

NORTHERN IRELAND HUMAN RIGHTS COMMISSION

Minutes of the Reconvened 51st Commission Meeting

Held on Monday 24 March 2003

**At 2.00 pm in the NIHRC Offices, Temple Court,
39 North Street, Belfast**

Present: Brice Dickson, Chief Commissioner
Tom Donnelly
Christine Eames
Harold Good
Tom Hadden (*from 3.25 pm*)
Paddy Kelly
Frank McGuinness
Kevin McLaughlin
Patrick Yu

Apologies: Margaret-Ann Dinsmore
Chris McGimpsey

In Attendance: Paddy Sloan, Chief Executive

Staff: Christine Loudes
Miriam Titterton
Edel Teague

1.0 Investigations, Truth and Justice

1.1 A paper prepared by Tom Hadden and Brice Dickson was considered. The paper outlined some of the issues arising from the relationships between the Commission's call for public inquiries into the Finucane, Nelson and Wright murders, its submission on "On the Runs", the discussion with Judge Cory and the possibility of some form of truth and reconciliation process in Northern Ireland.

1.2 Commissioners were seeking to agree a consistent position across these issues but will not be issuing any public statement as a direct result of today's meeting.

1.3 A supplementary paper prepared by a member of staff summarising the issues associated with the *Jordan* case was also tabled.

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1.4 The paper by Tom and Brice was welcomed as a useful starting point for the discussion. Commissioners sought to focus on human rights issues, to avoid, where possible, taking political considerations into account and to distinguish the issues in question from the Commission's work on victims' rights.

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- 1.5 Commissioners discussed the distinction between the right to truth and a truth and reconciliation process.
- 1.6 It was agreed that the only obligation in international human rights law is to investigate – subsequent prosecution and punishment are political decisions. The Inter-American Court of Human Rights and the UN Human Rights Committee, however, have tended towards a requirement for prosecution and punishment. It is a breach of international law to give amnesty with respect to crimes against humanity, torture or genocide.
- 1.7 There followed some discussion among Commissioners around the distinction between amnesty and impunity. Some commentators use “amnesty” to refer to a lack of punishment after determination of guilt and “impunity” to refer to situations where no prosecution takes place at all.
- 1.8 The Commission’s commitment to the need for all killings to be thoroughly investigated was re-stated. Amnesty cannot be provided without full investigations – thorough, effective, immediate and independent, as required by *Jordan et al.* This therefore brings into question the potential role of a Truth and Reconciliation Commission in Northern Ireland.
- 1.9 Commissioners expressed concern that “acknowledgement, apology, a new set of guidelines and compensation”, might be the response to outstanding cases which have not been fully investigated.
- 1.10 The Commission agreed to write to the Chief Constable asking for a meeting, to discuss whether he has the necessary resources to fulfil his obligation to investigate all killings. ~~If not, the state may be in breach of the ECHR.~~
- 1.11 Neither acknowledgement nor a confession was considered to be the equivalent of an investigation under the terms of *Jordan et al.*

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At 3.25 pm Tom Hadden joined the meeting.

- 1.12 It was agreed that Tom and Brice’s paper would be amended to stress the European Court’s standards with respect to investigations and prosecutions and to consider what might be Judge Cory’s approach. ~~The paper will also make clear that the Commission is not identifying international standards with respect to Truth Commissions.~~
- 1.13 There followed further discussion on the definition of international crime and the exclusion of terrorism. A further report by Bassiouni has recently appeared and the Victims’ Report will be amended to take account of it.
- 1.14 It may, in certain cases, not only be acceptable not to pursue prosecution and punishment but in fact it may be a more effective process, *post investigation*. Commissioners were agreed that it is important to hold on to a strong investigation process and not to make recommendations about what should happen thereafter.

