



CPT/Inf (2006) 28

**Report to the United Kingdom Government
on the visit to the United Kingdom
carried out by the
European Committee for the Prevention of Torture
and Inhuman or Degrading
Treatment or Punishment (CPT)
from 20 to 25 November 2005**

The United Kingdom Government has requested the publication of this report and of its responses. The Government's responses are set out in document CPT/Inf (2006) 29.

Strasbourg, 10 August 2006

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Copy of the letter transmitting the CPT's report

Strasbourg, 17 March 2006

Dear Mr Kissane,

In pursuance of Article 10, paragraph 1, of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment, I enclose herewith the report to the Government of the United Kingdom drawn up by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) following its visit to the United Kingdom from 20 to 25 November 2005. The report was adopted by the CPT at its 59th meeting, held from 6 to 10 March 2006.

The recommendations, comments and requests for information made by the CPT are set out in bold type in paragraphs 4, 16 to 18, 20 to 23, 26, 31, 32, 34, 36 to 39, 42, 44, and 46 to 48 of the report. The CPT requests the United Kingdom authorities to provide within three months a response containing an account of action taken by them to implement the Committee's recommendations and setting out their reactions and replies to its comments and requests for information.

I am at your entire disposal if you have any questions concerning either the CPT's report or the future procedure.

Yours sincerely,

Silvia CASALE
President of the European Committee for the
Prevention of Torture and Inhuman
or Degrading Treatment or Punishment

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I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment (hereinafter referred to as "the Convention"), a delegation of the CPT carried out a visit to the United Kingdom from 20 to 25 November 2005. The visit was one which appeared to the Committee "to be required in the circumstances" (cf. Article 7, paragraph 1, of the Convention).

2. The visit was carried out by the following members of the CPT:

- Mario FELICE (Head of delegation)
- Pétur HAUSSON.

They were supported by Trevor STEVENS, Executive Secretary, and Hugh CHETWYND, Head of Unit, of the CPT's Secretariat, and assisted by

- Per BORGÅ, Psychiatrist, Karolinska Institutet Danderyd Hospital, Sweden (expert)
- Mohammad ASSI (interpreter)
- Mourad KHALLAF (interpreter).

B. Context of the visit and issues pursued

3. On 8 August 2005 the police detained ten persons under the 1971 Immigration Act, with a view to their being sent back to their countries of origin, and transferred them to Full Sutton and Long Lartin Prisons. The persons in question had previously been certified under Part IV of the Anti-Terrorism Crime and Security Act 2001 (hereafter “the ATCSA”) and held in Belmarsh and Woodhill Prisons or Broadmoor High Secure Hospital, in some cases for more than three years¹. Subsequently, on 12 March 2005, they had been released on bail and served with “non-derogating” control orders under the Prevention of Terrorism Act 2005.

In early September 2005, a further twelve persons were detained under the same immigration legislation and transferred to Full Sutton and Long Lartin Prisons.

The CPT decided to examine the treatment and conditions of detention of these persons, with special attention being given to their mental health. In this context the delegation, which carried out the November 2005 visit, went to Full Sutton and Long Lartin Prisons as well as Broadmoor High Secure Hospital and interviewed the above-mentioned persons. It also interviewed two persons who had been released from prison and were under house arrest.

4. In connection with these detentions, the United Kingdom authorities have sought to conclude memoranda of understanding with States from the Middle East and North Africa; to date such memoranda have been signed with the Hashemite Kingdom of Jordan, on 10 August 2005, with the Great Socialist People’s Libyan Arab Jamahiriya, on 18 October 2005, and with the Republic of Lebanon, on 23 December 2005. The pursuance of such memoranda has elicited a forceful reaction from human rights organisations, which fear that they could undermine the absolute prohibition of torture². The CPT has also expressed its views in relation to this subject, of a general nature in its 15th Annual Report (cf. CPT/Inf (2005) 17, paragraphs 38 to 42) and, more specifically, in a letter to the United Kingdom authorities dated 21 October 2005, in which the Committee commented on the Memorandum of Understanding with Jordan (cf. Appendix). The CPT delegation which carried out the November 2005 visit held a preliminary discussion on this issue with officials from the Home Office and Foreign and Commonwealth Office, it being understood that the United Kingdom authorities would, in due course, provide a full response to the letter of 21 October 2005.

The CPT requests the United Kingdom authorities to provide the above-mentioned response.

¹ The CPT had examined the conditions of detention of this group while detained under the ATCSA in 2002 and 2004 (cf. CPT/Inf (2003) 18 and CPT/Inf (2005) 10, respectively).

² cf. Amnesty International, Human Rights Watch and International Commission of Jurists joint submission of 2 December 2005: “reject rather than regulate”; and Report by the United Nations Special Rapporteur on Torture of 23 December 2005 (cf. E/CN.4/2006/6, paragraphs 31-32).

5. In the report on the CPT's July 2005 visit, the CPT raised a number of issues in respect of the safeguards afforded to persons detained by the police under the Terrorism Act of 2000 and of conditions of detention of such persons, in the light inter alia of the Government's intention to extend police custody to a maximum of 28 days in terrorism-related cases³. During the November 2005 visit, the Committee's delegation explored these issues further, including during discussions with the United Kingdom authorities and in the course of a return visit to Paddington Green High Security Police Station.

6. Finally, the CPT's delegation met with persons served with control orders under the Prevention of Terrorism Act 2005. Taken together with the findings from the July 2005 visit, the Committee will comment on the impact of these orders on certain of the persons met.

C. Cooperation received and consultations undertaken during the visit

7. The CPT's delegation enjoyed on the whole very good cooperation at all levels. It had immediate access to the detention facilities it wished to visit and the individuals whom it desired to interview, and most of the information required to carry out its task was promptly provided.

In addition to meeting senior members of the Prison Service and representatives from the Home Office and Foreign and Commonwealth Office, the delegation also met with Peter CLARKE, Deputy Assistant Commissioner of the Metropolitan Police. The CPT would like to thank John KISSANE and Lola BELLO of the Department for Constitutional Affairs for their assistance, both during and after the visit.

The delegation also held an exchange of views with Lord CARLILE of Berriew Q.C., the independent reviewer of terrorism legislation in the United Kingdom.

³ cf. CPT/Inf (2006) 26, Section II A.a.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Persons detained under the 1971 Immigration Act, with a view to being deported to their countries of origin

1. Preliminary remarks

8. The groups of persons arrested in August and September 2005 under the 1971 Immigration Act and transferred to Full Sutton and Long Lartin high security prisons⁴ pose specific challenges to the prison service.

