



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Submission by the Northern Ireland Human Rights Commission
to the Advisory Committee on the
Framework Convention for the Protection of National Minorities**

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the United Kingdom Parliament, by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness of Northern Ireland law and practice relating to the protection of human rights,¹ advising on legislative and other measures which ought to be taken to protect human rights,² advising on whether a Bill is compatible with human rights³ and promoting understanding and awareness of the importance of human rights in Northern Ireland.⁴ In all of that work the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding 'soft law' standards developed by the human rights bodies.
2. The Northern Ireland Human Rights Commission welcomes this opportunity to submit views to the Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM). The Commission greatly appreciated the Advisory Committee's visit to Belfast in March 2007 and the time it took to meet with this Commission, non-governmental organisations and statutory bodies in Northern Ireland.
3. This submission to the Advisory Committee draws on that meeting in Belfast and elaborates on many of the points made on the day.

¹ Northern Ireland Act 1998, s.69(1).

² *Ibid.*, s.69(3).

³ *Ibid.*, s.69(4).

⁴ *Ibid.*, s.69(6).

It also provides information on some issues that the Commission was unable to bring to the Advisory Committee's attention on that day because of time constraints.

Situation of the Traveller community

4. Under Article 4(2) of the FCNM Parties "undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority". In this respect the Advisory Committee will be aware of the very serious and persistent disadvantage facing the Irish Traveller community in Northern Ireland in all walks of life: from health care and education to employment and housing. This reality has been, to some extent, acknowledged in the UK's second report to the Advisory Committee but despite some Government initiatives to address the issues, the relative disadvantage endured by the Traveller community has remained evident for decades.
5. In fact, Government has, since the last report to the Advisory Committee introduced measures that actively add to the disadvantage facing the Traveller community and that run counter to the spirit of other legislation in Northern Ireland that aims to promote equality, human rights and social inclusion for all groups in the region and in particular minorities. The Advisory Committee may already be aware of the duties that fall to public authorities under section 75 of the Northern Ireland Act 1998 to promote equality of opportunity and good relations between, among other groups, people of different racial groups. However, the Unauthorised Encampments (Northern Ireland) Order 2005, which came into force in the summer of 2006, creates a disparity between the obligations under s.75 and those incurred as a result of the Order.
6. Under the Order a police officer is empowered to direct a person to leave land and remove any vehicle or other property with him on that land. The Order creates an offence of non-compliance with the police officer's removal directions and empowers the police officer to seize the belongings of the persons being directed to leave the land that the police officer believes them to have been trespassing on. The penalty imposed under the Order for non-compliance is a maximum of three months' imprisonment or a fine of £2,500, or both.
7. There is little question that the primary impact of this Order has been on the Irish Traveller community, as the only indigenous

minority with a traditionally nomadic or partly nomadic lifestyle. For that reason the introduction of the legislation was strongly objected to by a number of organisations including this Commission. The objection was on the basis that in the absence of Government action to ensure the provision of suitable accommodation schemes for Travellers, the legislation was likely to have a very serious adverse impact on an already multiply disadvantaged and marginalised minority. In short, Government has introduced measures whereby members of a national minority can become liable to criminal prosecution for following their traditional lifestyle as best they can in the context of grossly inadequate provision of halting sites and other authorised accommodation; they are liable to be evicted from their homes, have them destroyed and then be imprisoned or fined. There has since the introduction of the Order been little progress in providing Travellers who choose to be nomadic with suitable transit sites.

8. The Commission notes the statement in relation to the Order, in the UK's report, which reads: "The Housing Executive has established excellent working relationships with the Police as regards dealing with unauthorised encampments and the current practices, which include the Housing Executive making a visit to each identified unauthorised encampment to assess the accommodation needs of resident families, are working well".
9. There is nothing in the report however, indicating the nature of the impact of the legislation on Travellers or the extent to which the accommodation needs of nomadic Travellers are actually being met, in terms of Government providing funding for the development of sufficient halting sites, serviced sites and other appropriate accommodation. There is also nothing in the report indicating the numbers of unauthorised encampments that have been dismantled since the legislation came into force, despite the obvious human rights sensitivities around how police officers on the ground might engage with Travellers when dismantling their homes. In commenting on the draft UK report this Commission urged Government to provide this information, and also to give details of any training given to police officers in removing people and their belongings from land and possibly dismantling their homes.
10. The Commission would appreciate the Advisory Committee expressing its views on these concerns in its Opinion on the UK, and urging Government to address as a matter of urgency the provision of sufficient funding for the development of suitable housing arrangements for those Travellers who choose to be nomadic, as well as for those who choose to be sedentary (or, as

the case may be, adopt non-nomadic lives due to the difficulties placed in the way of sustaining nomadism).

