FIFTH PERIODIC REPORT BY THE UNITED KINGDOM UNDER ARTICLE 40 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Submission by the Northern Ireland Human Rights Commission to the Pre-Sessional Hearing by the United Nations Human Rights Committee of July 2001

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The Northern Ireland Human Rights Commission is a statutory body established on 1 March 1999 as a result of the Belfast Agreement of 10 April 1998. The Commission is a national human rights institution independent of government. We have observer status with the International Co-ordinating Committee of National Human Rights Institutions (not full membership because our jurisdiction is limited to one legal system within the United Kingdom). The activities of the Commission include reviewing the adequacy and effectiveness in Northern Ireland of law and practice relating to human rights; advising on the compatibility of legislation and policy with human rights, and promoting understanding and awareness of human rights. We also assist individuals in legal proceedings where human rights issues arise, bring proceedings involving law or practice concerning the protection of human rights, and conduct research and investigations.

The Commission sees as an important part of its work informing international treaty-monitoring bodies of the state of human rights in Northern Ireland. To that end we have already made submissions to the UN Human Rights Committee, to the UN Committee on the Elimination of Discrimination Against Women, to the UN Committee on the Elimination of Racial Discrimination and to the Council of Europe’s Committee on Economic and Social Rights. We have also submitted a third party brief to the European Court of Human Rights in a group of right to life cases.

Unfortunately, however, our resources are very stretched and we have a lot of other competing priorities, not the least of which is the production of a draft Bill of Rights for Northern Ireland through an extensive process of public consultation. It has therefore not yet been possible for the Human Rights Commission to produce a detailed response to the UK’s 5th Periodic Report which is to be examined by the Committee later this year. We would, however, wish to make some important preliminary points to members of the Committee to help them in planning the examination of the UK Report. We are pleased to note that a number of respected non-governmental organisations have prepared submissions to the Committee, including the Committee on the Administration of Justice, Liberty, British-Irish Rights Watch and Amnesty International. Since the purpose of this submission is to help the Committee determine the questions to be put in examining the United Kingdom, we have omitted some points that we feel were made adequately in the NGO submissions. While their views will not necessarily reflect in every respect the positions taken by the Commission, we believe that their representations to you in relation to Northern Ireland will be of considerable help in determining the questions that you wish to put in respect of this UK jurisdiction.

The remarks below follow the arrangement of the UK Report.

1. *paragraph 1:* In welcoming the assertion that the United Kingdom Government is fully committed to protecting human rights, the Northern Ireland Human Rights Commission holds that one of the most visible and effective ways of demonstrating that commitment is the establishment of legal and institutional means of defending and promoting human rights principles and standards. That includes the creation of national human rights institutions, in line with the Paris Principles (the Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights, 1991). In a report to the Government on 28 February 2001, the Northern Ireland Human Rights Commission requested a range of enhancements to its institutional status, powers, duties and resources to enable it to meet the standards set out in the Paris Principles. Our
A report made 25 recommendations designed to improve the effectiveness of the Commission, to increase its independence from Government and to allow it to comply with the United Nations’ Principles Relating to the Status of National Institutions (approved by the General Assembly of the United Nations in Resolution 48/134 of 1993). Among the most important recommendations were that the Commission should be allowed to intervene as an interested third party in court cases and that it be authorised to compel the production of information during its investigations of alleged human rights abuses. We also called for greater resources to be allocated to the Commission to allow it to respond more effectively to the demands being made of it. The Committee may wish to ask the United Kingdom how it intends to demonstrate its commitment to protecting human rights in Northern Ireland in its response to the 25 recommendations made by the Northern Ireland Human Rights Commission.

2. paragraphs 6-7: The Introduction to the Report notes that a review of its policy on international human rights instruments, completed in early 1999, led the UK Government to continue with its refusal to accede to the First Optional Protocol of the International Covenant on Civil and Political Rights (ICCPR), which would give the right of individual petition under the Covenant. It was also withholding this right in respect of the conventions against torture and racial discrimination. The Government attributed this at least in part to the effect of the introduction of the Human Rights Act 1998, incorporating the European Convention rights into United Kingdom law. The Human Rights Act entered into effect on 2 October 2000, allowing public authorities some considerable time to prepare for its commencement. The Northern Ireland Human Rights Commission urges the Committee to ask the UK for a timetable for providing the individual right of petition under the three instruments.

