4 July 2007

Human Rights Division
Ministry of Justice
Post Point 5, 6th floor
Selborne House
54/60 Victoria Street
London  SW1E 6QW

Dear

Draft UK Report under ICESCR

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created 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, advising on legislative and other measures which ought to be taken to protect human rights, advising on whether a Bill is compatible with human rights and promoting understanding and awareness of the importance of human rights in Northern Ireland. 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.
Status of this commentary

2. The present commentary on the draft UK report to the United Nations Committee on Economic, Social and Cultural Rights (the Committee) is not a definitive statement of Commission policy but, in line with past practice, is provided by Commission staff by way of informal assistance to the officials responsible for the draft. The commentary here is confined largely to informing Government of any factual inaccuracies and of any serious gaps in the information that it is proposed to put to the Committee, with reference to Northern Ireland.

3. As has been our normal practice in commenting on draft treaty reports, we do not propose to publish or otherwise draw attention to this commentary, which is provided solely in the interests of improving the quality of the information before the Committee. However, this is not a confidential document and may be disclosed by us or by Government.

4. The Commission of course retains its independence and nothing said or omitted here amounts to an endorsement of any part of the draft. The Commission will submit its own parallel or ‘shadow’ report to the Committee some time after a date for the UK’s examination has been confirmed, and in doing so we may draw attention to any areas where the final report has failed to correct any deficiencies pointed out below; of course we reserve the right to raise issues not mentioned here, particularly if they arise between now and the date of examination.

5. Overall, there is a distinct lack of information on Northern Ireland in the draft report. The gaps are glaring and unless they are filled it will inevitably mean that the Committee does not receive an accurate update of the situation in this region since the last UK examination. This is particularly unfortunate given that the Committee in its Concluding Observations adopted in June 2002 raised very specific concerns about the situation in Northern Ireland. Since then Northern Ireland has witnessed significant political changes which will inevitably impact upon its economic, social and cultural situation, and it is particularly surprising that the information on Northern Ireland is so inadequate throughout the document.

6. A representative of the Commission attended a meeting convened by the then Department of Constitutional Affairs in


Detailed comments

7. Page 13, para 8 – The reference to the Northern Ireland Assembly in this paragraph should reflect with greater accuracy its range of legislative and executive powers. In particular it is important that the Committee is made aware of the fact that unlike the Scottish Parliament, policing and criminal justice functions have not yet been devolved to the Northern Ireland Assembly. Government may wish to inform the Committee of its plans regarding devolution of criminal justice and policing.

8. Page 24 – It is unfortunate that there is no mention of the Northern Ireland Human Rights Commission or indeed the Equality Commission for Northern Ireland in this section. The Committee welcomed the establishment of this Commission in its Concluding Observations of 2002 and is likely, therefore, to be interested in information relating to the changes to the powers of this Commission as provided for in the Justice and Security (Northern Ireland) Act 2007.

9. Page 30 – In the section on ‘Information and Publicity’, the Committee may also be interested to know that the Office of the First Minister and Deputy First Minister (OFMDFM) in Northern Ireland published its own guide to the Human Rights Act for public authorities: “Get in on the Act: Learning about the Human Rights Act”. OFMDFM also funded a series of guides for migrant workers produced by this Commission, Law Centre NI and ANIMATE. The guides “Your Rights in Northern Ireland” were launched in January 2007 and inform migrant workers in Northern Ireland of their rights in a range of areas from employment to social security and housing. They are currently being distributed widely amongst non-governmental organisations and public bodies. The guides are available in several languages on the Commission’s website at www.nihrc.org.

10. Page 45 – Again, it would be useful here for Government to explain to the Committee not only the powers of the new Commission for Equality and Human Rights but also the new
11. Page 47, paras 83-84 – The Commission’s role in relation to the Bill of Rights is legislated for in the Northern Ireland Act 1998 as a consequence of the text quoted from the Good Friday Agreement in the draft report.

12. The Commission suggests that the information on the Bill of Rights Forum be expanded to inform the Committee of the Forum’s composition and Chair. The suggestion in the text is that this Commission requested the creation of the Forum to help inform its thinking on the advice it is required give to the Secretary of State on a Bill of Rights for Northern Ireland. While the Commission welcomed the establishment of the Forum, has observer status, and looks forward to considering the Forum’s conclusions, its creation was not in fact the Commission’s initiative.

13. Page 47, para 87 – Government’s current response to the very serious concerns expressed by the Committee in 2002 in relation to the de facto discrimination faced by ethnic minorities and people with disabilities, especially in relation to employment, housing and education is not an adequate one. In particular, there is little in this report, or in the cross-referenced report to the Human Rights Committee, on the specific situation of Travellers, on which the Committee on Economic, Social and Cultural Rights expressed specific concerns in previous years.

14. On a positive note Government might wish to inform the Committee of the introduction of the Disability Discrimination (Northern Ireland) Order 2006, which marks a welcome improvement in the rights of persons with disabilities in domestic legislation.

15. Pages 48-50, paras 91–95 – There is no mention in these paragraphs of Northern Ireland’s attempts to meet the requirements of the Durban Declaration and Programme of Action, as represented by OFMDFM’s Racial Equality Strategy and subsequent Implementation Action Plan. A Racial Equality Forum has been established to oversee the implementation of the Strategy. Further information on the Strategy and Government plans for the Forum should be given to ensure that the Committee is made aware of responses to Durban throughout the UK, and not only in England and Wales.
16. Pages 51–53 – In responding to the Committee’s concerns regarding domestic violence, Government ought to inform the Committee of the Northern Ireland Office’s strategy on domestic violence, “Tackling Violence at Home”.

