



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

## **Submission to the Committee for the Elimination of all Forms of Racial Discrimination (January 2011)**

### **Examination of the Eighteenth and Nineteenth Periodic Reports of the United Kingdom of Great Britain and Northern Ireland: List of Themes**

1. The Northern Ireland Human Rights Commission (the Commission) is the national human rights institution (NHRI) for Northern Ireland. It was created in 1999 by the United Kingdom Parliament through the Northern Ireland Act 1998, pursuant to the Belfast (Good Friday) Agreement of 1998.<sup>1</sup> The Commission is accredited with 'A' status by the International Co-ordinating Committee of NHRIs.<sup>2</sup>
2. The present submission presents information from the NHRI to inform the Committee's List of Themes, and focuses on:
  - Rights of non-citizens: social protection (Articles 1, 2, 5)
  - Legal framework, policy and practice: defining and tackling sectarianism in Northern Ireland (Articles 1, 5, 7)
  - The Convention in domestic law: racist expression (Articles 4, 6)
  - Equality before the law: Internal immigration control and racial profiling (Article 5), and
  - Situation of Irish Travellers (Articles 2, 5)

---

<sup>1</sup> The Belfast (Good Friday) Agreement 1998 followed multiparty negotiations, and was endorsed by treaty and by referendum. It led to the devolution of powers from the UK Parliament and government to the Northern Ireland Assembly (the regional legislature) and its Executive (the regional government). Positions in the Executive are allocated in proportion to party strengths in the Assembly, and involve mandatory power-sharing between (British) unionists and the (Irish) nationalist minority. Although the Assembly and Executive have at times been suspended, the institutions were restored in May 2007 following the St Andrews Agreement 2006, a treaty between the UK and Ireland.

<sup>2</sup> The UK has two other 'A' status NHRIs: the Equality and Human Rights Commission for Great Britain, except in respect of matters devolved to Scotland, and the Scottish Human Rights Commission. The present submission is solely on behalf of the Northern Ireland Human Rights Commission.

## **Rights of non-citizens: social protection (Articles 1, 2, 5)**

3. The UK restricts the access to social protection (most social security benefits and homelessness assistance) of non-EEA nationals with temporary residency.<sup>3</sup> During the monitoring period, the UK also introduced transitional controls limiting access to social protection to nationals of most states that joined the European Union (EU) in 2004 and 2007.<sup>4</sup> In addition, rather than reform the system to provide some safety net for migrants, government legislated, under an “earned citizenship” policy, to extend from five to up to ten years the length of time non-EEA migrant workers must spend before being eligible for permanent residency (and during which they are without access to social protection).<sup>5</sup>
4. In response to growing concerns about destitution, the Human Rights Commission conducted a formal investigation into homelessness among migrants with limited access to social protection. This found the legislation to be unduly restrictive and noted particular impacts on victims of exploitation, refugees, asylum seekers, victims of domestic violence, persons with ill health or disability and victims of racist intimidation.<sup>6</sup>
5. In relation to the requirement under the Convention that differential treatment based on citizenship or immigration status must be proportionate and follow a legitimate aim in order for it not to be discriminatory,<sup>7</sup> the Commission has not seen an evidence base from the UK which meets this test. Indeed it is notable in relation to the ‘earned citizenship’ reforms that the UK rather, than detailing such a case, instead argued that migrants should ‘earn’ rights to social protection. While government has now agreed not to commence the ‘earned citizenship’ reforms, the concerns relating to the legitimacy and proportionality of existing restrictions remain.

---

<sup>3</sup> EEA: European Economic Area, that is, the 27 European Union states plus Iceland, Liechtenstein and Norway. Those affected by this limitation are referred to as persons subject to immigration control with ‘No Recourse to Public Funds’.

<sup>4</sup> The ‘Workers Registration Scheme’ limited access to social protection to the nationals of eight countries which joined the European Union in May 2004 (and under the terms of accession has to be discontinued in May 2011), and the Worker Authorisation Scheme to nationals of Romania and Bulgaria in 2007.

<sup>5</sup> Under Part II of the Borders, Citizenship and Immigration Act 2009.

<sup>6</sup> NIHRC (2009) *No Home from Home: homelessness for people with no or limited access to public funds*, Belfast.

