



SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS
COUNCIL'S UNIVERSAL PERIODIC REVIEW MECHANISM
CONCERNING THE UNITED KINGDOM



NOVEMBER 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 Council's Universal Periodic review Mechanism concerns the United Kingdom (the UK). All our comments stem directly from our work and experience. In the interests of brevity, we have kept details to a minimum, and annexed additional information.

2. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

- 2.1 In October 2000, the UK enacted the Human Rights Act 1998 (HRA), which was intended to incorporate most of the provisions of the European Convention on Human Rights (ECHR) into its domestic law. Due to the similarity of many of the provisions of the ECHR and ICCPR, the UN Human Rights Committee has found that, through the HRA, the UK has also incorporated many ICCPR rights into its domestic legal order¹. However, the House of Lords has held that, instead of *incorporating* the ECHR rights into domestic law, the HRA merely *gives effect* to these rights in domestic law². Therefore, the UK courts do not have to apply the HRA retrospectively and require the Government to remedy any breach that occurred prior to the coming into force of the HRA³. Individuals who have claims for violations of their human rights arising from incidents before that are therefore unable to vindicate their rights before the domestic courts. This approach was recently confirmed in the 2007 House of Lords decision in *R (on the application of Hurst) v. Commissioner of Police of the Metropolis*⁴. Given the similarity between provisions of the ICCPR and ECHR, this denies individuals the full protection of these convention rights.
- 2.2 The HRA did not incorporate Article 13 of the ECHR into domestic law, which provides for an effective remedy for breaches of Convention rights. This denies individuals the right to a domestic remedy where there has been a violation of their ECHR rights.
- 2.3 As explained in paragraph 2.1 above, the UK has incorporated many ICCPR rights into its domestic law. However, as recognised by the Human Rights Committee in its 2001 examination of the UK's observance of the provisions of the ICCPR⁵, the UK has

¹ Concluding Observations of the Human Rights Committee: United Kingdom of Great Britain and Northern Ireland, 05/11/2001; CCPR/CO/73/UK

² *In re McKerr* [2004] UKHL 12

³ *Ibid*

⁴ [2007] UKHL 13; see also *Jordan v Lord Chancellor and Another; McCaughey v Chief Constable of the Police Service of Northern Ireland* [2007] UKHL 14

⁵ Concluding Observations of the Human Rights Committee: United Kingdom of Great Britain and Northern Ireland, CCPR/CO/73/UK and UKOT para 7

failed to accord the same level of protection to other Covenant rights, including the provisions of articles 26 and 27, which guarantee individuals the right to equality before the law and protect the rights of ethnic, religious or linguistic minorities. The failure to incorporate these rights is of particular concern, especially given the discriminatory effect of counter-terror measures currently in force in the UK.

- 2.4 The Human Rights Committee has also recommended that the UK should consider, as a priority, accession to the first Optional Protocol⁶. The UK has not however taken any steps to meet this recommendation, thereby depriving people within the UK of the right of individual petition to the Human Rights Committee.

3. NATIONAL LEGISLATION AND COMPLIANCE WITH HUMAN RIGHTS OBLIGATIONS

- 3.1 Since 2001, the UK has enacted vast amounts of legislation with the aim of countering terrorism. We believe that any measures to combat terrorism undertaken by the UK should be in full compliance with international human rights obligations. However, we are concerned that the recently enacted counter-terror legislation has created 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.
- 3.2 In February 2001, the Terrorism Act 2000 replaced previous emergency laws⁷, some of which covered the whole of the UK, and others of which only applied in Northern Ireland. In 2001, the Anti-Terrorism, Crime and Security Act supplemented this counter-terrorism legislation, followed by the Prevention of Terrorism Act 2005 which, *inter alia*, introduced the power to make control orders. The following year, a number of new offences were created with the enactment of the Terrorism Act 2006. These offences are commented upon in more detail in Annex 1. In June 2007, the UK Government announced its intention to introduce a range of further counter terror measures⁸, which are currently being pushed through Parliament. BIRW has prepared a detailed submission to the Government in response to these proposals, which is attached at Annex 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. It is interesting to note that UK counter terror legislation does not seem to be taking account of the recent words of our Prime Minister, "We must never forget that the state and the people are not equivalent. The state is always the servant of the people. We must remember that liberty belongs to the people and not governments."⁹

