



SUBMISSION TO THE UNITED NATIONS HUMAN
RIGHTS COMMITTEE CONCERNING THE UNITED KINGDOM'S
COMPLIANCE WITH THE INTERNATIONAL COVENANT ON
CIVIL AND POLITICAL RIGHTS EXECUTIVE SUMMARY



SEPTEMBER 2007



1. INTRODUCTION

1.1 British Irish RIGHTS WATCH is an independent non-governmental organisation that monitors the human rights dimension of the conflict and the peace process in Northern Ireland. Our services are available free of charge to anyone whose human rights have been affected by the conflict, regardless of religious, political or community affiliations, and we take no position on the eventual constitutional outcome of the peace process.

1.2 This submission to the Human Rights Committee of the United Nations concerns the United Kingdom's observance of the provisions of the International Covenant on Civil and Political Rights (ICCPR). All our comments stem directly from our work and experience. Throughout the submission we respectfully suggest questions that the Committee may wish to pose to the United Kingdom (UK) during its examination of the UK's sixth periodic report.

2. THE UNITED KINGDOM AND HUMAN RIGHTS

2.1 The UK has yet to comply with the Committee's 2001 recommendation that the United Kingdom to incorporate all the provisions of the ICCPR into domestic law.

- What plans does the UK have for incorporating all provisions of the ICCPR into domestic law and what is the timetable?

2.2 The UK has yet to comply The Human Rights Committee's recommendation that the UK should consider, as a priority, accession to the first Optional Protocol.

- What plans does the UK have for ratifying the Optional Protocol and what is the timetable?

2.3 The House of Lords has recently held that, instead of *incorporating* the European Convention on Human Rights Rights (ECHR) into domestic law, the Human Rights Act 2005 A merely *gives effect* to these rights in domestic law.

- How will the UK ensure that the provisions of the ECHR are fully incorporated into domestic law and that human rights violations retrospective to the HRA are fully investigated?

2.4 The HRA did not incorporate Article 13 of the ECHR into domestic law, which provides for an effective remedy for breaches of Convention rights.

- Will the UK incorporate Article 13 of the ECHR into domestic law?

2.5 Under the terms of the Good Friday peace agreement in Northern Ireland, the UK has established a Human Rights Commission for Northern Ireland, which is currently engaged in drawing up a Bill of Rights to supplement the ECHR. Finally, in September 2006 a Bill of Rights Forum consisting of representatives of political parties and civil society was established. The Forum is due to submit recommendations to the Commission and UK Government in March 2008. However, there are concerns that the

Government may be influencing the debate behind the scenes, as the timetable for drafting of the Bill is short and resources are too limited for proper outreach to take place.

- How will the Government ensure that the Bill of Rights Forum is best placed to establish an effective Bill of Rights for Northern Ireland?
- Will the Government guarantee the Forum the necessary resources to conclude its work effectively?
- Should the Forum require more time to finish its work, will the Government extend the timetable?

2.6 On 3 July 2007, the UK Government proposed the creation of “A Bill of Rights and Duties” for Britain, which will draw upon and add to the provisions of the HRA. Since the Northern Ireland Bill of Rights has progressed so far, it makes sense for the UK to wait for the outcome of that process before embarking on a British Bill of Rights, so that lessons can be learned from the Northern Ireland experience.

- In relation to a British Bill of Rights, what plans does the UK have for the creation of a successful drafting process and for consultation with relevant stakeholders?
- Will the UK wait until the Northern Ireland Bill of Rights process is concluded before introducing a British Bill of Rights?

2.7 Since its establishment, the Northern Ireland Human Rights Commission has repeatedly sought an increase in its resources and powers in order to be able to function effectively. The Commission has not been designated a national preventive mechanism under the Optional Protocol to the UN Convention Against Torture

- Will the UK commit to extending the Northern Ireland Human Rights Commission’s resources and powers and designate it a national preventive mechanism under UN OPCAT?

2.8 In addition to those set out above, the UK has failed to implement many of the recommendations made by the Committee.

3. ARTICLE 1 THE RIGHT TO SELF-DETERMINATION

3.1 The island of Ireland has been partitioned since the 1920s, with six counties (Northern Ireland) retained within the UK, while the other 26 form the Republic of Ireland. Under the terms of the 1998 Good Friday Agreement, the partition will remain until such time, if ever, that a majority of people voting on both sides of the border decide that Ireland should be united.

3.2 The Northern Ireland Assembly was restored after a lengthy suspension on 8 May 2007. While some powers have been devolved to the Assembly, many other have been reserved to the UK Parliament.