'Hate crime'

11. Since the last UK Government report to the Advisory Committee there have been some positive legislative developments. The Criminal Justice (No. 2) (Northern Ireland) Order 2004 brought into force the provision that where an offence involves hostility based on religion, race, sexual orientation or disability, the court must on conviction take this into account when sentencing. The legislation provides for the sentencing judge to add on two years to the prison sentence where the crime has been motivated by hostility towards the actual or perceived religion, race, sexual orientation or disability of the victim. The Commission welcomed this legislation on the basis that minorities were particularly vulnerable in any society, and a strong message needed to be sent to perpetrators of crimes against minorities that such behaviour was not going to be tolerated by the state.

12. Indeed, at the time of Government consulting on the legislation there had been an increase in racist incidents and crime in Northern Ireland, and this has continued to the present. For example, in the period 1 April 2003 to 31 March 2004 there was a total of 453 racist incidents recorded by the police. That went up to 813 racist incidents in 2004-05 representing a 79.5% increase.⁵ In 2005-06 there was a total of 936 racist incidents reported to the police, a 15.1% rise from the previous year; of these 746 were recorded as racist offences, representing a 17% increase from the previous year. This figure of 936 racist incidents is particularly striking in a region where ethnic minorities make up less than 1% of the total population, and it must be acknowledged that such incidents are generally believed to be under-reported. These statistics, and other research carried out in Northern Ireland,⁶ have led to this region being given the unfortunate title, in some news reports, of "hate capital of Europe". The Criminal Justice (No. 2) Order was thus seen as one way of tackling the increase in racially motivated crime. However, as the statistics reveal, hate crimes in this area have continued to increase despite the introduction of the Criminal Justice (No.2) Order 2004.

⁵ PSNI explains that in the period 2004-05 improvements were made to the processes for identifying racial incidents and crimes. Rather than gathering data through manual returns, incidents and crimes of this nature began to be collated through the PSNI Integrated Crime Information System.

⁶ V.K. Borooah & J. Mangan (January 2007) "Love Thy Neighbour: How Much Bigotry Is There In Western Countries?", in *Kyklos International Review for Social Sciences*.

13. One of the problems identified by the Chief Inspector of Criminal Justice in his thematic report *Hate Crime in Northern Ireland* was the lack of information around the use of the Criminal Justice (No. 2) (Northern Ireland) Order 2004.⁷ In fact Criminal Justice Inspection was unable to obtain statistics on how often the Order had been used and on which basis (e.g. racist, homophobic crime etc.).
14. The absence of information around the actual use of the Criminal Justice (No. 2) Order 2004 has meant that the strong message it was intended to send to the perpetrators of racist crime has not gone out. That failure has done nothing to assure those belonging to racial minorities that Government is committed to tackling racist crime through legislative means.
15. In addition to the introduction of the Criminal Justice (No. 2) Order 2004 the UK report refers to the system of Minority Liaison Officers within the Police Service of Northern Ireland (PSNI). The report indicates that the system been in place since 1997. It is worrying that despite the designation of such Officers for almost a decade now, racist crime has continued to increase and a general lack of trust in the PSNI continues to be voiced by ethnic minority groups in the region.⁸

The Muslim community

16. In the UK the majority of Muslims are also of Asian origin, and the crossover between their ethnicity and religious affiliation makes their experiences relevant for the purposes of the FCNM. In particular, the experiences of the Muslim community in Northern Ireland engages Article 4 of the FCNM, particularly when taken with Article 7 under which Parties shall “ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, freedom of thought, conscience and religion”. Under Article 8 also, Parties undertake “to recognise that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations”.
17. Since the attacks on the World Trade Centre in New York in 2001, the position of Muslims in the West has been the subject of much debate. In the UK questions have been raised about the extent to

⁷ Criminal Justice Inspection NI (January 2007), *Hate Crime in Northern Ireland*, Belfast: CJI(NI).

