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

British Irish RIGHTS WATCH (BIRW) is an independent non-governmental organisation that has been monitoring the human rights dimension of the conflict, and the peace process, in Northern Ireland since 1990. Our vision is of a Northern Ireland in which respect for human rights is integral to all its institutions and experienced by all who live there. Our mission is to secure respect for human rights in Northern Ireland and to disseminate the human rights lessons learned from the Northern Ireland conflict in order to promote peace, reconciliation and the prevention of conflict. BIRW's services are available, free of charge, to anyone whose human rights have been violated because of the conflict, regardless of religious, political or community affiliations. BIRW take no position on the eventual constitutional outcome of the conflict.

Please note: References to recommendations refer to the original recommendations of the Human Rights Council, and not to the re-numbered recommendations accepted by the United Kingdom (UK).

NOVEMBER 2011

WINNER OF THE COUNCIL OF EUROPE'S PARLIAMENTARY ASSEMBLY HUMAN RIGHTS PRIZE 2009
WINNER OF THE IRISH WORLD DAMIEN GAFFNEY MEMORIAL AWARD 2008
WINNER OF THE BEACON PRIZE FOR NORTHERN IRELAND 2007

Dealing with the legacy of the Northern Ireland conflict

1. Northern Ireland is in transition from a protracted period of internal conflict in which over 3,500 people lost their lives and many thousands more were injured. Despite setting up a Consultative Group on the Past, which produced a detailed report recommending a Legacy Commission for Northern Ireland, the UK has failed to provide any effective mechanism for dealing with the legacy of the conflict, particularly in relation to contentious deaths.
2. There are three principal mechanisms in existence which provide some scope for dealing with such deaths: inquests; the Historical Enquiries Team (HET) and the Police Ombudsman (PONI).
3. In the case of McCaughey¹ the Supreme Court ruled that all inquests must comply with the procedural requirement for an effective investigation inherent in the right to life (A. 3 UDHR). However, there is a serious backlog for hearing inquests into contentious deaths and inquests cannot be said to provide a prompt remedy.
4. The HET is located within the Police Service of Northern Ireland (PSNI) and is answerable to its Chief Constable, and cannot therefore be said to comply with the requirement for independence. Neither is it prompt, as its review of deaths arising from the conflict has only reached 1975 so far.
5. PONI is in disarray, following the resignation of the Ombudsman himself and key senior staff after NGOs including BIRW exposed the fact that the office was allowing the police, whose work is supposed to be scrutinised by PONI, to censor its reports into contentious deaths. Following a damning report by the Criminal Justice Inspectorate (CJI), all historical investigations by PONI have been suspended. The Chief Constable of the PSNI, Matt Baggott, has refused to accept that he is bound by the findings of the Police Ombudsman, asserting that he must “apply a consistent ‘evidential’ test when asked to endorse or agree with judgements [of the Ombudsman]. BIRW has complained to the Policing Board of Northern Ireland concerning this refusal to be held to account by the PSNI.
6. The only other mechanism for dealing with contentious deaths is that of an inquiry. BIRW consider that the Inquiries Act 2005 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. However, in the Baha Mousa Inquiry, the Minister undertook not to exercise his powers to intervene, which meant that in many respects it was compliant with the requirement for an effective investigation; although, as in the Northern Ireland cases of the Robert Hamill Inquiry and the Billy Wright Inquiry, also held under the 2005 Act, the family of the victim were not consulted about the terms of reference of the inquiry and inquiries under the Act do not have the power to attribute liability.