- What plans does the UK have to ensure a transparent and effective devolution process, resulting in the establishment of public bodies which are fully compliant with the relevant human rights obligations?

4. ARTICLE 2 ENJOYMENT AND ENFORCEMENT OF ICCPR RIGHTS WITHOUT DISCRIMINATION

4.1 Catholics are considerably discriminated against in the workplace. The Fair Employment and Treatment (Northern Ireland) Order 1998, as amended, makes it unlawful to discriminate directly or indirectly on the grounds of religious belief and/or political opinion in the field of employment. However, the Order only applies to employers who have eleven or more employees, so small companies are not covered or regulated. In addition, discrimination also persists within the civil service, the largest employer in Northern Ireland.

- What steps is the UK taking to overcome higher unemployment rates amongst Catholics in Northern Ireland?
- Will the UK extend the fair employment provisions to all employers?

4.2 Catholics remain under-represented within the Police Service of Northern Ireland (PSNI). Further, although new recruits take an oath of office when joining the police, they are not barred from being members of the Loyal Orders whilst serving as a police officer. These Orders have oaths of allegiance which directly contradict the PSNI oath of office. Existing members of the PSNI do not have to take the oath of office. This gives rise to concerns that the PSNI has not taken any significant steps to eradicate sectarianism within its own ranks.

- What steps is the UK taking to ensure that the PSNI reflects the whole community in Northern Ireland?
- What steps are being taken to ensure that the PSNI eradicates sectarianism within its ranks?
- What steps are being taken to ensure that the PSNI is able to deliver effective policing equally to all sections of the community, free from discrimination and sectarianism?

4.3 BIRW is aware that the police in Northern Ireland have awarded contracts for building works etc to known paramilitaries. Recently, a civilian PSNI employee was charged with passing information obtained from police computers to paramilitaries.

- Will the Government review its vetting procedures to ensure that paramilitaries are not able to work for the PSNI, whether as contractors or employees?
- Will the Government seek an explanation from the Policing Board as to why PSNI vetting procedures have failed?

4.4 As explained above, the UK's failure to incorporate the ICCPR or Article 13 ECHR means that there is no specific remedy in UK law for breaches of ICCPR or ECHR rights.

5. ARTICLE 3 EQUAL RIGHTS OF MEN AND WOMEN

Women continue to be seriously under-represented at the senior levels in the public sector in Northern Ireland.

- What steps is the UK taking to ensure appropriate numbers of women in senior posts in the public sector?

6. ARTICLE 4 DEROGATION

Since 2001, the UK has enacted vast amounts of legislation with the aim of countering terrorism, creating a twin-track system of justice with fewer due process rights for certain suspects and defendants determined by the supposed motivation for their acts. This legislation perpetuates the so-called emergency laws enacted in response to the conflict in Northern Ireland. Yet there is no state of emergency in Northern Ireland, or elsewhere in the UK, and such laws are unjustified.

7. ARTICLE 5 ACTS DESTRUCTIVE OF RIGHTS

7.1 Research by NGOs, including by BIRW, and by state agencies such as the Police Ombudsman, has exposed systematic collusion between members of the army, the police and the intelligence services and both loyalist and republican paramilitaries. Far from taking rigorous measures to stem collusion, however, the UK Government has appeared to condone it by a series of official cover-ups.

- What steps is the UK taking to prevent collusion between members of the security forces and paramilitaries, and to protect victims of that collusion?
- What steps is the UK taking to establish the extent of past collusion and to provide effective remedies for victims of collusion?

7.2 In January 2007, the Police Ombudsman for Northern Ireland (PONI) published a report which disclosed institutionalised and systemic collusion between the police and loyalist paramilitaries as recently as 2003. Many of the findings gave rise to concerns about current serving officers and practices.

7.3 Some of the most serious concerns included evidence of a pattern of work by certain officers within the Special Branch (the intelligence wing) of the RUC designed to ensure that an informant and his associates were protected from the law.

7.4 Although police practices have changed since 2003, no explanation has been provided for the fact that, in a major review of police informers, the current Chief Constable does not appear to have pursued charges against the 12% of informers who were 'dropped' at that time because of their alleged involvement in serious criminal activity.

- What steps is the UK taking to end the legacy of impunity as a result of the UK authorities' failure to instigate prompt, independent, impartial and effective investigations?
- How many police officers have been charged with criminal offences arising out of collusion, how many were disciplined or prosecuted, and what was the outcome?

8. ARTICLE 6 THE RIGHT TO LIFE

8.1 To date, over 3,600 people have died as a result of the conflict in Northern Ireland, including over 1,100 members of the security forces. According to our calculations, 82% of those killed by the security forces were Catholics, although Catholics represent only around 40% of the population of Northern Ireland.