ARTICLES 2(2) AND 26

3. paragraphs 55-60: Noting that the UK Report provides statistics relating to unemployment among ethnic minority groups derived from the Labour Force Survey, including gender differentials, we suggest that the provision of comparable information from the Northern Ireland Labour Force Survey Religion Report would better enable the Committee to understand the slightly different issues relating to this part of the United Kingdom. (In this jurisdiction there are two main communities, which can be characterised in a number of ways including religious affiliation.) For the Committee’s information, the Religion Report for the year 2000 recorded the Catholic male unemployment rate as 13 per cent, compared with 5 per cent for Protestant males. It is also noted that the relevant UK Government Department established a forum to advise on the progress of minorities in the labour market, addressing employment, education and training provision. Within Northern Ireland there has been insufficient Government attention to redressing inequity in employment, with no such forum established and with little evidence of an urgent approach to reducing differentials. The UK should be asked to provide data on employment and unemployment differentials between the two main communities in Northern Ireland in future Reports. It should also be asked about legislative and policy initiatives taken or planned to reduce differentials, and about their effectiveness.
4. **paragraphs 70-73:** The protection afforded to the rights of members of ethnic minorities in Northern Ireland is less than that afforded in Great Britain (England, Wales and Scotland). This was addressed in some detail in a joint submission by two Northern Ireland non-governmental organisations, the Committee on the Administration of Justice (CAJ) and the Northern Ireland Council for Ethnic Minorities (NICEM), in response to the UK’s 15th Periodic Report under the International Convention on the Elimination of All Forms of Racial Discrimination. The Northern Ireland Human Rights Commission fully endorsed the views expressed by the CAJ and NICEM and we believe that there is no justification for failing to replicate in Northern Ireland some of the statutory provisions available in other parts of the United Kingdom. Major changes to the law in Great Britain under the Race Relations (Amendment) Act 2000 added considerably to the strength and scope of the 1976 Race Relations Act, but Northern Ireland is left with legislation based on the original 25-year-old Act. We also note that the Equality Commission for Northern Ireland, which reviewed the effectiveness of race relations legislation in the jurisdiction, earlier this year made 24 recommendations for improving the scope of the law, its enforcement by the Commission and the fair adjudication of cases. Some of these matters may be addressed in a proposed equality bill to be put before the devolved legislature (a matter on which the Committee may wish to seek further information), but the UK Government retains responsibility in some key areas including policing and the criminal justice system. A particular difficulty in Northern Ireland is the dearth of statistical information on ethnic minority communities and this makes it particularly difficult to assess the extent of institutional racism, a problem widely acknowledged in Great Britain. The UK should be asked how it intends to ensure that the human rights of ethnic minorities in Northern Ireland are to be protected in policing and criminal justice contexts to the same extent as they are in Great Britain. It should also be asked for its views on the Equality Commission recommendations, and how it intends to improve the gathering and publication statistical information relating to the ethnic minority communities.

5. **paragraphs 74-80:** Religious and political discrimination, particularly in employment, remains a fact of life in Northern Ireland. This at least partly accounts for the fact that Roman Catholic males are approximately twice as likely to be unemployed as Protestant males, a ratio that has improved only slightly over the last decade. We acknowledge that Northern Ireland at least has legislation dealing with religious discrimination, in contrast to the rest of the United Kingdom where there is limited protection for a very limited range of religious minorities. It is, however, quite evident that the legislation has not redressed the imbalance and is not capable of doing so. To take one issue, the law does not recognise that disadvantage or discrimination can occur on combined grounds, so that a person discriminated against as (for example) a Protestant male must prove that it occurred either because he was male (under the sex discrimination legislation), or because he was Protestant (under the law on religious discrimination), or quite separately on both grounds. Moreover, public appointments are exempted from discrimination legislation, in religion as in other areas such as race. The UK Report provides statistics on the functioning of the Fair Employment Tribunal, which adjudicates complaints of discrimination. These show that, of 2,919 cases registered between 1993 and 1998, only 21 (0.7 per cent) resulted in findings for the complainant, and 1,033 remained unresolved. A comparison can be made with race discrimination cases in England, Scotland and Wales (**paragraph 31**), where of 2,568 cases brought in 1997-98 some 88 (3.4%) were
successful. In the same period, of the 81 cases of alleged sex discrimination disposed of in the industrial tribunal in Northern Ireland, 12 (14.8%) were decided for the applicant (paragraph 99). There is no immediately apparent reason why the success rates in religious and political discrimination cases should be so much lower than in other cases of alleged discrimination before similarly constituted tribunals, but it can be noted that there can be a gross inequality of arms in the Fair Employment Tribunal. As in most other types of tribunal in Northern Ireland, legal aid is not available and unrepresented complainants can often be faced with teams of solicitors and barristers paid for by employers or, in the case of public authorities, from the public purse. Another serious concern is the delay in disposing of cases; it is evident from the Government’s figures that the number of cases outstanding rose considerably during the period under review. Finally, we note that the Government reported (paragraph 78) that in 1997 the predecessor of the Northern Ireland Human Rights Commission, the Standing Advisory Commission on Human Rights (SACHR), made 160 recommendations to Government in relation to fair employment and other areas related to the targeting of social need. (Paragraph 79 of the UK Report as printed omits the Fair Employment Commission and the Equal Opportunities Commission for Northern Ireland from the list of bodies incorporated into the new Equality Commission.) The UK should be asked to explain the low rate of success in religious and political discrimination cases, the denial of legal aid and the delay in disposing of cases. It should be asked why the discrimination legislation does not address the issue of discrimination on combined grounds, such as religion taken together with gender. It should be asked to explain the exemption of public appointments from legal protection against discrimination. It should be asked to report on how many of the 160 SACHR recommendations have been implemented.