Collusion

7. Another outstanding issue arising out of the Northern Ireland conflict is that of collusion. There is compelling evidence that throughout the conflict agents of the state, including soldiers, police officers and intelligence officers, colluded with both republican and loyalist paramilitaries. Paramilitary organisations were infiltrated in the name of obtaining intelligence and saving lives, but murders and other criminal acts were allowed to take place without security force intervention in order to maintain the cover of infiltrated agents. Such collusion was not the result of unauthorised acts by rogue individuals, but was the outcome of policies consciously adopted by successive UK governments and state agencies.
8. One such case, in which the UK Prime Minister recently admitted that collusion had occurred, was the 1989 murder of Belfast human rights lawyer Patrick Finucane. In 2001 the UK and Irish governments agreed in the Weston Park Agreement to ask an international judicial figure to study six cases of alleged collusion, including that of Patrick Finucane and promised that, if this person recommended a public inquiry, an inquiry would be held. Retired Canadian Supreme Court judge Peter Cory recommended inquiries in five of the six cases. Four inquiries were established, but in Patrick Finucane's case the UK has reneged on its commitment to hold an inquiry. The UK, having said that it needed to change the law before it could hold an inquiry into his case, then introduced the Inquiries Act 2005. The Finucane family resisted an inquiry that would have been under the control of the Secretary of State for Northern Ireland. However, they later revised their stance and said they would accept a Baha Mousa-style inquiry, with no ministerial interference. In October 2011 they met the Prime Minister in the full expectation that they would be granted an inquiry. Instead, the government announced its intention to appoint senior Counsel to conduct an on-paper review behind closed doors with no opportunity for the family to examine papers or witnesses. This is a major failure in accountability on the part of the UK, with the potential to destabilise the peace process.

Prison issues

9. There has been some continuing violence in Northern Ireland and dissident paramilitaries continue to attack the security forces and the public. Those who have been apprehended are held in Northern Ireland's only high security prison, HMP Maghaberry, where those awaiting trial are not segregated from convicted prisoners. Paramilitary prisoners are separated from others for their own safety, which severely restricts their access to facilities such as education. There is a power struggle taking place between these prisoners, who want effective control of their part of the prison, and the prison authorities. These prisoners do, however, have some legitimate complaints about the oppressive use of strip-searching and severe limitations on their ability to associate with other prisoners. An independent team of moderators achieved an agreement between the prisoners and the authorities in August 2010, which included modern alternatives to strip-searching, which BIRW regards as inhuman and degrading treatment (A. 5 UDHR), but so far the UK has failed to implement it. Some thirty republican prisoners have been engaged in a dirty protest (destroying sanitation, refusing to wash, and smearing their excrement on cell walls) over the last four months. At least two of these prisoners are seriously ill and the health of all these prisoners is at risk. There is no separate women's jail in Northern Ireland and female prisoners are housed in a facility designed for young offenders. One female prisoner charged with terrorist offences, Marion Price, is being held in isolation in the all-male Maghaberry jail because there are no high security provisions for female prisoners. The situation in Maghaberry has the potential to destabilise the fragile peace process in Northern Ireland.

Counter-terrorism legislation

10. UK counter-terrorism law does not comply with human rights standards (Rec. 6, UK UPR). Following the ruling of the European Court of Human Rights in the case of Gillan and Quinton², the UK was forced to suspend the power to stop and search people without any need for reasonable suspicion of involvement in terrorism under the Terrorism Act 2000. Terrorist suspects can be remanded without charge for up to 28 days and without access to bail (Rec.s 9 and 10). A challenge to these provisions in the case of Duffy³ is pending. In Northern Ireland, those charged with terrorist offences continue to be tried in the no-jury Diplock Courts, whereas in the rest of the UK a person charged with the identical offence would be tried by a jury. Throughout the UK, adverse inferences can be drawn from a person's silence under police questioning or a refusal to testify at trial; these provisions undermine the privilege against self-incrimination and shift the burden of proof from the prosecution to defence, thus violating the right to a fair trial (A. 10 UDHR). The Terrorism Act 2000 continues to permit the denial of access by terrorist suspects to legal advice for up to 48 hours (Rec. 8).

11. BIRW have noted with some dismay the introduction of the Serious Organised Crime and Police Act 2005 (SOCPA), which introduced a legislative framework for using the evidence of co-defendants against other defendants. The few trials in the preparation for which SOCPA has been deployed have sometimes involved multiple defendants and/or multiple charges, and for this reason among others they have been likened to the infamous “supergrass trials” of the mid 1980s in Northern Ireland, where a single informer testified against multiple defendants. These convictions almost all collapsed on appeal and brought the administration of justice in Northern Ireland into serious disrepute. While SOCPA attempts to include a system of checks and balances, it nonetheless provides an incentive for offenders to lessen the penalties they would normally face, and an opportunity to settle old scores within the paramilitary underworld. It also represents a failure of normal policing methods, often leaving victims with a sour sense that they were only able to achieve partial justice at the cost of seeing at least one perpetrator walk away with relative impunity.