8.2 One of the most serious violations of the right to life has concerned the operations of a British army intelligence unit, the Force Research Unit (FRU). In recent years, information about its activities has gradually come to light. It is alleged that FRU infiltrated agents into paramilitary groups and assisted those groups to target people for murder.

8.3 BIRW consider that the Inquiries Act undermines the rule of law, the independence of the judiciary and human rights protection, and therefore fails to provide for effective, independent, impartial or thorough public judicial inquiries into serious human rights violations.

- Will the UK repeal the Inquiries Act 2005?

8.4 The UK Government still has yet to establish an inquiry into the death of Patrick Finucane, a human rights lawyer from Belfast, who was shot dead in February 1989 by loyalist paramilitaries. Substantial and credible allegations of state collusion have since emerged, including evidence of criminal conduct by police and military intelligence officers acting in collusion with members of the UDA.

8.5 In 2003, the European Court of Human Rights ruled that “proceedings following the death of Patrick Finucane failed to provide a prompt and effective investigation into the allegations of collusion by security personnel”, and that there had therefore been a violation of Article 2 ECHR. The UK Government announced in 2004 that there would be an inquiry into the Finucane case, following an independent investigation into the case by former Canadian Supreme court judge Peter Cory, who recommended an independent public inquiry into the case. However, the UK Government still has not established an inquiry, in breach of the commitment it gave in the Weston Park Agreement to implement Judge Cory’s recommendations.

- Will the UK set up an independent judicial inquiry into the murder of Patrick Finucane and the activities of the FRU?

8.6 In May 2001, the European Court of Human Rights issued four landmark judgments which affirmed the right to an effective investigation into deaths caused by agents of the state or where collusion was alleged. The UK has not implemented these judgments and these four cases have remained under consideration by the Committee of Ministers ever since. Following decisions by the courts, individuals who have claims for violations of their human rights arising from incidents before 2 October

- 2000, when the Human Rights Act came into force, can therefore not vindicate their rights before the domestic courts.
- What steps is the UK taking to ensure that ALL human rights violations, including those occurring prior to October 2000, are fully investigated?
- 8.7 In 2006, the PSNI established the Historical Enquiries Team (HET), whose sole job is to re-examine all deaths attributable to the security situation here between 1968 and 1998. Whilst we welcome the establishment of this body, we have concerns that the HET will not provide Article 2 ECHR compliant investigations, because it is the police investigating the police.
- 8.8 BIRW has concerns that seven cases are currently being withheld from HET investigation by the PSNI, despite the fact all these cases fall under the HET's remit. There are also concerns about the co-operation between the HET and Police Ombudsman.
- What steps will the UK take to ensure that investigations by the HET are compliant with Article 2 ECHR and the corresponding obligations under the ICCPR?
 - What is the UK doing to ensure that the work of the Police Ombudsman and that of the HET complement one another?
- 8.9 Plastic bullets continue to be deployed in Northern Ireland. BIRW is opposed to the deployment of plastic bullets because we regard them as lethal weapons that should have no place in the policing of a democratic society in the twenty-first century.
- 8.10 In 21 June 2005, surrounded by controversy, the attenuating energy projectile (AEP), was brought in to replace the plastic bullet, but it is no safer.
- 8.11 The guidelines for firing AEPs are deficient in a number of respects. In 1998, the United Nations' Committee against Torture again found "the continued use of plastic bullet rounds as a means of riot control" to be a matter for concern, and recommended their abolition. In 2002, the United Nations' Committee on the Rights of the Child said;
- "The Committee is concerned at the continued use of plastic baton rounds as a means of riot control in Northern Ireland as it causes injuries to children and may jeopardize their lives."
- It too urged the abolition of plastic bullets.
- Will the UK discontinue the use of plastic bullets?
- 8.12 The current use of a 'shoot-to-kill' policy by UK police forces is both open to abuse, and likely to result in tragedy.
- 8.13 The use of lethal force by the UK police has resulted in the deaths of innocent individuals, in direct violation of international human rights standards. In each of these incidents, none of those killed was armed or posing any threat at the time of his death. It is clear that the use of this policy inevitably leads to the abuse of lethal force, and the deaths of

innocent people, contrary to Article 2 ECHR, which applies a test of absolutely necessity to the use of force, and Article 6 ICCPR.

- Will the UK bring police practice on the use of lethal force into line with international human rights standards?