⁶ *Ibid*

⁷ Prevention of Terrorism (Temporary Provisions) Act and Northern Ireland (Emergency Provisions) Act

⁸ Government Discussion Paper ahead of Proposed Counter Terror Bill 2007, 7 June 2007, <http://security.homeoffice.gov.uk/legislation/proposed-new-legislation/>

⁹ Gordon Brown's speech on liberty at the University of Westminster, 25 October 2007, <http://www.number10.gov.uk/output/Page13630.asp>

- 3.3 In recent years, information about the activities of the British army intelligence unit, the Force Research Unit (FRU), has gradually come to light. The FRU functioned in Northern Ireland between 1980 and 2007.¹⁰ It is alleged that FRU infiltrated agents into paramilitary groups and assisted those groups to target people for murder. They are also said to have allowed bombings and shootings to go ahead, resulting in more deaths, in order to protect their agents from discovery. It is further alleged that they caused the deaths of paramilitaries by falsely identifying them as informers.
- 3.4 In response to wide international and local criticism about the lack of investigation of these and other high profile deaths, the UK Government has now established inquiries into the murders of Rosemary Nelson¹¹, Billy Wright¹² and Robert Hamill¹³, all of which concerned allegations of collusion. Yet the investigations into the latter two murders have controversially been converted into inquiries under the Inquiries Act 2005. 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. This is because, instead of inquiries being under the control of an independent judge, they are controlled in all important respects by the relevant government minister. Under the Act, the Minister decides whether there should be an inquiry, sets its terms of reference, can amend its terms of reference, appoints its members, can restrict public access to inquiries, can prevent the publication of evidence placed before an inquiry, can prevent the publication of the inquiry's report, can suspend or terminate an inquiry, and can withhold the costs of any part of an inquiry which strays beyond the terms of reference set by the Minister.
- 3.5 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. After the Commission produced two unsuccessful drafts, in September 2006, a Bill of Rights Forum consisting of representatives of political parties and civil society was established, which has agreed terms of reference and set up a number of working groups. 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 place¹⁴. BIRW believes that the UK Government should ensure that the Bill of Rights Forum has sufficient resources and time so that it is best placed to establish an effective Bill of

¹⁰ FRU changed its name to the Joint Support Group in or about 1991 – the JSG is currently operating in Iraq

¹¹ A lawyer who was blown up in a car bomb by loyalist paramilitaries in 1999 after the government ignored consistent warnings about the threat to her life from NGOs, the UN and the Irish and American governments

¹² A loyalist paramilitary leader who was murdered in 1997 inside the Maze prison by a republican faction after the prison authorities ignored warnings about his safety

¹³ A Catholic who died in 1997 after a sectarian beating which took place in the presence of the police, who later assisted his loyalist assailants to avoid justice

¹⁴ Funding has only been made available for two outreach workers for the period mid-October 2007 to 31 March 2008

Rights for Northern Ireland. Further, the emphasis on responsibilities should be on the state, not on individuals.

- 3.6 On 3 July 2007, the UK Government revealed details of its route map to constitutional reform, as set out in the Green Paper "The Governance of Britain"¹⁵. This proposes the creation of "A Bill of Rights and Duties" for Britain, which will draw upon and add to the provisions of the HRA, and therefore the ECHR and its corresponding articles in the ICCPR. It is envisaged that the Bill will give people a clear idea of what they can expect from public authorities, and from each other, and that it will set out a framework for giving practical effect to common values.¹⁶ BIRW submits that the establishment of a Bill of Rights for Britain should be encouraged since, as set out in paragraph 2.1 above, the HRA does not provide for an effective remedy for human rights violations, and the judgments in *McKerr* and *Hurst* mean that the vindication of people's human rights depends on when the violation occurred. The Government should learn from the Northern Ireland Bill of Rights experience, concentrating as much on the process and timing of the Bill and ensuring proper consultation, as on its content. Further, 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.
- 3.7 The right of silence, long considered the most fundamental right of a suspect, was curtailed in Northern Ireland in 1989 and in the UK in 1994. The legislation permits the court hearing the charge against you to draw such inferences as appear proper from the fact of your silence, either while in police custody or at trial. BIRW is concerned that this legislation violates Article 6 ECHR and the corresponding ICCPR rights where the defendant has not been given access to legal advice: see *John Murray v UK*¹⁷.