ARTICLE 3

6. paragraphs 99-102: The Equal Opportunities Commission for Northern Ireland, now subsumed into the Equality Commission, made recommendations in 1997 for the strengthening of protection against sex discrimination. These are enumerated in the UK Report. The UK should be asked to report on actions taken or planned to implement those recommendations.

ARTICLE 6

7. paragraphs 135-137: The Northern Ireland Human Rights Commission intervened as a third party in four recent right-to-life cases in the European Court of Human Rights. The cases raised serious issues with regard to the handling of police investigations after suspicious deaths have occurred. The Court found that the UK had failed to comply with the right to life, as defined by Article 2 of the European Convention (in similar terms to Article 6 of the ICCPR), when investigating a number of suspicious deaths between 1982 and 1992. The Human Rights Commission argued that in suspicious deaths, the state’s internal accountability procedures had to satisfy the standards of effectiveness, independence, transparency and promptness. The European Court found that investigations must be able to lead to the identification and punishment of those responsible. This means that government will have to make significant changes to investigative procedures, to the prosecution process and to the inquest system in Northern Ireland. The Human Rights Commission has also sought to intervene as a third party on
right-to-life issues in inquest proceedings in Northern Ireland, but it has been prevented from doing so by a ruling of the Northern Ireland High Court. That ruling (also barring the Commission from intervening in non-inquest judicial proceedings), which is currently subject to appeal to the House of Lords, is relevant to the examination of the United Kingdom under the ICCPR in that it prevents a national human rights institution from giving courts advice or information on human rights. This seriously affects the ability of inquests to give full consideration to the implications of the right to life. In relation to plastic baton rounds (paragraph 137), the Northern Ireland Human Rights Commission has not taken a position on whether their use is compatible with human rights, although we are aware of the recommendation of the United Nations Committee Against Torture that use of the weapon should be discontinued. We note the recent introduction of a redesigned baton round (a matter on which the Commission was not consulted) and are concerned that it may not prove to be any less lethal than the older model. We have recently investigated the system in place for recording the use of the weapon. We were given very limited access to police files on some incidents where plastic baton rounds were fired. Our findings were that the documentation in relation to authorisation and use of the weapon is seriously inadequate both in its design and in the way that it is used, and does not provide a proper basis for accountability. The UK should be asked to report on how it intends to change investigative procedures, the prosecution process and the inquest system in Northern Ireland. It should be asked to comment on the inability of the Northern Ireland Human Rights Commission to intervene in inquest or court proceedings in relation to human rights issues including the right to life. It should be asked how it intends to ensure that the use of plastic baton rounds in Northern Ireland complies with its obligations in respect of the right to life.

8. paragraphs 141-150: The Northern Ireland Human Rights Commission is concerned that the Royal Ulster Constabulary (the police force in Northern Ireland) has not followed procedures prescribed for UK police forces regarding access to information at inquests. This became apparent following the death, allegedly in police custody, of a member of the Traveller community (which is one of the largest ethnic minority communities in Northern Ireland). The Committee should ask the UK to state its policy in relation to access to information about deaths in police custody in Northern Ireland.

ARTICLE 7

9. paragraph 183: The minimal reference to the concerns expressed by the UN Special Rapporteur on the Independence of Judges and Lawyers, which have not in fact been satisfied by the Government’s responses, deserve further consideration by your Committee. Two matters in particular are also right-to-life issues: the murders of defence lawyers Patrick Finucane (in 1989) and Rosemary Nelson (in 1999). The Northern Ireland Human Rights Commission believes that only an independent public judicial inquiry will be able to ascertain the truth in the Finucane case, and we are becoming increasingly concerned that, with the lack of progress in the police investigation, a similar inquiry may be required in the case of Mrs Nelson. The facts that the Nelson murder was preceded by death threats allegedly made by members of the RUC, and that security force collusion with illegal paramilitary groups is alleged in both cases, give the Commission very serious cause for concern. The UK should be asked to give an account of the
investigations into the murders of Patrick Finucane and Rosemary Nelson, and to establish an independent public judicial inquiry into the murder of Mr Finucane.