8.14 In the past, the practice and procedure of inquests in Northern Ireland has fallen far short of the standards laid down by the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. Professor Tom Luce conducted a 'Fundamental Review of Inquests' in 2003; the subsequent draft Coroners Bill, published for consultation in 2006, attempted to address the reforms recommended by this review, but the UK has failed to legislate to reform inquests.

8.15 In particular, the limits placed on verdicts, the restricted scope of inquests and the absence of legal aid for families all undermine the Coronial system and continue to deny those in Northern Ireland their ECHR Article 2 rights.

- Will the UK reform the inquest system to ensure that it is compliant with international human rights standards?

9. ARTICLE 7 FREEDOM FROM TORTURE

9.1 BIRW has grave concerns about the potential introduction of tasers (electric stun guns). The lack of data on the long-term effects on the body of exposure to electric shocks powerful enough to incapacitate and the known risk of causing heart attacks give rise to significant concern. Tasers also raise the possibility of violating the prohibition on torture and cruel, inhuman and degrading treatment because they inflict intolerable pain. Whilst we accept that the use of force will inevitably inflict some pain on its victims, with tasers the infliction of pain is the means of incapacitating people, rather than a side effect of their use. Furthermore, where other means are used it is possible for the operator to use restraint and to try to avoid inflicting unnecessary pain. However, with a taser, a high level of pain is inevitable.

9.2 Manufacturers of tasers recommend that they should not be fired on anyone with a dysfunctional heart, pregnant women, or small children. There is also scope for accidental injury to such persons, and to children, especially in crowds. Tasers can set fire to flammable liquids, including CS spray, which is used by the PSNI. In two surveys conducted in America on the use of the M26 Advanced Taser used in a UK trial, over 50% of the persons confronted with the weapon were impaired by alcohol, drugs or mental illness. According to Amnesty International, since 2001, over 150 people have been killed in the USA by tasers. One person, Brian Loan, who had a heart condition died in the UK on 14 October 2006 three days after being struck by a taser.

- Will the UK ban the use of tasers ?

- 9.3 The Northern Ireland Prison Service (NIPS) is currently deploying PAVA pepper spray in Northern Ireland prisons for a trial period. When PAVA is used as an incapacitant, it is essentially a pepper spray, sprayed into the eyes, and its aim is to incapacitate and/or to obtain compliance by causing acute pain. For that reason, BIRW is opposed to its use in the same way that we are opposed to the use of tasers. The use of PAVA raises the prohibition on torture and cruel, inhuman and degrading treatment because it inflicts intolerable pain.
- Will the UK ban the use of PAVA pepper spray?
- 9.4 BIRW is concerned about the use of CS spray and the injuries that it can cause, especially when used against children and in confined spaces. In particular, PSNI officers are able to use CS spray within a custody suite, where the effects of such use could well be severe, on police officers as well as suspects.
- Will the UK ban the use of CS spray?
10. ARTICLE 9 LIBERTY AND SECURITY OF PERSON
- 10.1 Since 2001, the UK has enacted a worrying amount of counter-terror legislation.
- 10.2 In our view, this vast swathe of counter-terror legislation is unnecessary. Terrorism in Northern Ireland, while still a threat, does not entail any activity that cannot be dealt with by the ordinary law, as can acts of terrorism elsewhere in the UK. The counter-terror legislation creates a twin-track system of justice with fewer due process rights for certain suspects and defendants determined by the supposed motivation for their acts.
- 10.3 BIRW has particular concerns about the use of control orders, which are a form of detention without trial. Despite the clear indications that control orders are an unsuitable method of addressing a terrorist threat, the UK Government continues to use them as a counter-terrorism measure.
- 10.4 While control orders only apply to the individual, the effects are felt by the families of those living under control orders. The Committee on the Prevention of Torture (CPT) has also voiced concerns about the psychological impact of the control orders on the 'controlees', citing conditions such as depression and anxiety with risks of self-harm and suicide.
- Will the UK repeal the legislation which provides for the use of control orders?
- 10.5 The Prevention of Terrorism Act 2005 introduced a 28-day period during which a suspect can be detained without charge and the UK Government is again threatening to extend this period to 90 days. In our view, such protracted detention amounts to internment without trial.
- Will the UK abolish prolonged detention without charge?