⁸ Northern Ireland Affairs Committee [of the UK Parliament], *The Challenge of Diversity: Hate Crime in Northern Ireland*, Ninth Report of Session 2004-2005.

which Muslims can be trusted to respect the laws of European states, and the feasibility and desirability of respecting or even tolerating Muslim traditions in such states. Overall, there has been a strong element of the discourse that suggests that the presence of Muslims in Europe has become a problem.

18. The New York events and subsequent attacks have been met with a raft of counter-terrorist measures in the UK. This Commission has taken a particular interest in such measures as they apply to the whole of the UK because of the experience in Northern Ireland of terrorism and counter-terrorist measures. While the Commission understands the duty of the state to protect those within its jurisdiction from terrorist activity, it refers also to the Preamble of the Council of Europe Guidelines on Human Rights and the Fight against Terrorism: "... it is not only possible, but also absolutely necessary, to fight terrorism while respecting human rights, the rule of law and, where applicable, international humanitarian law".⁹
19. The counter terrorist measures themselves have been the subject of much debate in the UK, and this Commission, along with a number of non-governmental organisations, has voiced serious concerns about their implications in terms of Government's duty to protect human rights. Currently in the UK, those suspected of being implicated in terrorism can be detained for up to 28 days without charge. Holding individuals without charge engages Article 5(1) of the European Convention on Human Rights, and indeed the UK has already been held in breach of this Convention right along with Article 14 (the non-discrimination clause) by its enactment of Part 4 of the Anti-Terrorism, Crime and Security Act 2001, which applied exclusively to non-UK nationals. This Act has now been repealed
20. The counter-terrorist measures enacted since 2001 appear to have been used exclusively against Muslims. In addition, powers under section 44 of the Terrorism Act 2000 allow police officers to stop and search individuals for the prevention of terrorism, with no requirement on police officers to have reasonable suspicion before stopping and searching individuals. Following the atrocities in London on 7 July 2005, figures from the Metropolitan Police revealed that from the period 7 July 2005 to 5 September 2005, 27% of all those stopped in London were of Asian origin. Asians make up only 12% of the London population. While these figures relate to an area outside of this Commission's jurisdiction, they

⁹ *Guidelines of the Committee of Ministers of the Council of Europe on human rights and the fight against terrorism* (the first international text in this field), adopted on 11 July 2002.

impact on the Muslim minority within Northern Ireland by signalling a trend in the treatment of Muslim Asians in the UK as a whole.

21. Along with this there have been a series of comments by senior members of Government which have overall created an atmosphere in which it appears legitimate to question the extent to which the rights of Muslims can be respected. The Muslim community in Northern Ireland has not been immune to attacks as it attempts to exercise its rights. In one town, Portadown, it was forced to cease its attempts to build a local mosque after threats from a section of the local community that it would burn down the mosque if its construction went ahead. Leaflets were distributed across the city claiming that such a mosque would become a training ground for terrorists.
22. While radical Islamist motivation has been attributed to individuals responsible for terrorist attacks in New York, Madrid and London, and others convicted or suspected elsewhere, the UK Government's response, through legislation and commentary suggest that all Muslims are rightly the object of suspicion. This has persuaded Muslims that they are perceived and targeted as a 'suspect community', recalling the perception of the Catholic community in Northern Ireland during the 'Troubles'. The experience of Northern Ireland has shown that targeting entire communities in this way is not in keeping with human rights and has in fact been an ineffective way of combating terrorism.
23. The Commission therefore invites the Advisory Committee to reflect and comment on the treatment of the Muslim minority in the UK.

The Irish language

24. The Advisory Committee will also be aware from the UK state report that the Department for Culture, Arts and Leisure in Northern Ireland recently consulted on proposals for an Irish Language Act. This Commission has noted with disappointment that despite a near unanimity on that point among respondents, Government failed to bring forward legislation with a rights based approach. The legislative proposals that have been advanced in a second consultation are instead based on 'language schemes', i.e. on public authorities being expected to carry out certain activities rather than individuals having a right to "use freely and without interference his or her minority language, in private and in public, orally and in writing".

25. The Commission hopes that the Advisory Committee will endorse the Commission's view that the legislation needs to be entrenched in a rights based approach.
26. The Commission concludes by thanking the Advisory Committee again for its visit to Belfast and hopes the information provided in this paper will be reflected in its Opinion on the UK.

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