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- 1.15 The Commission decided not to undertake any further work on how investigations might effectively be undertaken, given the scale of outstanding cases.
- 1.16 The issue will be reconsidered at the April Commission meeting following a redrafting of the paper by Tom Hadden and Brice Dickson.
- 1.17 In the interim, if any public statement is required by the Commission in response to political developments, the Chief Commissioner will respond according to our previous advice on “On the Runs” and on the basis of this discussion.

At 3.50 pm the Commission broke for tea. Staff left the meeting at this point.

The Commission then moved to the reconvened agenda of the 51st Commission meeting.

2.0 OSCE Opinion on the Bill of Rights (HRC 51.11)

- 2.1 This Opinion reflects the views of the High Commissioner on National Minorities from the Organisation for Security and Co-Operation in Europe although was essentially written by John Packer, Director of the OSCE (formally senior legal advisor).
- 2.2 Concerns were expressed regarding the implications for ethnic minorities if the term minority is replaced by community, thereby dealing with the two main communities in Northern Ireland all in one clause. There was a view that this may have negative implications for the protection of small ethnic minorities in Northern Ireland society.
- 2.3 Some further discussion ensued on the difference between community rights and group rights and the need for group protections to be included in the Bill of Rights, as in the Framework Convention on the Protection of National Minorities.
- 2.4 It was agreed that the Chief Commissioner would write to John Packer at the OSCE asking for his views on the implications for Northern Ireland society of moving from protections for minorities to protections for communities, though it was acknowledged that it is unlikely the OSCE will want to proffer a view on this, and will expect the Commission itself to take that perspective.
- 2.5 There was discussion of whether it was more compatible with the Belfast (Good Friday) Agreement to use the term community or minority in the Bill of Rights. It was agreed to ask the Equality Commission for their views on this.

At 4.15 pm Harold Good left the meeting.

- 2.6 There was also discussion of how the race discrimination laws apply to “communities”.
- 2.7 The Chief Commissioner has already acknowledged receipt of this document from the OSCE and will follow up Commissioners’ inquiries with John Packer on the implications of a “community” based approach to group protection, particularly as regards monitoring requirements and the right of people not to be considered part of a minority if they do not wish to be. The Chief Commissioner will consult with Patrick Yu prior to writing to the OSCE. He will also consult the recent article by Tom Hadden published in Fortnight magazine referring to the recent census results.

3.0 Strategic Plan (HRC 51.12)

- 3.1 The final version of the Strategic Plan had been circulated to Commissioners for comment prior to publication.
- 3.2 Under section four it was agreed to rearrange the performance indicators.
- 3.3 It was agreed that the Chief Commissioner would review the criteria used by all Committees in prioritising their work against the Strategic Plan priorities.
- 3.4 It was agreed that at section 2.6 the categories of mentally ill, medical negligence and Article three issues would be disaggregated. Deleted: rticle
- 3.5 There being no other concerns expressed by Commissioners the Strategic Plan was agreed for publication.

4.0 Joint Committee

4.1 Charter of Rights (HRC 51.13)

- 4.1.1 As convener of the Joint Committee Sub-Committee on the Charter of Rights, Paddy Kelly explained the process currently being undertaken.

Each Commission is independently to review a paper produced as a draft consultation paper by the Sub-Committee. Comments from each Commission will then be considered by the Sub-Committee and a revised paper presented to the next Joint Committee meeting on 11 April 2003. When the NIHRC met to discuss the draft consultation paper the meeting was not quorate. This Commission meeting is therefore now required to consider the NIHRC position on the draft for submission to the Sub-Committee so that it can produce an amended document for consideration at 11 April Joint Committee meeting.

- 4.1.2 The Chief Executive is to ensure that the minutes of the last Joint Committee meeting are circulated at the same time as the amended consultation document in order to explain its genesis and purpose. Deleted: ¶

4.1.3 Commissioners noted that the questions present in the original document have been removed as this is not now to be circulated as a consultation document but as a pre-consultation paper.

Each of the three options have been expanded upon. There is an increased number of provisions described in paragraph 23 onwards.