<sup>7</sup> CERD General Recommendation No. 30, Discrimination against non-citizens, 1 October 2004, para 4.

**The Committee may wish to ask the UK how it justifies the above distinctions on citizenship and migration status.<sup>8</sup>**

## **Legal framework, policy and practice: defining and tackling sectarianism in Northern Ireland (Articles 1, 5, 7)**

6. Sectarianism in Northern Ireland frequently continues to be treated as something other than a particular form of racism. As a consequence, in official policy terms it is often and problematically placed outside the well-developed framework of protections provided by ICERD, other standards and the framework provided in the Durban Programme of Action. This is manifest in the Northern Ireland Executive's draft strategy to tackle sectarianism<sup>9</sup> which, in contrast to the parallel strategy for minority ethnic groups,<sup>10</sup> does not even make reference to human rights standards to which the UK is party.
7. The divide between the two largest ethnic groups in Northern Ireland is often characterised on the basis of religion (Protestant/Catholic), or political opinion (British Unionist/ Irish Nationalist),<sup>11</sup> but it is manifest also in nationality (British/Irish). This was accepted by the British and Irish states in the Belfast (Good Friday) Agreement, with the adoption of a pluralist approach to British and Irish nationality, both in terms of citizenship and national identity. There are therefore clear correlations and "intersectionality" between these indicators of ethnicity (religious and political affiliation, national identity and citizenship) in relation to sectarianism in Northern Ireland. This is not to say sectarianism should not continue to be individually named nor, like any ethnic divide, that the two largest communities

---

<sup>8</sup> There are a number of other unjustified distinctions based on nationality and residency on which the Commission has concerns, including access to primary medical care in Northern Ireland, the introduction of an additional migrant tax on non-EEA migrants, and nationality requirements in the civil service.

<sup>9</sup> *Draft Programme for Cohesion, Sharing and Integration*, Office of the First and deputy First Minister, autumn 2010.

<sup>10</sup> *Racial Equality Strategy 2005-10*, Office of the First and deputy First Minister

<sup>11</sup> The Belfast (Good Friday) Agreement provides text that can be drawn on to provide definitions of political affiliation indicators defining the Irish nationalist minority as: "a substantial section of the people in Northern Ireland [who] share the legitimate wish of a majority of the people of the island of Ireland for a united Ireland"; the British unionist majority can be similarly defined as people who wish to maintain Northern Ireland as part of the United Kingdom through the Union with Great Britain; Agreement, Constitutional issues 1(i-iii).

are rigid and homogenous. However, the location of sectarianism outside the protections of the Convention seriously limits its application to Northern Ireland, and therefore obligations on the state to tackle sectarianism along with other forms of racism.

**The Committee may wish to further explore with the UK the defining and tackling of sectarianism in Northern Ireland in a manner that is consistent with, and underpinned by, the Convention and the Durban Declaration and Programme of Action.**

## **The Convention in domestic law: racist expression (Article 6)**

8. In addition to other forms of discrimination, racist violence and other racially-motivated incidents remain a serious problem in Northern Ireland (population around 1.7 million). In the year 2009-10 the number of (victim-perceived) racist incidents reported to police was 2,901, of which 1,991 constituted crimes. Sectarian incidents at 1,840 constituted the single largest number (1,264 crimes), with 1,038 other racist incidents (712 crimes).<sup>12</sup> This included sectarian murder and an incident of intimidation leading to the forced departure of around 100 Roma to Romania, which brought international attention to racist intimidation in Northern Ireland. There is also the context of the involvement of illegal paramilitary organisations in racist violence.<sup>13</sup>
9. Despite the gravity of the situation, legislation preventing advocacy of racial hatred in Northern Ireland is limited to offences of stirring up hatred or arousing fear on racial and religious grounds.<sup>14</sup> This constitutes a high threshold, and

---

<sup>12</sup> Police Service of Northern Ireland, Annual Statistical Report: *Report No. 3 Hate Incidents and Crimes, 1<sup>st</sup> April 2009 – 31<sup>st</sup> March 2010*. The figure of 2,901 also includes 23 incidents on 'faith/religion' grounds, where intersectionality is likely to be with other indicators of ethnicity. Beyond the separation of sectarian incidents, there is no breakdown of victim groups relating to other forms of racism.