ARTICLE 9

10. paragraphs 232-239: The Northern Ireland Human Rights Commission made extensive representations to Government and Parliament during the pre-legislative consultation and eventual passage of the Terrorism Act 2000. None of our representations were taken into account in the enactment. For example, the Act offers a definition of terrorism that is so wide as to cover many activities that are covered by the ordinary law and could not reasonably be regarded as terrorist. Many of its provisions are capable of being used in ways that infringe rights enshrined in the ICCPR and the European Convention. Section 108 of the Act allows the unsupported opinion of a senior police officer to stand as evidence of membership of a proscribed organisation, and taken together with Section 109, which allows inferences to be drawn from the silence of the accused, could lead to persons being convicted on the basis of the opinion of the police, contravening Article 14 rights. The Act creates powers to stop, question and detain people at ports or borders; where we had proposed that use of the powers should relate to “the commission or preparation of acts of terrorism”, the original wording was retained, relating to “entering or leaving Northern Ireland”. Persons can be detained at ports or border areas for up to nine hours without any requirement for reasonable grounds of suspicion. This would allow the “arbitrary detention” referred to in Article 9(1). The UK should be asked to explain the compatibility of the Terrorism Act 2000 with Covenant rights.

11. paragraphs 243-248: In Northern Ireland the practice has been to detain persons applying for asylum in a high-security prison, alongside convicted criminals. This is a clear affront to the dignity of persons who have applied for asylum and may amount to degrading treatment. Elsewhere in the UK Report (paragraph 353) it is stated that “Detention is never used... merely because someone has claimed asylum.” This statement is inconsistent with the policy of imprisoning asylum seekers in Northern Ireland. The same paragraph continues: “It is sometimes necessary, for reasons of geography or security, to hold [immigration] detainees in prison.” We do not accept that “geography” is a valid reason for detaining someone in prison. There are indications that the only proposal to improve this situation involves removing asylum seekers from Northern Ireland and detaining them elsewhere in the United Kingdom. The UK should be asked how it intends to provide appropriate facilities for the accommodation outside prisons of persons who request asylum in Northern Ireland.

ARTICLE 10

12. paragraphs 286-289: The arrangements for the recall to prison of persons released on licence under the Life Sentences (Northern Ireland) Order 2001 seriously offend against Article 10. The Secretary of State has absolute power to decide on whether to revoke a licence on the basis of his interpretation of the public interest. We believe that there should be some machinery for challenging the Secretary of State’s view, and for contesting any damaging information about the prisoner on which the Secretary of State is relying. At present prisoners do not even have a right to be present or to be represented in recall hearings; their interests are supposedly protected by a “representative” whom...
they do not appoint and who is not permitted to communicate with them. We also regard the concept of a lifetime licence as unduly oppressive. The UK should be asked to justify the arrangements for the release and recall on licence of life-sentenced prisoners in Northern Ireland in terms of Articles 10 and 14.

13. paragraphs 331-332 & 335-336: The Northern Ireland Human Rights Commission is close to completing an investigation into the care of children in Juvenile Justice Centres. We would be pleased to provide copies of our report to the Committee. We have already concluded that there is a need to transform the policies, ethos and operation of the whole juvenile justice system. We are concerned that current legislation and practice results in 17-year-olds being processed through the adult system. A comprehensive reform should include incorporating international standards into domestic juvenile justice legislation, raising the age of criminal responsibility, and inclusion of 17-year-olds within the youth justice system. The current system is out of step with the UN Convention on the Rights of the Child, other international standards which define children as all people under 18, and the Beijing Rules which state that the age of criminal responsibility should be broadly in line with fundamental rights in society such as voting rights and the legal marriage age.

The UK Report noted (paragraph 336) the lack of secure accommodation only for juveniles, and regrettably that is still the case. The Government should also abandon its plan to build one new centre for the whole of Northern Ireland to replace the existing three juvenile justice centres. International guidelines stipulate that custody for children should be used as little as possible, and that where it is considered unavoidable custody should be based in small family sized units, situated within children’s local communities. We are also concerned about the relatively high use of remand for children and about the over-representation of children coming from care to custody, particularly in the remand population. The UK should be asked to account for the continuing lack of appropriate accommodation for juveniles, and to indicate its intentions with regard to the reform of the juvenile justice system in Northern Ireland.