- 10.6 The definition of terrorism in the Prevention of Terrorism Act 2005 and the subsequent Terrorism Act 2006 is problematic.
- 10.7 The objective of most actual terrorism is usually the overthrow of the state, or at least the status quo. That being so, it is crucial that a democratic state does not over-react to terrorism or the threat of terrorism, because to make any of these errors can catapult a state out of democracy and into despotism, creating the very situation that terrorists are seeking to achieve.
- Will the UK revisit its approach to countering terrorism and review all its anti-terrorism legislation with a view to ensuring that it is proportionate to the actual threat posed by terrorism and that it does not undermine human rights or fundamental freedoms?
11. ARTICLE 14 THE RIGHT TO FAIR TRIAL
- 11.1 Those tried under the Terrorism Act in Northern Ireland used to be dealt with in special courts known as the Diplock courts. These courts employed lower standards of admissibility of confession evidence than the ordinary courts and sat without a jury. Both factors militated against a fair trial. However, on 1 August 2005, the Northern Ireland Office announced that the Diplock courts were to be phased out, as part of the normalisation process. The Diplock courts were abolished in 2007. However, Diplock style courts will still be used where certain circumstances exist.
- Will the UK abolish the use of juryless courts in all situations where a jury would normally sit?
- 11.2 In 2007 the UK intends to transfer responsibility for all counter-intelligence operations from the PSNI to the intelligence service, MI5. MI5 is a secretive organisation which goes to great lengths to protect its operatives and methods from identification or public scrutiny. Although MI5 will work jointly with the PSNI in counter-terrorism cases, while the actions of police officers will come under the independent, public scrutiny of the Police Ombudsman, those of MI5 agents will not come any scrutiny at all.
- Will the UK undertake to put in place a mechanism for the independent public scrutiny of the activities of MI5 agents?
12. ARTICLE 17 PRIVACY, FAMILY LIFE AND REPUTATION
- 12.1 People living in Northern Ireland continue to be subjected to an exceptionally high level of surveillance.
- What steps is the UK taking to reduce surveillance of the population in Northern Ireland and to destroy intelligence files on individuals?
- 12.2 Evidence has recently come to light that detainees' consultations with their lawyers whilst in the Serious Crime Suite at Antrim Police Station have been the subject of covert surveillance. Similarly, there are concerns that covert surveillance of such consultations in prison has occurred, and also

the surveillance of a medical consultation by an independent medical professional, carried out in custody.

- What steps will the UK take to ensure that intercepted communications between suspects and their lawyers are never admissible as evidence?

12.3 The UK Government is currently proposing the use of intercepted communications as evidence against a suspect during trial. Given that terrorists can avail themselves of the benefits of modern technology, on the face of it there is an argument for giving the prosecution equality of arms. However, careful attention needs to be paid to the human rights implications of covert surveillance, in particular its impact on the privilege against self-incrimination, which forms an important element of the right to a fair trial.

- What plans does the UK have to ensure that the use of intercepted communications as evidence meets the relevant human rights standards?

If intercepted communications are to be allowed in evidence, then so too must information about how such evidence was obtained, in order that the defence may challenge evidence that was gathered improperly.

- Will the UK review the provisions of the Regulation of Investigatory Powers Act 2000 and ensure it complies with international human rights laws?

12.5 BIRW continue to have some concerns about the treatment of defence lawyers in Northern Ireland. The interception of lawyer's consultations with their clients referred to above has done considerable damage to the relationship between lawyers and the police, as has the failure to hold an independent public inquiry into the murder of Patrick Finucane. Recently, we were disturbed to learn of an unprovoked assault on a defence lawyer by two police officers who apparently disapproved of his involvement in a particular criminal case.

- What steps is the UK taking to ensure that defence lawyers are supported in their role as an integral part of the criminal justice system?

13. ARTICLE 19 FREEDOM OF EXPRESSION

Section 1 of the Terrorism Act 2006 introduced the offence of "encouragement of terrorism". This is an extremely vague offence.

- Will the UK repeal the provisions of the Terrorism Act 2006 relating to the encouragement of terrorism and dissemination of terrorist material?

14. ARTICLE 22 FREEDOM OF ASSOCIATION

Under section 3 and Schedule 2 of the Terrorism Act 2001 and section 28 of the Terrorism Act 2006, membership of 46 organisations is proscribed. In our view, proscription is in itself anti-democratic and is largely counter-productive. Proscribing organisations and prosecuting their members

drives them underground and increases their allure. Proscription may also breach the right to freedom of expression and to freedom of association.

- Will the UK repeal the provisions of the Terrorism Acts 2000 and 2006 relating to proscription?

15. ARTICLE 25 DEMOCRATIC RIGHTS

The Northern Ireland Assembly was restored after a lengthy suspension on 8 May 2007. While some powers have been devolved to the Assembly, many other have been reserved to the UK Parliament.

- What plans does the UK have for devolving currently reserved powers to the Northern Ireland Assembly?

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