Of the ten persons arrested in August 2005, eight had already spent a significant amount of time in detention in Belmarsh and Woodhill prisons between December 2001 and March 2005 after being certified under Part IV of the Anti-Terrorism Crime and Security Act 2001 (ATCSA)⁵. During this time, three of them had been committed to Broadmoor High Secure Hospital as their mental and physical health had deteriorated and a fourth was bailed on house arrest for health reasons⁶. The others all suffered, to a greater or lesser degree, deterioration in their mental health⁷.

The reasons behind this deterioration are several but a primary factor was the indefinite nature of the detention with no effective means of challenging the concrete evidence that led to their certification. Following the ruling by the House of Lords on 16 December 2004, which declared the ATCSA Part IV to be incompatible with Articles 5 and 14 of the European Convention on Human Rights, new legislation was adopted and the persons in detention were bailed and served with “non-derogating” control orders on 12 March 2005⁸ (see Section C below).

9. It should be noted that all the persons detained in August 2005 had previously applied for asylum in the United Kingdom and that deportation to their countries of origin had been ruled out given the apparent real risk of ill-treatment they would be exposed to, if returned. Hence, their re-arrest and renewed detention were perceived by them as a recurrence of the experience endured during imprisonment under Part IV of the ATCSA, with the added distress of a possible forced return to their countries of origin (by virtue of the previously mentioned memoranda of understanding⁹), where apparently most of them had experienced torture or ill-treatment.

⁴ The detainees were classified as “Category A” prisoners, the highest security risk classification, reserved for prisoners whose escape it is considered would be highly dangerous to the public or the police or to the security of the State.

⁵ The CPT had examined the mental and physical health of these persons during an ad hoc visit in March 2004 (cf. CPT/Inf (2005) 10 and CPT/Inf (2005) 11 for the response by the United Kingdom).

⁶ Special Immigration Appeals Commission decision of 20 January 2004, which granted bail, considered that “detention [had] created a mental illness” and that “the open-ended nature of the detention was such as to ensure the condition did not improve” (cf. CPT/Inf (2005) 10, paragraph 14).

⁷ cf. CPT/Inf (2005) 10, paragraph 19; and Statement by the Royal College of Psychiatrists in respect of the psychiatric problems of detainees held under the ATCSA 2001 (January 2005); and Psychiatric Bulletin (2005), 29, pp. 407 to 409.

⁸ cf. also CPT/Inf (2006) 26, paragraphs 3 to 5.

⁹ cf. paragraph 4 *supra*.

10. In respect of the persons arrested and detained in September 2005, it should be noted that a number of them had recently spent 18 months or more in Belmarsh Prison prior to being released following an acquittal by jury in the "ricin plot" case in April 2005. These persons therefore did not comprehend how they could be deprived of their liberty and held with a view to deportation due to their suspected terrorist activities.

2. Situation observed in the prisons visited

11. In both Full Sutton and Long Lartin Prisons, the Governors explained to the delegation that they had tried to take on board the lessons of the previous detention period in Belmarsh and Woodhill Prisons. Nevertheless, it was evident that neither prison was prepared to receive the detainees and *ad hoc* measures were taken to accommodate them.

12. In Full Sutton Prison, the five detainees were placed in the empty Special Secure Unit, a separate facility designed to hold exceptionally high-risk prisoners. The stand-alone unit consisted of ten cells (one of which was used as a medical room) and an association room on one side of the corridor, overlooking a sizeable outside exercise yard with a ceiling of three layers of interlocking meshing. The unit also contained a kitchen, a washroom and a room with a billiards table and computers; the secure unit control room, equipped with an observation window, was situated in the middle of the corridor. At one end of the corridor there was a well-equipped gym, which also had access to the exercise yard; the other end of the corridor led to the "safer-custody" cell and two segregation cells, as well as the unit visiting area. Despite the above-mentioned facilities for association, the unit had a bleak and claustrophobic feel to it, and its oppressive nature engendered a degree of tension.

The staffing ratio was favourable with 16 officers and three senior staff, but there was virtually no interaction with the detainees. Some staff members complained that they had few points of common reference with them, particularly language and culture, a fact also noted by the prison mental health team. The lack of communication stoked tensions and minor problems. It was apparent that the staff had not received any special training in relation to caring for the detainees.

13. In Long Lartin Prison, the five detainees were initially located on a five-cell corridor on the first floor of the drug rehabilitation unit. Subsequently, the ordinary prisoners in the drug unit were re-located to the general accommodation blocks and the unit was entirely allocated for the detainees, whose numbers increased in September 2005. In addition to the previously-mentioned five cells, the ground floor of the unit consisted of some 15 cells, a washroom and a small gym, all overlooking an internal exercise yard; there was also an association room, staff room, kitchen, a room with a television and pool table and an area for washing clothes. Two smaller cells were being used for storage purposes. The unit had a generally relaxed feel to it and there was even a sizeable fish tank, which not only provided some colour and distraction, but also some responsibility for the detainees.

The staffing for the unit was in the process of being finalised, with an open selection process for some 18 prison officers, two senior officers and two carers; in addition, a dedicated unit governor had been appointed. However, the full team would only start operating together as from January 2006. While the delegation noted limited interaction with the detainees, it also witnessed the positive effect made through the dedication and experience of at least one female prison officer assigned to the unit. Further measures aimed at developing interaction between the unit staff and detainees were also being planned.

14. As to regime, in Full Sutton Prison the detainees had access to basic courses on computing and hygiene two mornings a week, and could use the unit gym¹⁰ twice a week and had access to the exercise yard every day for one hour (two hours on weekends). However, the detainees never associated with other prisoners or left the unit, thus heightening the claustrophobic effect of the premises.

In Long Lartin Prison, educational activities began on the day of the delegation's visit as the planning and security issues had apparently taken time to arrange. Ten of the 17 detainees had signed up for educational activities, and opportunities to participate in certain workshops were to be offered (three were being assessed for painting). Access to the main prison library was possible once a week. Further, the detainees had recently been offered access to the modern, well-equipped main gym twice a week.

Group prayers were held in the association rooms in the respective units everyday and an Imam also visited on Fridays. It should also be noted that all detainees had their own cell and that there was a generous provision for out-of-cell time. Further, the detainees could cook their own food.

Both prisons were in the process of developing activities, which would provide the detainees with opportunities to associate with other prisoners through education, sport or even work.

¹⁰ The detainees complained that the lack of ventilation rendered the gym unusable. The delegation noted that this problem could be remedied by keeping the door to the exercise yard open while maintaining the inner barred door closed, thus meeting both security requirements and the need for fresh air. The Governor of Full Sutton Prison saw no obstacle to such an arrangement.

3. Assessment and action proposed

15. The past history of the detainees, the previous experience from their detention in the United Kingdom and the nature of their current detention means that careful consideration should be given to their specific needs in terms of psychological and psychiatric treatment. The CPT's delegation paid particular attention to the cumulative effects of their detention and the manner in which the prison authorities were responding.