4.1.4 It was agreed to review paragraphs 25 and 26 as they appear to be contradictory.

4.1.5 These comments were accepted for submission to the Sub-Committee. A composite paper approved by the Sub-Committee will be circulated with Joint Committee papers.

4.1.6 Further advice will also be given to the Joint Committee from the Sub-Committee with respect to research and the consultation process.

4.2 Emergency Legislation (HRC 51.14)

4.2.1 The purpose of this discussion was to provide a view to the Joint Committee as to what the NIHRC can most usefully do with respect to emergency legislation provisions North and South.

4.2.2 The IHRC focus is on the Hederman Report whilst the NIHRC has concerns mainly on the general provisions of the Terrorism Acts in Northern Ireland. It may be an option to amalgamate work on this into the proposed Charter but it was acknowledged that that would significantly delay the Charter consultation process.

4.2.3 It was proposed that the Joint Committee could document the international standards applying North and South and comment on how both or either jurisdictions fail to comply with those standards. Such a document could then be put to both Governments.

4.2.4 It was agreed that the Chief Commissioner would compose a proposal along these lines for circulation with the Joint Committee papers.

4.2.5 It was noted that, although justice and the criminal law may be devolved to the Northern Ireland administration, any responsibility for anti-terrorism legislation is unlikely to be devolved, as any derogation from international obligations would have to come from the UK Government.

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5.0 Quigley Review (HRC 51.15)

5.1 A revised paper prepared by Tom Hadden was tabled for consideration at the 51st Commission meeting on 10 March.

5.2 The initial discussion from that meeting was revisited with concern expressed by at least one Commissioner that the current paper enhances ECHR Article 11 protections unnecessarily. It was argued that embellishing Article 11 without adding anything to Articles 8, 10 or 17 is inconsistent with the Commission's Bill of Rights position.

5.3 There was a difference of opinion among Commissioners on the relevant importance of these Articles in this situation.

5.4 Further discussion ensued about the need to protect family life and the importance of promoting tolerance – balancing Articles 8 and 11.

5.5 A concern was also expressed regarding the reference to a duty on non-state bodies as well as on the state. It was agreed that such a duty should be moved in to associated guidelines rather than being explicit in legislation.

At 5.30 pm Christine Eames left the meeting.

5.6 The power to impose conditions on parades currently lies with the Parades Commission. There was discussion among Commissioners as to whether that power should also apply to imposing conditions upon related protests. The power to control protests currently lies with the PSNI, who also, at an operational level, retain public order responsibility for both parades and protests. Currently protestors have to give notice to the police and it was argued that to move this responsibility to the Parades Commission would undermine the role of the PSNI.

5.7 It was agreed that the Chief Commissioner would seek the views of the PSNI on this issue and that Tom Hadden and Paddy Kelly would seek to re-draft paragraphs referring to the enhancement of Article 11 and the relocation of control of protests from the PSNI to the Parades Commission.

5.8 The reference to “equality of arms” in paragraph 13 is to be removed lest it suggest a recommendation for additional legal representation.

6.0 Mental Health Report

6.1 This Report is being further amended as a result of the successful seminar held at the NIHRC on 14 March. Drafts of the Report will be submitted for consideration at the 52nd Commission meeting.

7.0 Any Other Business

7.1 War in Iraq

7.1.1 Further to the NIHRC public statement opposing the UK's attack on Iraq, Commissioners asked for further details of the Attorney General's advice to Government on the legality of its position.

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HRC 52.1(b)

7.1.2 The Chief Commissioner is to write to the Attorney General seeking a copy of his full legal opinion. At least the lengthy version of his opinion which is available on the Foreign ~~and~~ Commonwealth ~~Office~~ website is to be circulated to all Commissioners.

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7.1.3 The Chief Commissioner is also to write to the Secretary of State conveying the Commission's advice regarding the attack on Iraq.

7.1.4 The Chief Commissioners is also to write to the Joint Parliamentary Committee on Human Rights for their support in securing a copy of the full legal opinion.

7.2 There being no other business the meeting closed at 5.55pm.