



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

24 August 2009

Prof. Yuji Iwasawa
Chairperson
Human Rights Committee
Office of the United Nations High Commissioner for Human Rights
(OHCHR)
Palais des Nations
CH-1211 Geneva 10, Switzerland

Dear Professor Iwasawa

ICCPR Concluding Observations on the United Kingdom

The Northern Ireland Human Rights Commission is recognised at the UN as an 'A' status national human rights institution (NHRI). The Commission submitted a Parallel Report on the United Kingdom's Sixth Periodic Report and participated in the examination during the Committee's 93rd session.

Paragraph 31 of the Committee's Concluding Observations asked the UK to provide information within 12 months on a number of your recommendations. This included the matter of inquiries into conflict-related deaths in Northern Ireland on which the Committee concluded:

The Committee remains concerned that, a considerable time after murders (including of human rights defenders) in Northern Ireland have occurred, several inquiries into these murders have still not been established or concluded, and that those responsible for these deaths have not yet been prosecuted. Even where inquiries have been established, the Committee is concerned that instead of being under the control of an independent judge, several of these inquiries are conducted under the Inquiries Act 2005 which allows the government minister who established an inquiry to control important aspects of that inquiry. (art. 6)

The State party should conduct, as a matter of particular urgency given the passage of time, independent and impartial inquiries in order to ensure a full, transparent and credible account of the circumstances surrounding violations of the right to life in Northern Ireland.¹

The Commission is aware that the UK has now submitted a response to the Committee. As the NHRI we are writing to provide additional information that we hope will be of assistance to the Committee in its deliberations on this matter.

The UK states in its response that it does not regard it as a matter of concern that two inquiries are proceeding under the terms of the Inquiries Act 2005. The Committee may wish to note that this is contrary to our advice as a NHRI. As well as raising with your Committee the compliance of this legislation with the ICCPR the Commission also regards the Act as incompatible with the European Convention on Human Rights (ECHR), which is the only international instrument incorporated into the UK's domestic legal order (by way of the Human Rights Act 1998). The Commission's view is that the 2005 Act makes it impossible to set up truly independent inquiries into deaths (and other serious issues) by virtue of an unprecedented subordination of the inquiry process to the control of Government ministers at every stage, even though the actions of the executive may, more often than not, be the very subject of investigation.

The Committee may also wish to note the Judicial Review into the decision by the Secretary of State for Northern Ireland to convert one such inquiry, into the murder of Billy Wright, into an inquiry under the Inquiries Act 2005.² Although Mr Justice Deeny decided that he was unable to examine the compatibility of the Inquiries Act with the Human Rights Act 1998 given that the incident in question took place before the commencement of the 1998 Act,³ the Court nevertheless upheld the application, finding the decision of the Secretary of State unlawful:

[The Applicant's] challenge to the decision of the Secretary of State for Northern Ireland on 23 November 2005 to convert the inquiry into the death of Billy Wright from one under the Prisons Act

¹ CCPR/C/GBR/CO/6/CRP.1 21 July 2008 [paragraph 9].

² In the matter of an application by David Wright for Judicial Review of a decision of the Secretary of State for Northern Ireland, High Court of Justice in Northern Ireland, Queen's Bench Division, 22 December 2006 NIQB 90; Available: http://www.courtsni.gov.uk/en-GB/Judicial+Decisions/JulDec06/j_j_deef5579.htm?UserPref=culture%5Een-GB.

³ The Act commenced in October 2000.

(Northern Ireland) 1953 into an inquiry under the Inquiries Act 2005 succeeds. As the Secretary of State failed to take into account the important and relevant consideration that the independence of such an inquiry was compromised by the existence of Section 14 of the 2005 Act and as he was wrongly advised that an equivalent power existed under the Prisons Act and as he was advised and appeared to take the view that there was a presumption in favour of acceding to the request of the inquiry, I find that the decision was unlawful.⁴

In his judgement Mr Justice Deeny questioned the independence of inquiries under the Act and drew attention to the lack of limitation on the Minister's power to bring an inquiry to an end:

...one has to ask whether an inquiry conducted under a sword of this nature, which was perhaps not Damoclean but still rested in the scabbard of the Minister, would or could be perceived to be truly independent.⁵

Paragraph 8 of the UK's response draws attention to the Interim Resolution of the Council of Europe's Committee of Ministers closing the examination of individual measures in relation to the finding by the European Court of Human Rights in 2003 that there had been a violation of Article 2 in relation to the murder of human rights defender Pat Finucane. This might appear to suggest that the Council of Europe regarded the matter as satisfactorily disposed of. For completeness, it is worth noting that the Council of Ministers decided to close the examination of individual measures only after noting that the authorities were engaging with the Finucane family to discuss the terms of a potential statutory inquiry, and 'strongly encouraging' the UK to continue this dialogue.⁶ The Finucane family has been critical of the Inquiries Act and has pressed for a fully independent public inquiry into the killing.

Paragraphs 13-14 deal with the issues of inquests but omit to mention recent developments, namely that the UK Government has twice unsuccessfully sought to legislate for 'certified inquests'. This provision, more commonly referred to as 'secret inquests', was first attempted through counter-terrorism legislation and then subsequently through the Coroners and Justice Bill. Following the withdrawal of the certified inquest provisions from the latter Bill, government indicated it would consider establishing an inquiry (under the Inquiries Act 2005) when it is 'not possible to proceed

⁴ Ibid. [67b]

⁵ Ibid. [41]

⁶ CM/ResDH(2009)44

with an inquest'.⁷ This in effect means that if a Coroner is frustrated in attempting to hold an inquest, for example when necessary information is not disclosed by the authorities, it is for government to consider whether any other inquiry takes place, under what terms, and with multiple opportunities for government to influence the conduct, content and outcome of the process. In this context the Committee may wish to seek assurances from the UK about full co-operation with any inquests into conflict-related deaths in Northern Ireland, and may wish to echo the reservations expressed by this Commission and others about the use of the 2005 Act in such cases.

I hope this information is useful to inform the Committee's deliberations on these matters. We are happy to provide further detail on request.

Yours sincerely

Professor Monica McWilliams
Chief Commissioner

⁷ Rt. Hon. Paul Goggins MP, Minister of State, correspondence to Commission, 7 July 2009.