16. The SSU unit in Full Sutton is an inappropriate location for holding the detainees, a fact recognised by the prison management. The delegation was informed that G Wing (where the induction unit was located) would be closed in December 2005 and refurbished by March 2006, whereupon the detainees would be transferred to it. This unit is next to the health care centre and the visiting area, has a more open layout and will enable association outside of the unit to take place more easily. **The CPT would like to be informed whether the refurbishment has been completed and the detainees transferred to G Wing. Further, it would like to receive detailed information concerning the final renovations as well as the regime.**

17. In Long Lartin, the management had received approval to upgrade the unit, which would include the establishment of a "safer custody" cell opposite the staff room and creating more direct access to the visiting area, which should result in greater visiting time. **The CPT would like to receive detailed information concerning the refurbishment.**

18. The CPT would encourage the prison management in both prisons to continue to be flexible in providing a diverse regime to the detainees, who are neither remand nor sentenced prisoners, although they are classified as high security risk (Category A). While no "sentence planning" can be carried out, every effort should be made to enable the detainees to take part on a voluntary basis in education, sport and work activities, including in the company of other prisoners as was being proposed at Long Lartin prison. This will help to alleviate the sense of hopelessness that many of the detainees experience as well as assist them to cope with life on the outside, when they are released. **The CPT would like to receive detailed information on the measures taken in both prisons concerning the activities offered to the detainees and the numbers involved.**

19. As mentioned above, the delegation paid particular attention to the mental health care needs of the detainees, knowing that for one group the detention represented a continuation of deprivation of liberty which had commenced several years previously, and which had led to mental disorders. These persons now run the risk of deportation to a country where apparently they have experienced torture and/or ill-treatment. Such a threat increases the risk of permanent damage to their health.

In this respect, the CPT's delegation shared its concerns with the United Kingdom authorities that serious mental disorders, coupled with the situation in which the detainees found themselves, increased the likelihood of a major crisis, including the possibility of multiple suicide. The delegation's findings suggested that such a scenario was real and should be addressed accordingly.

20. A prerequisite for treating this group of persons is the development of a relationship based upon trust. However, further to interviews with the detainees and members of the health care teams in both prisons, it was evident to the CPT's delegation that the detainees did not sufficiently trust the health care staff and that they did not consider the health care service as being independent from the prison. The CPT considers this state of affairs to be both important and urgent. There is, however, no one simple remedy but rather an array of complementary measures that need to be instituted.

To begin with, medical examinations should take place in an atmosphere of confidentiality, out of hearing of a prison officer, and only within the latter's sight if so requested by the doctor (cf. also paragraph 21). The use of outside mental health experts already known to the detainees could, in a collaborative spirit, support the work of the prison mental health teams. The issue of trust is not limited to health care and, to address trust and respect in general, various measures - some of which were already being addressed - should be taken:

- recruitment of a dedicated unit staff with a wide range of interpersonal skills, who understand the need to respect the cultural and religious customs of the detainees;
- introduction of a comprehensive induction programme, with a follow-up several weeks after admission;
- flexibility in the unit timetables in order to enable the detainees to take full advantage of the opportunities offered without having to forego their prayer time;
- adjustment of certain measures to the smaller numbers present in the detainee units: for example, prison officers do not need to shout out activities when only a few persons are concerned – the persons could be contacted individually;
- involvement of detainees in discussions and consultations concerning their treatment and conditions of detention should be encouraged and measures to address concerns communicated by the detainees should be acted upon promptly, and clear explanations provided;
- opportunities to associate outside the units should be provided to the detainees;
- measures to brighten up the units should be taken.

The CPT recommends that the United Kingdom authorities take the appropriate measures in light of the above remarks.

21. The delegation was concerned to learn that, at Full Sutton, medical examinations of the detainees usually took place in the presence, and always within the hearing, of prison officers. The CPT acknowledges that special security measures may be required during medical examinations in a particular case, when a security threat is perceived by the medical staff. However, there can be no justification for prison officers being *systematically* present during such examinations; their presence is usually unnecessary from a security standpoint and detrimental for the establishment of a proper doctor - patient relationship. Alternative solutions can and must be found to reconcile legitimate security requirements with the principle of medical confidentiality. One possibility might be the installation of a call system, whereby a doctor would be in a position to rapidly alert prison officers in those exceptional cases when a prisoner becomes agitated or threatening during a medical examination.

The CPT recommends that steps be taken to ensure that all medical examinations of persons held in prison are conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of prison officers.

22. As to the right of access to a lawyer from the outset of deprivation of liberty, the CPT was concerned to learn that the lessons from 2001 under the ATCSA had not been taken into account¹¹. The detainees arrested on 11 August 2005, all of whom were at that time under control orders, were unable to exercise this right expeditiously. When special procedures are applied and arrested persons transferred directly to prison (bypassing police custody and the safeguards automatically triggered) concomitant measures should be put in place to ensure that fundamental safeguards (notification of custody, access to a doctor and access to a lawyer) are made available. The United Kingdom authorities could have ensured that all the detainees were given an opportunity to contact, or even meet with, their lawyers while being processed at Woodhill Prison. **The CPT recommends that in the case of further detentions of this nature pursuant to the 1971 Immigration Act, special measures are taken to ensure the right of access to a lawyer and the right to notify a third party of the fact of detention are guaranteed as from the outset of deprivation of liberty.**

23. Many detainees also complained about their transportation to Full Sutton and Long Lartin Prisons. The lack of any rest stop during the transfer journeys meant the detainees could not meet the needs of nature, and at least one individual had to relieve himself in the vehicle in view of the other detained persons. Further, the CPT is concerned to learn that the detainees were handcuffed during the journeys even though they were securely locked inside a metal cage. Handcuffing persons during transportation is dangerous and its routine use should be ended. **The CPT recommends that the United Kingdom authorities review the system of transportation of detained persons in light of the above comments; it would also like to be informed about the specific measures taken to ensure that the transportation of detained persons is carried out under decent conditions.**

¹¹ cf. CPT/Inf (2003) 18, paragraph 15 and the United Kingdom government's response CPT/Inf (2003) 19, paragraphs 12 to 14, in relation to access to a lawyer for persons detained under the ATCSA.

4. Broadmoor High Secure Hospital

24. The delegation met with B, who had been (re-) transferred to Broadmoor High Secure Hospital (a psychiatric hospital) from Long Lartin Prison on 8 September 2005¹².

After a period in Dunstable admission ward he was transferred to the high security Luton ward as he had been classified as “Tilt High Risk”. This meant *inter alia* that he had to be handcuffed whenever he left the secure premises of the ward.