Torture

12. The UK did not accept Recommendation 11 in full, because they would not accept that persons detained by the army were under UK jurisdiction. The UK has now been over-ruled on that point by the European Court of Human Rights in the case of Al Skeini⁴. As in other instances mentioned in this submission, all too often it has been necessary to have recourse to the courts in order to obtain compliance with the UK's human rights obligations. As the Baha Mousa Inquiry showed, the UK has failed to meet Recommendation 12 in terms of ensuring that specific policies and programmes to avoid violations in situations of armed conflict. Indeed the case of Ali-Zaki Mousa⁵ shows that there are many victims of human rights violations perpetrated by UK soldiers arising out the war in Iraq, who are now seeking a public inquiry into the UK's policies and practices. A large group of domestic and international NGOs including BIRW have refused to co-operate with the Detainee Inquiry, chaired by Sir Peter Gibson, who was the Intelligence Services Commissioner from 2006 to 2010. The inquiry is meant to examine allegations of intelligence service complicity in torture of British detainees held at Guantanamo Bay and elsewhere post 9/11. This inquiry is a non-statutory inquiry, with none of the powers of compulsion of disclosure or witnesses conferred by the Inquiries Act 2011. It will hear most of its evidence in secret, and will only hear from the heads of the intelligences services, rather than from operatives. The victims of the alleged torture have themselves refused to co-operate with this sham of an inquiry.

“Less lethal” force

13. The UK continues to deploy plastic bullets (AEPs) as a weapon of riot control in Northern Ireland. Earlier versions killed 14 people, half of them children, and we remain concerned that if improperly used they have the potential to

cause fatalities. In 2002 the Committee on the Rights of the Child expressed concern about their use. Tasers are also deployed throughout the UK, although not normally in riots, and they too are potentially fatal. In 2008 the Committee against Torture condemned them as “a form of torture”. We are also concerned about the deployment of CS gas, which can cause lasting harm to people with respiratory problems or eye conditions.

The Bill of Rights

14. In December 2008 the Northern Ireland Human Rights Commission (NIHRC) finally delivered to the government the advice on a Bill of Rights for Northern Ireland which was ordained by the 1998 Good Friday/Belfast Agreement. It was the result of very detailed consultation with all political parties and civil society throughout Northern Ireland. It encompassed not only civil and political rights but also economic, cultural and social rights (Rec. 15). Instead of acting upon the advice and fulfilling its commitment under the Agreement, the then government simply shelved it. The present government has sought to subsume the issue under a debate on whether there is a need for a UK-wide Bill of Rights and Responsibilities, which is a thinly-disguised attack on the Human Rights Act 1998, which gave effect to most of the European Convention on Human Rights in domestic law (excluding A. 13, which confers the right to an effective remedy). Northern Ireland needs a Bill of Rights that is, in the language of the Agreement, would “reflect the particular circumstances of Northern Ireland”, because, unlike the rest of the UK, Northern Ireland is in transition from a sectarian conflict which led to a yawning human rights deficit. Recent opinion surveys show that the Northern Ireland Bill of Rights has strong public support.

Impunity of the intelligence services

15. The UK's domestic (MI5) and international (MI6) intelligence services operate secretly and are not subject to any public oversight, such as an ombudsman, nor are individual operatives held to account for their actions. The UK will abandon criminal trials rather than allow intelligence operatives or operational methods to be exposed. Under the Regulation of Investigatory Powers Act 2000 a person can, for example, ask whether his or her telephone has been tapped, but will only be told that it is not possible to answer such a question, other than to say that, if the telephone is tapped, then such action has been authorised.

¹ In the matter of an application by Brigid McCaughey and another for Judicial Review (Northern Ireland), 18 May 2011, [2011] UKSC 20

² Gillan and Quinton v the United Kingdom (Application no. 4158/05)

³ In the matter of an application for judicial review by Colin Duffy and others, [2009] NIQB 31

⁴ Al-Skeini v UK (55721/07)

⁵ Ali-Zaki Mousa and Others v Secretary of State for Defence and Legal Services Commission,(2010] EWHC 1823 (Admin), currently before the Court of Appeal