14. paragraph 338: The Northern Ireland Human Rights Commission is concerned at the continuing lack of high security hospital places in Northern Ireland. This impinges particularly on the right to family life (Article 17). We understand that there is a proposal to establish a facility in Belfast; this should not be delayed. The UK should be asked how it intends to secure the Article 17 rights of mentally disordered offenders from Northern Ireland.

15. paragraphs 343-346: Notwithstanding the UK Report’s reference (paragraph 234) to the intention to “achieve normalisation” in Northern Ireland so that no special emergency or counter-terrorist provisions are in place, the Terrorism Act 2000 includes a wide range of special powers applicable only in Northern Ireland. Codes of Practice issued under the Act contain elements undermining two of the rights that the Report (paragraph 344) correctly identifies as safeguards for detained persons, namely the right to legal advice (see also paragraphs 432-433) and the right not to be held incommunicado. The Northern Ireland Human Rights Commission had recorded objections to these elements, but our views were not taken into account when the Codes were implemented. The UK should be asked to justify provisions in the Terrorism Act Codes of Practice allowing the police to prevent or delay a detained person from informing another person of his or her detention, and to delay access to legal advice.
ARTICLE 13

16. paragraph 369: The lack of legal aid in Northern Ireland in Immigration Appeal Tribunals has the clear potential to result in injustice. The UK should be asked to extend legal aid in this area.

ARTICLE 14

17. paragraphs 428-429: The means test for access to legal aid is so stringent that a very large proportion of deserving cases do not qualify for assistance. The Northern Ireland Human Rights Commission welcomes the proposal to create a Legal Services Commission, and proposals for a public defender system. We have serious concerns about the non-availability of legal aid in most types of tribunal and in inquests. (A recent proposal to provide ex gratia assistance in respect of inquests is quite inadequate.) Access to justice, and the efficient running of courts and tribunals, is considerably influenced by the parties’ access to legal expertise, and we believe that the current legal aid system fails to meet the standard set by Article 14. The UK should be asked to extend the availability of legal aid to tribunals and inquests.

18. paragraphs 430-431: The Northern Ireland Human Rights Commission supports the Government’s objective of returning to jury trial in Northern Ireland. We are firmly of the view that this is not only a desirable end in itself but also that it should be attained as soon as possible. We believe that the system has continued to be used long after it could have been abandoned altogether or at least radically altered. The Diplock system has contaminated the ordinary legal system to the extent that measures intended for the terrorist context have been applied in non-terrorist contexts, and also in that the use of emergency powers has undermined the perceived integrity of the criminal justice system as a whole. To maintain the Diplock system is to perpetuate two criminal justice systems in Northern Ireland, with the inevitable charge of inequality under the law that such duality invites. This inequality seems to be a breach of Article 26 of the International Covenant on Civil and Political Rights. In February 2000 we made detailed recommendations to the Government as to how the issues of jury intimidation and perverse verdicts (paragraph 430) could be addressed. The Government declined to supply any evidence that intimidation was occurring or had ever been a problem. The UK should be asked to discontinue the use of Diplock courts and reinstate a single criminal justice system in Northern Ireland.

19. paragraph 434: The Northern Ireland Human Rights Commission believes that the constitution and rules of the “national security” tribunals established under the Northern Ireland Act 1998 do not meet the minimum requirements of due process. These tribunals consider appeals against a certificate issued by the Secretary of State that, in effect, permits discrimination on the grounds of national security. There is, for example, no right for a person affected by the Secretary of State’s certificate to attend a hearing or to know the reasons for the issuance of the certificate. The UK should be asked to amend the law so as to afford the parties Article 14 rights.

ARTICLE 24
20. *paragraphs 594-600*: The Northern Ireland Human Rights Commission has welcomed the initiative in the devolved legislature to create an office of Children’s Commissioner. It believes that this potentially offers a significant additional protection for the rights of children.

**ARTICLE 25**

21. *paragraphs 632-633*: Appointments to public bodies are currently outside the scope of legislation intended to prevent discrimination on grounds such as religion, political belief and ethnicity. *The United Kingdom should be asked to justify such exemptions in the light of its frequently stated commitment to equality of opportunity, and the evidence that members of minority groups are significantly under-represented in public appointments.*

The Human Rights Commission is willing to provide the Committee, or individual members, with additional comments and documentation on any of the matters raised. We thank the Committee for its consideration.

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