<sup>13</sup> See for example: statements in the *Eighth Report of the Independent Monitoring Commission* (House of Commons paper 870, 2006, paras 3.32-5) that it would be an important step for Loyalist paramilitaries "to stop targeting nationalists and members of ethnic minorities" ("Loyalist" refers to loyalty to the British Crown).

<sup>14</sup> Part III of the Public Order (Northern Ireland) Order 1987 (1987/463(NI7)). The police were not able to indicate to the Commission how often charges have been brought under this legislation.

does not cover fully the mandatory requirements of Article 4 of the Convention.

10. The Criminal Justice (No 2) (Northern Ireland) Order 2004 allows the Courts to treat motivation by hostility on racial and religious grounds as an aggravating factor increasing the seriousness of the offence. Prosecutors considered 578 cases to have been aggravated by racial or religious hostility in 2009-10. However in the (calendar) year 2009, there was just one conviction recorded under the Order.<sup>15</sup> In the case of only five persons, was the primary offence stirring up hatred or arousing fear referenced in the preceding paragraph.

**The Committee may wish to ask the UK if it will further legislate in Northern Ireland to fulfil all the requirements of Article 4, and about steps the UK will take to improve prosecution and conviction rates under existing legislation.**

## **Equality before the law: Internal immigration control and racial profiling (Article 5)**

11. The Commission, in 2009, published a report on its investigation into the UK Border Agency's (UKBA) powers of detention in Northern Ireland.<sup>16</sup> Since 2005, the Commission had become increasingly concerned about the way in which the UKBA authorised deprivation of liberty in the context of immigration control in the jurisdiction. In particular, the Commission had serious questions as to the legal basis and conduct of "Operation Gull" - a form of internal immigration control at Northern Ireland ports and airports, on passengers travelling within the UK and the Common Travel Area (the passport-free zone comprising, principally, the UK and Ireland).
12. The Commission's investigation of "Operation Gull", which results in considerable number of individuals being detained and later removed from the UK as "immigration offenders", raised serious concerns in relation to racial profiling. Despite this, "Operation Gull" continues and the frequency of scheduled operations, and the number of people detained and removed, may even have increased since 2009. However, no

---

<sup>15</sup> *Official Report*, Northern Ireland Assembly, Written Answers, Minister for Justice, David Ford MLA, 8 October 2010, AQW 710/11.

<sup>16</sup> NIHRC (April 2009), *Our Hidden Borders: The UK Border Agency's Powers of Detention*, Belfast.

detailed statistics or other information exists to enable further assessment.

**The Committee may wish to ask the UK Government for further information regarding ‘Operation Gull’ and safeguards to prevent racial profiling in immigration control.**

## **Situation of Irish Travellers (Articles 2, 5)**

13. Serious and persistent disadvantage faces the Irish Traveller community in Northern Ireland in all walks of life, from health care and education to employment and housing. On the positive side, the Caravans Bill presently before the Northern Ireland Assembly has the potential to improve security of tenure for Travellers. More broadly, however, the Commission considers that the Northern Ireland authorities have failed to discharge their legal duty to provide such caravan sites as appear to be appropriate for the Irish Traveller community.<sup>17</sup>

**The Committee may wish to ask the UK what steps it is taking to improve the accommodation situation of Irish Travellers.**

**February 2011**

**Northern Ireland Human Rights Commission**  
Temple Court, 39 North Street, Belfast BT1 1NA

**Tel:** +44 (0)28 9024 3987

**Fax:** +44 (0)28 9024 7844

**Textphone:** +44 (0)28 90249066

**SMS Text:** +44 (0)7786 202075

**Email:** [information@nihrc.org](mailto:information@nihrc.org)

**Online:** [nihrc.org](http://nihrc.org) ■ [twitter.com/nihrc](https://twitter.com/nihrc)  
[facebook.com/nihrc](https://facebook.com/nihrc) ■ [youtube.com/nihrc](https://youtube.com/nihrc)

---

<sup>17</sup> Article 28A Housing (Northern Ireland) Order 1981 (as amended).