17. Page 54, para 115 – The Committee may be interested in knowing the reasons why the physical chastisement of children in their homes has still not been outlawed in Northern Ireland. The Commission will raise this issue.

18. Page 57, para 125 – Given that Northern Ireland was specifically singled out as a region requiring particular attention by the Committee, the information contained in this section is wholly insufficient. For example, there is no mention that in addition to the Lifetime Opportunities strategy there is to be a Ministerial-led Poverty Forum to monitor the progress of the Strategy. The Committee will want more than this very brief paragraph on the steps taken in the Strategy to address the very serious inequalities in Northern Ireland. There is insufficient statistical data on how the situation has either deteriorated or improved since the previous UK report and exactly what steps Government is taking to address the persistent inequalities that exist in Northern Ireland.

19. Page 63, para 142 – Again, the information on Northern Ireland is not sufficiently detailed given the level of concern the Committee expressed regarding homelessness, “particularly among certain groups of society, such as ethnic minorities” in its 2002 Concluding Observations. In particular, Government ought to inform the Committee of any recent changes with regards to the housing rights of Travellers in Northern Ireland. Information that the Committee should be made aware of includes the extent to which the Unauthorised Encampments (NI) Order 2004, brought into force despite the absence of suitable authorised halting sites, has affected the Traveller community’s right to a nomadic lifestyle. This situation also of course engages Article 15 of the ICESCR.

20. Pages 72–73 – The information on gender equality does not
21. Page 75 – Article 6 of the ICESCR enshrines the right to work which includes “the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right”. It may be useful therefore for Government to inform the Committee of its recent signature to the Council of Europe’s Convention to Combat Trafficking in Human Beings and its intentions with regard to ratification. Government might also inform the Committee of domestic measures to aid victims of trafficking.

22. Problems in relation to forced labour have also been identified in Northern Ireland and indeed throughout the UK. Government should inform the Committee of the Gangmasters (Licensing) Act 2004 and other domestic provisions intended to address problems of forced labour, and in particular the victims of forced labour.

23. Page 80, paras 182-191 – Under Article 9 of the ICESCR States Parties recognise the right of everyone to social security, and social insurance. Not all those who work and/or reside legally in the UK are entitled to social security payments in the same way that UK nationals are. Those that are employed under the Work Permit scheme will often have no recourse to public funds, while those that fall under the Workers Registration Scheme will have certain rights only after having undisrupted employment in the country for 12 months. Bulgarian and Romanian nationals are also subject to restrictions in the area of accessing social security. It would be helpful for Government to explain to the Committee, the current arrangements for social security provision to these groups; the reasons for the differentiation; and the reasons why the UK considers it acceptable under the requirements of the ICESCR.

24. Page 91, paras 218–222 – The section relating to the provision of water in Northern Ireland needs to be updated to reflect the decision to postpone the introduction of water charges for at least one year. The Committee might also be interested in knowing what steps Government has taken to assess the effect on poverty levels that the introduction of water charges will have
25. Pages 101–106 – There is a complete absence of information on Northern Ireland on the right to health as enshrined in Article 12 of the ICESCR. Serious inequalities exist in Northern Ireland in relation to income and health and international evidence shows a link between income inequality and health. For example, a review by the Institute of Public Health of all deaths occurring in Northern Ireland between 1989 and 1998 showed the death rate for “all causes of death in the lowest occupational class was over three times higher than in the highest occupational class”.¹

26. The number of people suffering poor mental health in Northern Ireland and claiming Disability Living Allowance as a result is three times higher than in Great Britain.²

27. The very serious situation with regards to health in Northern Ireland requires an in-depth explanation and analysis from Government in its report.

28. Page 107 – 110 – The Committee needs to be made aware of the situation with regards to plans to end the 11+ (transfer test) selection procedure in Northern Ireland, and what alternative arrangements might be put in place.

29. The Committee in its 2002 Concluding Observations, expressed concern about the educational structure in Northern Ireland and its segregation on the basis of religion. It then went on to recommend that appropriate measures be taken to facilitate the establishment of integrated schools “in areas where a significant number of parents have indicated their desire to have their children enrolled in such schools”. However, there is no information in the draft report on the availability of integrated schools or indeed Irish medium schools in Northern Ireland. This information needs to be provided.

30. Government may also wish to inform the Committee of the introduction of the Special Educational Needs and Disability (Northern Ireland) Order 2005 and the provisions therein that

are intended to improve educational services for children with physical and learning disabilities.

31. Overall, the importance of informing the Committee of the situation facing Travellers in Northern Ireland cannot be over-emphasised and yet is distinctly lacking in all sections of this report. The Commission strongly urges Government to remedy this very serious shortcoming.

32. The overall lack of information relating to Northern Ireland leads us to question the extent to which the devolved NI Administration was involved in drafting the report. The situation should be rectified with suitable up to date and detailed data on this region. We look forward to seeing substantial improvements when we receive the final report.

Yours sincerely

Dr Nazia Latif
Investigations and Policy Worker