25. It was clear that no doctor-patient relationship was in evidence, and B seemed to have developed a mistrust of the treating staff. He resented the fact that he was accused of feigning a hunger strike¹³ because he had accepted a piece of fruit from another patient one night. Moreover, he could not understand why the doctors at Broadmoor would not acknowledge the ongoing consequences of the sudden withdrawal of taking medication¹⁴ (an SSRI anti-depressant and a tranquiliser).

The scepticism as to whether B was really suffering from any mental disorder was evident in the authorities’ instructions in the medical record for staff to advise the police if they suspected that B was “feigning illness or if he has some ulterior motives for wishing to be outside the secure premises”. Further, it was clear from discussions with the staff that they saw their role as mainly custodial and only marginally therapeutic, if at all. For example, staff continued to shine their torches into B’s room at night despite being aware that it caused him distress and to re-experience previous traumas.

26. B requires a therapeutic approach. This necessitates placing him in a less oppressive environment conducive to establishing a proper doctor-patient relationship and to implementing an appropriate treatment plan for him¹⁵. Efforts to build such a relationship and trust might eventually lead him to take up some activities, such as pottery for which he has a talent.

Once again, **the CPT recommends that the United Kingdom authorities take the necessary steps to review the treatment and conditions of detention for this patient, in the light of the above remarks.**

¹² It should be recalled that B had initially been detained in Belmarsh Prison under Part IV of ATCSA and that, due to a deterioration of his mental health, he had been transferred to Broadmoor High Secure Hospital where he spent more than a year until served with control orders on 11 March 2005. On 12 March 2005 he was admitted to the Royal Free Hospital in London, where he remained until his arrest on 11 August 2005.

¹³ B had not been eating solids for three months; his diet consisted of liquids and, sometimes, fruit.

¹⁴ All medication was abruptly halted when he was taken from Royal Free Hospital to Long Lartin Prison and had not been reinstated when he was transferred to Broadmoor High Secure Hospital.

¹⁵ B’s request to be transferred to a medium security ward was being held up as apparently the medical records from Long Lartin Prison were requested in order for his doctor to write up a feasibility report.

B. Persons detained by the police pursuant to the Terrorism Act 2000

1. Preliminary remarks

27. In its July 2005 visit report, the CPT highlighted several issues which caused it concern: notably, that persons detained under the Terrorism Act 2000 (TACT) were not physically brought before the judge responsible for deciding the question of the possible extension of their detention; and that doctors visiting the custody suites did not carry out thorough medical examinations of detained persons and record their findings in full. Further, especially in the light of the provisions contained in the Terrorism Bill, the Committee pointed out that conditions at Paddington Green High Security Police Station were not suitable for prolonged periods of detention.

28. As already indicated, the CPT delegation which carried out the November 2005 visit went once again to Paddington Green High Security Police Station. It also interviewed in prison a number of persons who had been detained under the TACT. The findings of the delegation in the course of this visit only serve to reinforce the remarks made in the July 2005 visit report, and to highlight in particular the necessity for a review of the safeguards in place in relation to persons detained pursuant to the TACT.

2. Ill-treatment

29. The delegation heard no allegations of ill-treatment of detained persons by custodial police officers at Paddington Green Police Station.

- (a) However, one person, detained between 8 and 15 October 2005 under the TACT and subsequently, from 15 to 17 October 2005 under the Immigration Act, alleged that he had been ill-treated both at the time of his arrest and during the time he was formally in custody in Paddington Green Police Station (but not while on its premises). As regards the latter allegation, he claimed that after refusing to co-operate with the intelligence services he was taken out of the police station by two persons at night, blindfolded and driven to an undisclosed location, where in the course of an interrogation he was allegedly shown a film on torture and his thigh was cut¹⁶. Upon examination by a medical member of the delegation, on 21 November 2005, the person concerned displayed three healing wounds on the right upper, inner-thigh (the largest being 7 cm x 3mm and the others 2 cm x 2mm); the healing wounds were pink in colour, concave and soft on palpation with crusted borders. There were no signs of the wounds having been stitched. The injuries were consistent with the allegation.

¹⁶ The person in question further alleged that the wound was inflicted by the same English-speaking foreigner who had, along with a member of the British intelligence service, attempted to solicit his co-operation. It should be noted in this respect that three other persons interviewed separately by the delegation, including the two referred to in paragraph 29 (b), alleged that an English-speaking foreigner of a similar description, along with a member of the British intelligence service, had attempted to solicit their co-operation in an interview, while being held under the Immigration Act at Paddington Green Police Station between 15 and 17 October 2005.

- (b) The delegation also met two persons who had been arrested in the early hours of 8 October 2005, together with the person mentioned in paragraph 29 (a) above, and taken to the secure custody suite in Paddington Green Police Station. They alleged that, at the time of their arrest, they had been kicked and beaten with hard objects by the arresting officers while lying on the floor. In the police station they had been photographed and treated by a doctor but apparently nobody had asked them how the injuries were sustained. Upon examination by a medical member of the delegation on 22 November 2005, one of the men had a certain tenderness above his right eyebrow and an impression of the bone, which could be indicative of a healing fracture above the orbit of the right eye. Upon palpation, he also experienced pain in the chest, which could be clinically consistent with rib fractures.

30. As regards the allegation referred to in paragraph 29 (a), the Metropolitan Police, once informed by the delegation, immediately opened a criminal investigation, referring the matter to the Independent Police Complaints Commission (hereafter “IPCC”). With regard to this person, the Deputy Assistant Commissioner of the Metropolitan Police also expressed concern that an investigation had not been initiated in relation to allegations made by that person (which were noted in the custody record) in respect of excessive use of force at the time of arrest.

By letter of 14 February 2006, the Commissioner of the IPCC informed the CPT that an examination of the CCTV footage of the custody suite showed that the person had not been removed from Paddington Green Police Station at the times alleged and, therefore, the allegations of ill-treatment could not be true. The investigation into the allegation of the use of force at the time of arrest had still not been completed, but the authorities undertook to inform the CPT of its outcome in due course.

The CPT takes note of the information provided by the IPCC; the question as to how the injuries to the thigh were sustained nevertheless remains open¹⁷.

31. As regards the allegations of ill-treatment at the time of arrest, the CPT recognises that the apprehension of a suspect is often a hazardous task, in particular if the person concerned resists and/or is someone whom the police have good reason to believe may be armed and dangerous. The circumstances of an arrest may be such that injuries are sustained by the person concerned (and by police officers), without this being the result of an intention to inflict ill-treatment. However, no more force than is strictly necessary should be used when effecting an arrest. Furthermore, once arrested persons have been brought under control, there can be no justification for their being struck by police officers. **The CPT recommends the United Kingdom authorities to remind police officers once again of these precepts.**

Further, the CPT requests that the United Kingdom authorities verify the circumstances of the arrest of the two persons referred to in paragraph 29 (b), and inform the Committee of any report thereon.

