”; “*accountable, both under the law for its actions and to the community it serves*”; “*representative of the society it polices*” and operates within a criminal justice system compatible with human rights norms.<sup>9</sup> Further reforms to seek to make covert policing human rights accountable occurred in 2003 following a damning report by the independent Police Ombudsman for Northern Ireland, which uncovered continued implication of police informants in serious criminality, sham investigations into the same and police Special Branch continuing to operate outside the regulatory framework. The Ombudsman’s report indicates that in October 2003 the PSNI instigated a ‘major review’ (the CRAG review) of all their informants, which resulted in around a quarter of them being let go, half of them as they were deemed “too deeply involved in criminal activity.”<sup>10</sup>
9. It is in this context that there were human rights concerns about the manner in which the UK Home Office intended the NCA to operate in one of the most sensitive areas of policing in Northern Ireland. The Home Office had envisaged the NCA operating in Northern Ireland with full police powers, an intelligence gathering function, a ‘coordinating role’ and powers to place PSNI officers under NCA control without accountability to the Northern Ireland Policing Board. Rather the NCA will be answerable only to a Minister in London. The Northern Ireland Executive did not provide legislative consent to the NCA operating in this manner. The outcome of this is that the NCA can still operate in Northern Ireland but without powers of a police officer or powers to direct the PSNI.
10. In February 2013 the Chief Constable Matt Baggott stated the PSNI’s official position on the NCA to the Northern Ireland Policing Board. Whilst stressing the PSNI would need access to NCA expertise and international reach the statement emphasised the importance of ensuring accountability and PSNI primacy in its operations in Northern Ireland. He stated that it was:

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<sup>9</sup> Belfast/Good Friday Agreement, Section 9, Policing and Justice, Paragraph 2.

<sup>10</sup> 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.

...vitaly important that the PSNI can access the international reach the NCA provides and the ability to draw down on the expertise that the agency will offer, including specialist support on human trafficking, child abuse... ... While criminals ignore and manipulate borders for their own advantage, Northern Ireland is a unique position. Major aspects of policing and justice have been devolved in Northern Ireland and the accountability arrangements are rightly a matter for local and central Government to determine. The confidence and consent of the whole community is essential to the delivery of policing. We recognise that agreed accountability plays a central role in achieving this. It must be thought through carefully. It is our view that the NCA should only work in Northern Ireland alongside the PSNI, so that operational control ultimately remains with the [PSNI] Chief Constable and nothing proceeds without agreement. There must be complete transparency of intelligence, investigation and operational activity.<sup>11</sup>

11. CAJ noted that since the decision by the Northern Ireland Executive some policing and political figures have argued that there will be a serious gap in the ability to tackle organised crime in Northern Ireland. However, no real case has been made to date to demonstrate that policing serious and organised crime will be ineffective in the absence of the NCA having the far reaching powers the Home Office had anticipated. Unless the UK Home Office unduly withholds cooperation the PSNI can still get whatever specialist assistance it may need in investigations of an international reach from the NCA by working directly with them. The PSNI can still draw on NCA expertise and assets if and when needed to inform its own operations in a manner which maintains PSNI primacy and hence accountability to the Northern Ireland Policing Board.

**The Committee may wish to consider asking the UK in its List of Issues whether, insofar as it operates in Northern Ireland, it would allow the NCA to be fully accountable to the Northern Ireland Policing Board and other important oversight structures committed to as part of the peace settlement. The Committee may also wish to ask the UK how it has addressed the above concerns in relation to the incorporation of Ceop into the NCA.**

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<sup>11</sup> PSNI Statement 'An Update from the Police Service of Northern Ireland' February 2013, National Crime Agency.