4. ACTIVITIES OF NATIONAL HUMAN RIGHTS INSTITUTIONS

- 4.1 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. Most recently, in response to these requests, the Justice and Security (Northern Ireland) Act 2007 introduced a number of changes to the Commission's powers, which are generally to be welcomed. One of the reforms has enabled the Commission to rely on the ECHR when instituting, or intervening in, judicial review proceedings. However, BIRW is concerned that these changes do not go far enough. Specifically, although the Commission can now have access to places of detention, it must prepare terms of reference in advance and provide them to the relevant affected persons. This removes the element of surprise in any investigation, forewarning public bodies of the issues under consideration and, in the worst case scenario, enabling documents to be 'lost' or destroyed, thus undermining the nature of the Commission's investigations.
- 4.2 Further, the Commission has not been designated a national preventive mechanism under the Optional Protocol to the UN Convention Against Torture (UN OPCAT),

¹⁵ <http://www.official-documents.gov.uk/document/cm71/7170/7170.pdf>

¹⁶ *Ibid*, paragraph 209

¹⁷ [1996] 22 EHRR 29

which the UK ratified in December 2003 and which came into force on 22 June 2006. This is surprising given the nature of the Commission and its aims and purpose: ironically it has more powers than many of the designated bodies. The designation process lacks transparency and clarity, and there has been a marked failure to adequately consult with and consider representations from civil society in relation to their potential to become a designated mechanism.

- 4.3 In June 2007, the Northern Ireland Office established a group to deal with the past in Northern Ireland. BIRW has a number of concerns with the establishment of this group, in particular regarding the lack of consultation with the people of Northern Ireland, the membership of the group, the broad terms of reference and the short time scale within which the group must reach its conclusions. These concerns are expanded in Annex 3.
- 4.4 The recent transfer of primacy for counter-terrorism from the police to the security services causes BIRW particular concern, in particular because there is no mechanism to hold the security services to account.
- 4.5 The Chief Constable of the PSNI, Sir Hugh Orde, has recently decided to deploy tasers (electric stun guns) in Northern Ireland. This decision has yet to be authorised by the Policing Board, which oversees the work of the PSNI. BIRW has grave concerns about the potential introduction of tasers, since there is a distinct lack of data on the long-term effects of exposure to such powerful electric shocks, a known risk of causing heart attacks, and their use is likely to raise the possibility of violating the prohibition on torture and cruel, inhuman and degrading treatment. BIRW is also concerned about the PSNI use of CS spray and the injuries that it can cause, especially when used against children and in confined spaces. Our concerns are further elaborated in Annex 1.
- 4.6 Plastic bullets continue to be deployed by the PSNI. 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. Although intended as a non-lethal weapon, seventeen people have died as a result of the use of rubber and plastic bullets between 1970 and 2005: 14 of these were caused by plastic bullets. We also have concerns about the current use of a 'shoot-to-kill' policy by UK police forces, which is both open to abuse and has already resulted in tragedy: see further Annex 1.
- 4.7 According to paragraph 15(a) of HRC Resolution 5/1¹⁸, states are encouraged to prepare the information they submit to the Universal Periodic Review mechanism "through a broad consultation process at the national level with all relevant stakeholders". BIRW is concerned that, as an interested stakeholder and relevant national human rights institution, it has not been approached by the UK Government and asked to participate in such consultation nor, as far as we are aware, has the Government approached other similar NGOs. Nevertheless, we are co-ordinating with other concerned NGOs and endeavouring to persuade the Government to engage in as broad a consultation process as possible.

¹⁸ A/HRC/RES/5/1, 18 June 2007