¹⁷ As the medical record at Paddington Green Police Station relating to the first examination by an FME (Forensic Medical Examiner) did not refer to these injuries, it would be logical to conclude that the injury to the thigh occurred after being taken into custody.

3. Safeguards against ill-treatment by the police

32. In the July 2005 visit report, the CPT recommended that steps be taken to ensure that persons detained under terrorism legislation in respect of whom an extension, or further extension, of police custody is sought are always physically brought before the judge responsible for deciding this question. The Committee explained that one of the purposes of the hearing should be to monitor the manner in which the detained person is being treated. From the point of view of making an accurate assessment of the physical and psychological state of a detainee, nothing can replace bringing the person concerned into the direct physical presence of the judge. Further, it will be more difficult to conduct a hearing in such a way that a person who may have been the victim of ill-treatment feels free to disclose this fact if the contact between the judge and the detained person is via a video conferencing link.

The delegation which carried out the November 2005 visit discovered¹⁸ that persons detained under TACT are not even physically brought before the judge responsible for deciding the question of the very first possible extension of police custody beyond 48 hours. This initial hearing (in the same way as subsequent hearings on further possible extensions of the detention period) is held via a video conferencing link, with officers of the Anti-Terrorist Branch of the Metropolitan Police responsible for the investigation (but not custodial police officers) present in the same room as the detained person. **The CPT reiterates its recommendation that steps be taken to ensure that persons detained under terrorism legislation are always physically brought before the judge responsible for deciding the question of an extension of police custody.**

33. The information gathered during the November 2005 visit suggests that, as regards persons detained on suspicion of an offences under the TACT, two other basic safeguards against ill-treatment advocated by the CPT (the rights of notification of custody and of access to a lawyer)¹⁹ operate, on the whole, in a satisfactory manner. In particular, all the persons met by the delegation who had been held under TACT indicated that they were offered the possibility of access to a lawyer and to notify a third party of their detention as from the outset of their deprivation of liberty.

34. However, the CPT was concerned to learn that access to any lawyer (whether a specific lawyer requested by the detained person or another) can be denied on the authority of a police superintendent for a period up to 48 hours. The CPT's delegation was informed about such a case in late July 2005. Of course, the CPT had been aware of the possibility to delay access to a lawyer²⁰. However, the Committee had been under the impression that by virtue of Annex B to the Code of Practice for the detention, treatment and questioning of persons by police officers²¹, access to another lawyer must be allowed when access to a specific lawyer was delayed, and that in no case could there be a complete denial of access to any lawyer.

¹⁸ contrary to what was indicated in the report on the July 2005 visit; cf. CPT/Inf (2006) 26, paragraph 12.

¹⁹ cf. *inter alia*, Schedule 8, paragraphs 6 and 7, of the Terrorism Act 2000.

²⁰ cf. Schedule 8, paragraph 8, of the Terrorism Act 2000 or Schedule 8, paragraph 16, in Scotland.

²¹ Code C to the Police and Criminal Evidence Act (PACE) 1984.

The CPT has repeatedly stressed that, in its experience, the period immediately following deprivation of liberty is when the risk of intimidation and physical ill-treatment is greatest. Consequently, the possibility for persons taken into police custody to have access to a lawyer during that period is a fundamental safeguard against ill-treatment. The existence of that possibility will have a dissuasive effect upon those minded to ill treat detained persons; further, a lawyer is well placed to take appropriate action if ill-treatment actually occurs. The CPT recognises that in order to protect the legitimate interests of the police investigation, it may exceptionally be necessary to delay for a certain period a detained person's access to a lawyer of his choice. However, this should not result in the right of access to a lawyer being totally denied during the period in question. In such cases, access to another independent lawyer should be arranged.

Consequently, if the police do currently have authority to deny access to any lawyer for up to 48 hours, **the CPT recommends that the United Kingdom authorities amend the relevant legal provisions so as to remove that authority and ensure that all persons arrested have the right of access to a lawyer from the outset of their deprivation of liberty.**

35. In its July 2005 visit report, the CPT made known its concerns as regards the nature and recording of the medical examinations by visiting doctors to Paddington Green Police Station. The findings during the November 2005 visit reinforced the validity of the recommendation made in that report concerning the importance of doctors carrying out thorough medical examinations of detained persons and recording in full their findings (cf. CPT/Inf (2006) 26, paragraph 19).

However, it would appear that it would be difficult to implement the above-mentioned recommendation without a more extensive review of the existing system of medical examinations. At present, the doctors' role is to certify the detainees as being fit for detention and for being interviewed, and to identify whether there is a need for hospitalisation. Given the current recording system of examinations, upon carbon copies, whereby the custody officer counter-signs the medical form (thus permitting the doctor to be paid for the visit), many doctors are opposed, on ethical grounds, to recording *in extenso* their findings. The delegation was informed that doctors adopted different subjective criteria for carrying out their examinations and recording their findings.

36. The system is clearly not functioning effectively. It would be more appropriate, for example, if two forms were to exist: one would be a simple checklist for the doctor to complete, in order to permit detention and interviews to take place, which could be added to the detainee's custody record and viewed by the police officers; the other would be a medical record based upon a thorough medical examination. Any exceptions to that record's confidentiality should be based on law and be known to the person concerned. This report should contain a full account of statements made by the person concerned which are relevant to the medical examination (including the description of his/her state of health and any allegations of ill-treatment), and the doctor should indicate the degree of consistency between any allegations made and objective medical findings. Further, there should be an obligation on the doctor to report any signs and symptoms indicative of ill-treatment to an appropriate independent authority.

The CPT recommends that the United Kingdom authorities review the current system of recording medical examinations in police custody suites in the light of the above remarks.

37. It is also essential that the medical examination of a person in police custody be carried out under conditions which guarantee confidentiality. This is certainly not the case at present. The relevant standard operating procedures explicitly state that “the examination of a detained person by an FME without an officer present should be exceptional rather than normal”. Such a state of affairs is not acceptable. **The CPT recommends that appropriate measures be taken to ensure that all medical examinations of persons in police custody are conducted out of the hearing of police officers and, unless the doctor concerned requests otherwise in a particular case, out of the sight of such officials.**

38. It should also be mentioned that an examination of custody records revealed that they were not always filled in accurately. For example, it was noted that a detained person was out of his cell in the secure custody suite for forty-five minutes but no details were recorded as to the reason for leaving the cell, where the person was during this time or into whose charge he had been placed. The Custody Management Team at Paddington Green Police Station commented to the delegation that the standard of recording entries had deteriorated and could, in many cases, be considered “sloppy”.

The CPT recommends that the United Kingdom authorities ensure that custody records are filled out comprehensively and accurately.

4. Conditions of detention

39. The CPT commented on the conditions of detention at Paddington Green Police Station in its July 2005 visit report²², and its findings in the course of the November 2005 visit confirmed the concerns raised in that report. For example, outside exercise was still not systematically offered every day and, when it did take place, it was limited to some 20 minutes and took place under unsatisfactory conditions. The norm should be that all persons held in detention for more than 24 hours are offered the opportunity to take outdoor exercise every day. **The CPT recommends that the necessary measures be taken to this effect.**

Moreover, **the CPT must reiterate that the present conditions at Paddington Green High Security Police Station are not adequate for prolonged periods of detention** (cf. CPT/Inf (2006) 26, paragraph 24).

²² cf. CPT/Inf (2006) 26, paragraphs 20 to 24.

C. Prevention of Terrorism Act 2005

1. Preliminary remarks

40. The background to and the main provisions of the Prevention of Terrorism Act 2005 (PTA) have been referred to in the July 2005 visit report²³. The CPT was primarily interested in examining the practical day-to-day operation of the control orders issued under the PTA and their effects on the individuals upon whom they were served.

Control orders may be either “non-derogating” or “derogating”²⁴ and to date, as far as the CPT is aware, no “derogating” control orders have been served. The CPT’s delegation interviewed eight persons under “non-derogating” control orders in July 2005²⁵ and the two who were still under control orders were interviewed again in November 2005.

The United Kingdom Government’s position is that “non-derogating” control orders do not amount to a deprivation of liberty under Article 5 of the European Convention on Human Rights. Nevertheless, the United Kingdom authorities acknowledged the right of the Committee to have access to these persons (cf. Article 8, paragraph 3, of the Convention, according to which the Committee “may communicate freely with any person whom it believes can supply relevant information”).

41. It is not for the CPT to determine whether a given case of a “non-derogating” control order amounts to a deprivation of liberty within the meaning of Article 5 of the European Convention on Human Rights. Nevertheless, in the Committee’s view it cannot be ruled out that the cumulative effect of the obligations imposed by such a control order on a given individual might in certain circumstances be considered as a deprivation of liberty^{26 27}. Therefore, the CPT considers it appropriate to offer its comments on the operation of control orders.

²³ cf. CPT/Inf (2006) 26, paragraphs 3 to 5 as well as the response by the United Kingdom authorities to the February 2004 visit report (CPT/Inf (2005) 11).

²⁴ cf. Prevention of Terrorism Act 2005, Sections 4 and 5.

²⁵ six of whom were detained on 8 August 2005 and transferred to Full Sutton and Long Lartin Prisons (cf. also paragraph 8 above).

²⁶ In the case of *Guzzardi v. Italy* (1980) 3 EHRR 333, the European Court of Human Rights stated that: “The difference between deprivation of and restriction upon liberty is ... merely one of degree or intensity, and not one of nature or substance ... the process of classification into one or other of these categories sometimes proves to be no easy task in that some borderline cases are a matter of pure opinion ... ”

²⁷ In commenting on “non-derogating” control orders Lord Carlile of Berriew Q.C. states: “On any view those obligations are extremely restrictive. They have not been found to amount to the triggering of derogation, indeed there has been no challenge so far on that basis – but the cusp is narrow.” (cf. First report of the independent reviewer of the PTA 2005, of 2 February 2006, paragraph 42).

2. Practical application of the control orders and assessment

42. The control orders were served with no accompanying warning or explanation as to how they should function²⁸ and there was an apparent lack of any uniform interpretation of what was, and what was not, permitted by the orders²⁹. The result was confusion, uncertainty and even anguish on the part of those detained under the ATCSA and subsequently issued with a control order. This state of affairs is important as a breach of an obligation flowing from a control order could result in imprisonment for five years (cf. PTA 2005, Section 9, paragraph 4).

The CPT recognises that teething problems are inevitable when a novel mechanism of control is introduced in a short space of time³⁰. However, **the CPT recommends that the United Kingdom authorities take the relevant steps to avoid a repetition of a similar situation.**

43. The control orders placed a restriction on movement, confining each person to his home between the hours of 7 pm to 7 am, and imposed a raft of other measures which made leading a normal life difficult not only for the persons concerned, but also for their families. With one or two minor variations the control orders served were similar and included³¹: no pre-arranged meetings without prior authorisation of the Home Office; no mobile phones or internet connection for computers; no visits to the individuals' homes without the interested persons first submitting personal details to the Home Office, including children over the age of 10 and medical practitioners; the necessity to call the monitoring company in the morning before leaving the residence and in the evening after returning to the residence; the obligation to permit the police to enter at any time of the day or night to verify the presence of the persons concerned if so required (i.e. if the tagging equipment could not locate them)³².

Between the hours of 7 am and 7 pm the individuals were by and large not restricted as regards their movements or who they could see, as long as any meetings were not pre-arranged. However, taking part in educational or exercise classes required the Home Office to verify the activity and to screen all the other participants.

²⁸ By contrast, all prisoners in the United Kingdom receive counselling to prepare them for the life they will lead upon release, including the conditions of their release and any obligations that might be imposed upon them.

²⁹ For example: the elderly mother of E had not been included in the control order permitting her to stay in the house with E; the Treasury Solicitor said her presence would not constitute a technical breach of the control order but the police insisted she left.

³⁰ The Prevention of Terrorism Bill 2005 was introduced to the House of Commons on 22 February 2005 and received the Royal Assent on 11 March 2005. Part IV of the ATCSA was due to expire on 13 March 2005.

³¹ cf. Prevention of Terrorism Act 2005 Section 1(4) (a) to (p).

³² op.cit Section 1(4) (k) and (n) and Section 1(6).

44. It appeared that quite frequently during the night, when the persons concerned and their families were asleep, the tagging devices became faulty; the consequence was that the police would arrive and insist on searching the whole premises, even after ascertaining the presence of the person under control orders³³.

The CPT would like to receive the comments of the United Kingdom authorities as regards the reliability of the monitoring equipment and the related interventions by the police.

45. In addition to these remarks of a general nature, the CPT wishes to draw the attention of the United Kingdom authorities to its findings concerning the application of the Control orders vis-à-vis two individuals, P and X.

P arrived in the United Kingdom in 1999 from Algeria, where in 1997 he had suffered serious injuries to his legs and had both his forearms above the elbow amputated following a bomb explosion on a bus. P was certified under Part IV of the ATCSA on 15 January 2003 and detained in Belmarsh Prison where he was visited by a delegation of the CPT during the March 2004 visit³⁴, shortly before being transferred to Broadmoor High Secure Hospital due to his mental disorder. He remained there until bailed on 11 March 2005 and on the next day he was served with a control order under the PTA.

X, a Palestinian, arrived in the United Kingdom in 1995 and obtained indefinite leave to stay. In 1999 he was diagnosed as having PTSD, with prominent features of hyperarousal and withdrawal as well as some paranoid features. He was certified under Part IV of the ATCSA on 17 December 2001 and detained in Belmarsh Prison until transferred to Broadmoor High Secure Hospital in July 2002, where the CPT's delegation met him during the March 2004 visit. He remained there until bailed on 11 March 2005 and on the next day he was served with a control order under the PTA.

³³ For example, reference is made to the complaint filed by G's lawyers on 4 July 2005; and the various complaints made by A's lawyers (cf. letter of 8 July 2005 addressed to the Home Office).

³⁴ cf. CPT/Inf (2005) 10

46. P was taken from Broadmoor High Secure Hospital to a flat in North London in the evening of 11 March 2005. It was neither furnished nor modified in any way to accommodate his disability. Given that the only phone in the flat was connected to the monitoring company – and it too was not adapted for someone with no forearms –, P found himself alone with no means of communication and barred from leaving the flat until 7 am the following morning. Thereafter, other than two carers who came for one hour in the mornings and evenings to attend to P's daily needs, he was entirely alone. Four months later, at the time of the visit by the CPT's delegation in July 2005, a sense of hopelessness and abandon was evident; the flat was in a state of disarray and, with no furniture or decoration and strewn with rubbish, presented a bleak environment. Permission to continue studies, initiated while in hospital, had still not been given by the Home Office; and he had problems trying to register with a library or dentist as his identity papers were apparently still with the Metropolitan Police. More generally, friends and acquaintances were reluctant to submit themselves to intrusive examinations of their private lives, as required by the control order, in order for permission to visit to be granted³⁵.

The conclusion of the delegation's psychiatrist was that he was severely depressed and anxious, in considerable distress and despair, with symptoms of post-traumatic stress disorder such as numbing, re-experiencing, intrusive memories, arousal, avoidance, irritability, alienation and detachment. The depression could not be treated as long as the restrictions of the control orders remained in place. Further, the risk of self-harm and even suicide was significant, especially if he were faced with additional adverse life events. In the light of the above, it is not surprising that paranoid conduct was prevalent in P's behaviour.

On 11 August 2005 P was detained under the 1971 Immigration Act with a view to being deported to his country of origin, and held in Long Lartin Prison. When interviewed by the delegation's psychiatrist on 22 November 2005 in Long Lartin Prison, P was severely depressed and his symptoms of PTSD had increased since the previous interview in July 2005³⁶, and a sense of apathy and hopelessness had taken over. The risk of suicide was higher. On 20 December 2005 P was released on bail (the conditions being similar to those under Control orders although more restrictive, as he is only allowed to leave his flat between midday and 2pm, and has to stay within the vicinity of the flat at all times).

The CPT recommends that the United Kingdom authorities make every effort to ensure that P is provided with proper treatment in a conducive environment.

³⁵ Given the nature of the accusations of those served with control orders, certain provisions of the Prevention of Terrorism Act 2005 discourage applications for visits, such as Section 1(9):

“For the purpose of this Act involvement in terrorism-related activity is any one or more of the following -

(d) conduct which gives support or assistance to individuals who are known or believed to be involved in terrorism related activity;”

³⁶ The same CPT psychiatrist interviewed P in July and November 2005, as well as in March 2004.

47. X had been in Broadmoor High Secure Hospital for more than two and a half years, in an environment which the CPT, at the time of its March 2004 visit, did not consider clinically appropriate for someone suffering from severe PTSD³⁷. Within a week of his sudden re-installation in London in March 2005, with his family, his condition deteriorated; he overdosed and was admitted to Charing Cross Hospital, but by then he had become convinced that the electronic tag on his leg was infecting him. His refusal to wear the tag, once discharged from hospital, resulted in him being arrested and detained in Brixton Prison for ten days. After a court hearing the control order was amended, removing the obligation to wear the tag on condition that X made two additional phone calls during the night to the monitoring company, one of which between 3 and 4 am. The problem with this second call was that it interrupted his sleep when medically he required uninterrupted rest. In the course of an interview during the July 2005 visit the delegation observed that X found it mentally challenging to enter the correct code to phone the monitoring company, causing him to get angry and further increasing his resentment against the Control order³⁸.

Early trauma has affected X's personality in such a way that he reacts to adversity with self-harm, and he has been suffering from PTSD even prior to his detention in December 2001. Further, a number of characterological traits, possibly caused by repeated trauma, exacerbate any stress arising from his unstable mood or PTSD. Detention in Belmarsh Prison and Broadmoor Hospital led to a deterioration in his mental health condition, and the control order had imposed a regime which is not compatible with his existing state of health. It would be unwise to dismiss the episodes of self-harm as mere manipulation. They were more likely symptoms of the desperation caused by the various restrictions and the increasing hopelessness felt by X about his life, accentuated no doubt by the departure of his wife and children who could not abide by the restrictions the control order placed upon them, combined with his mood swings.

In November 2005, X was seen again by the two psychiatrists in the delegation. Despite the return of his family, his withdrawal (evident in his apathy, emotional numbness and sense of hopelessness) was symptomatic of someone with a serious depression. Further, he was afraid to leave the house as he was certain that he was being followed by the police, while he was also convinced that his house was electronically monitored. The telephone call to the monitoring company at 4 am every morning continued to disturb his sleep.

The CPT requests that the United Kingdom authorities review the conditions of his control order in the light of the above remarks.

³⁷ cf. CPT/Inf (2005) 10, paragraph 7.

³⁸ The effect of the control order on his family, restricting their freedom of movement, combined with the restrictions placed upon him and the regular police searches, all served to exacerbate his feeling of hopelessness.

48. More generally, the CPT wishes to emphasise that, when measures of the kind described above are taken in respect of persons who had been undergoing psychiatric treatment, steps to assure their continued care should be taken. Treatment for psychiatric patients involves a care plan and usually is composed of both pharmacotherapy and a wide range of rehabilitative and therapeutic activities. Such treatment is not designed to be turned on or off at a moment's notice; removing mentally ill persons from one environment to another, with a new set of rules and ending the treatment brusquely, could well prejudice their well-being. Thus, it was not surprising that of three persons removed from Broadmoor High Secure Hospital, two of them had to be admitted shortly afterwards to psychiatric hospitals close to their places of residence, and that both of these individuals developed a real fear of the tagging devices.

The CPT requests the United Kingdom authorities to ensure that the physical and psychological needs of each person subject to a control order are adequately catered for.

APPENDIX

**Letter sent by the President of the CPT to the United Kingdom authorities
concerning a Memorandum of Understanding between
the Government of the United Kingdom of Great Britain and Northern Ireland
and the Government of the Hashemite Kingdom of Jordan
reached on 10 August 2005 regulating the provision of undertakings in respect of
specified persons prior to deportations**

Strasbourg, 21 October 2005

Dear Mr Kissane,

I would like to thank you for the information provided in your letter of 14 October 2005, in response to my letters of 19 August and 5 October 2005. That information is currently being examined by the CPT, and the Committee may seek further details in due course.

In my letter of 19 August 2005, I also indicated that the CPT intended to forward some observations on the Memorandum of Understanding (MoU) between the Government of the United Kingdom and the Government of Jordan, signed on 10 August 2005. In your letter of 14 October 2005, you emphasise that "The Government will not deport anyone if to do so would be contrary to the United Kingdom's international obligations, including those under the European Convention on Human Rights". In the same vein, the Lord Chancellor informed the House of Lords on 12 October 2005 that "we would not remove a person under immigration powers in the knowledge that this would lead to treatment contrary to Article 3". The observations set out below on the above-mentioned MoU are made against that backdrop. They are given in a constructive spirit, with the objective of assisting the United Kingdom authorities to remain in full conformity with the obligations which flow from the prohibition of torture and inhuman or degrading treatment or punishment.

The United Kingdom authorities will be aware of reports indicating that persons detained in Jordan can be subjected to torture and other forms of ill-treatment. Of course, it does not necessarily follow that a particular person whose deportation to Jordan is envisaged personally runs a real risk of being ill-treated there; the specific circumstances of each case have to be taken into account when making such an assessment. However, if in a given case there would appear to be a real risk of ill-treatment, does the MoU offer sufficient protection against that risk materialising? Without prejudice to the broader question of whether relying on assurances received from a State with a record of ill-treatment is a viable approach, the following observations by the CPT focus on the issues of procedural guarantees and monitoring arrangements.

./..

Mr John KISSANE
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Any intended deportation pursuant to the MoU must be open to challenge before an independent authority, and any such challenge must have a suspensive effect on the carrying out of the deportation; this is the only way of ensuring rigorous and timely scrutiny of the safety of the arrangements envisaged in a given case. The terms of your letter of 12 August 2005 suggest that there will indeed be a right of appeal against a deportation order, and with suspensive effect; however, the CPT would be grateful if this could be confirmed. Of course, any interim measure which might be indicated by the European Court of Human Rights, under Rule 39 of the Rules of the Court, in relation to an intended deportation pursuant to the MoU must also be complied with.

With reference to paragraph 1 of the section headed "Understandings", it would be wise to provide some specific examples of what is meant by "internationally accepted standards".

In paragraph 2 of the said section, it is stipulated that a returned person who is arrested or detained will be brought promptly before a judge. This is a fundamental safeguard against not only arbitrary detention but also ill-treatment. However, the meaning of the term "promptly" needs to be clarified; it should be understood as interpreted by the European Court of Human Rights. Further, if the person concerned is returned to the custody of a law enforcement agency rather than remanded to prison, he should continue to be brought before a judge on a regular basis until such time as he is transferred to prison (or released). Of course, the proceedings before the judge must be organised in such a way that the person concerned has a real opportunity to inform the judge of any complaints he might have about his treatment.

In paragraph 3 of the same section, it is stipulated that a returned person who is arrested or detained will be informed promptly of the reasons for his arrest or detention. In the CPT's opinion, those reasons should be given "immediately". The person concerned should also be informed immediately of his rights, which in the CPT's opinion should include the rights of access to a lawyer (though not necessarily a lawyer chosen by him), of access to a doctor, and to notify a third party of his detention (subject to possible clearly-defined exceptions, designed to protect the legitimate interests of the investigation). The latter three rights should apply as from the very outset of the person's deprivation of liberty.

Paragraph 4 of the same section deals with visits by the representative(s) of an independent body to returned persons who are subsequently deprived of their liberty. The precise arrangements in this regard are central to the overall effectiveness of the MoU. In the first place, such visits should not be made dependent on a "contact" by a returned person with the body concerned; the CPT knows from experience that detained persons can easily be dissuaded from contacting outside bodies. Instead, such visits should be triggered automatically by the deprivation of liberty of the person concerned. Further, the visits should not be circumscribed by any limits on frequency or timing (such as "at least once a fortnight"); the right to visit should be applicable at any time, without prior notice. It is also important for the visiting procedure to apply as from the very outset of custody; in the CPT's experience, the period immediately following deprivation of liberty is when the risk of ill-treatment is greatest. The MoU rightly refers to the need for private interviews with the person concerned; to ensure that the interviews are truly "private", the representative(s) of the body concerned must also have the right to choose the precise place in the establishment concerned where an interview will be organised.

In order to carry out its role effectively in the manner described above, the body to be nominated by the United Kingdom and Jordanian authorities would almost certainly need to be based, or to have a base, in the receiving state. It is also important that the representative(s) of the body concerned be suitably qualified for this delicate task. Persons who have been ill-treated are frequently reluctant to admit to that fact; the representative(s) will need to possess developed interpersonal skills and to have the necessary knowledge/experience to be able to detect signs (including psychological) of ill-treatment.

The arrangements to be put in place must also offer means of ensuring that immediate remedial action is taken in the event of evidence of ill-treatment coming to light, whether through the visits referred to in the preceding paragraph or otherwise. The present wording of paragraph 4 of the Understandings section ("the nominated body will give a report of its visits to the authorities of the sending state") needs to be developed in this regard. As a minimum, provision should be made for the person concerned to be immediately brought before the competent judge and, if appropriate, for specialist medical examinations to be carried out. The point made in the final sentence of paragraph 6 above is highly relevant in this context (for example, those possibly implicated in the ill-treatment should not be present when the person concerned appears before the judge).

Naturally, the effectiveness of action taken in such a case by the authorities of the receiving state should also be of prime importance in relation to possible future deportations pursuant to the MoU.

In relation to paragraph 5 of the Understandings section, the CPT would like to know whether consular personnel of the sending state will have the right to visit a returned person who is subsequently deprived of his liberty.

The CPT hopes that the above initial observations will prove useful both in the context of the MoU signed with the Government of Jordan and as regards similar agreements currently under discussion with other countries. The CPT is at the disposal of the United Kingdom authorities if they would like to discuss these matters further with the Committee.

Yours sincerely,

Silvia CASALE
President of the European Committee for the
Prevention of Torture and Inhuman
or Degrading Treatment or Punishment

Copy: Mr Stephen HOWARTH, Ambassador Extraordinary and Plenipotentiary,
Permanent Representative of the United Kingdom to the Council of Europe