

Submission by the

**Northern Ireland
Human Rights Commission**

To the
Criminal Justice Review Group

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NORTHERN IRELAND HUMAN RIGHTS COMMISSION
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INTRODUCTION

The Northern Ireland Human Rights Commission was established on 1 March 1999 under the Good Friday Agreement and the Northern Ireland Act 1998. It is the first independent, statutory human rights commission of its type in Western Europe. The Commission has a range of statutory powers and duties laid down in sections 69 and 70 of the Northern Ireland Act 1998.

The Commission was established late in the life of the Criminal Justice Review Group. Consequently it took an early decision not to make a formal submission to the Group. Following the meeting between the NIHRC and the CJRG on 28 June, the Northern Ireland Human Rights Commission has reconsidered its position and has now decided to make this brief written submission to the Review Group. The submission builds upon the views expressed by the NIHRC at the meeting of 28 June 1999. In the time available, the Commission was unable to produce a comprehensive submission dealing with all the issues of concern regarding the criminal justice system in Northern Ireland. The issues the Commission raises are those which are directly related to its mandate or reflect those which have been brought to the attention of this Commission in its consultative meetings to date with individuals and groups.

The NIHRC welcomes the commitment of the CJRG to ensure that human rights standards are reflected in each chapter of its report. We also welcome the commissioning of a research paper on the international human rights standards for criminal justice. The Commission would expect that the United Kingdom's commitments under international human rights law, together with other internationally agreed soft-law standards, would be fully reflected in the CJRG's recommendations. Ensuring a criminal justice system which is efficient and effective and one which also complies with international human rights standards are not two mutually exclusive goals. Rather they are interdependent. The NIHRC considers that a criminal justice system can only be effective and efficient where it also ensures the protection of human rights. This is particularly so in a jurisdiction such as Northern Ireland which is emerging from conflict and where the

criminal justice system has failed to attract the support and confidence of people from all communities.

In line with the views already expressed to the CJRG by this Commission's predecessor, the Standing Advisory Commission on Human Rights, and by other groups, the NIHRC is concerned at the exclusion from the CJRG's terms of reference of the operation of the Diplock Courts and the emergency law system. The NIHRC considers that the widespread use of 'emergency legislation' over the past 77 years¹ has contaminated the criminal justice system in Northern Ireland. No fundamental assessment of the way ahead can be conducted without giving due weight to the continuing impact of the emergency law regime. While the NIHRC is mindful that the Government has decided upon a different mechanism for the review of this area, it nonetheless would urge the CJRG to adopt an expansive interpretation of its terms of reference in this regard. The Commission considers that such an approach would enhance the credibility, and indeed the reliability, of the recommendations of the Review Group.

The NIHRC appends a copy of its response of March 1999 to the White Paper: 'Legislation Against Terrorism'². In essence, the Commission considers that, with a few exceptions, the current emergency legislation should be repealed and should be replaced by a three level system where recourse may only be had to exceptional measures subject to significant safeguards. The Commission's opinion is that the presumption should be in favour of the ordinary criminal law except where there has been a prior declaration approved by Parliament.

¹ 'Emergency Laws' have operated in Northern Ireland since its inception with the Civil Authorities (Special Powers) Act 1922. This was replaced in 1973 by the Northern Ireland (Emergency Provisions) Act and in 1974 the Prevention of Terrorism (Temporary Provisions) Act was also enacted. Updated versions of the latter two Acts have remained in force for the last 26 years.

² CM 4178; 1998

ISSUES

1) Guiding Principles of the Criminal Justice System:

The NIHRC considers that there would be considerable value in enshrining such 'Guiding Principles' in legislation. The Commission believes that the principles should then be used as an aid to judicial interpretation of legislation. These 'Guiding Principles' should reflect the full range of relevant binding and non-binding international human rights standards. While the NIHRC may well recommend the inclusion of rights relating to the criminal justice system in a Bill of Rights for Northern Ireland, the Commission believes that this would complement any 'Guiding Principles' recommended by the CJRG. The forthcoming work of the NIHRC on the Bill of Rights for Northern Ireland does not therefore mean that the CJRG can leave the preparation of such 'Guiding Principles' to the NIHRC. The NIHRC believes that these principles should be established by the CJRG to provide a clear framework within which all of the Review Group's recommendations must be operationalised.

2) The Bill of Rights for Northern Ireland:

The NIHRC has been asked by the Secretary of State for Northern Ireland under section 69 (7) of the Northern Ireland Act to provide the advice envisaged in paragraph 4 of the Good Friday Agreement. The Commission has indicated to the Secretary of State that it intends to provide this advice by the end of the year 2000. The Commission's programme of consultation will commence in the autumn of this year.

While the Commission has yet to consider those rights which it believes should be protected in the Bill of Rights, it is likely that certain issues relating to the operation of the criminal justice system will be included in so far as they reflect the 'particular circumstances' of Northern Ireland, such as, for example:

- a) the contamination of the criminal justice system by the prolonged operation of emergency legislation;
- b) a special judicial appointments process;
- c) rights associated with an improved inquest system;
- d) specific provision for the rights of victims.

While these issues may duplicate to an extent those being addressed by the CJRG, the Commission considers, that the CJRG should at least make recommendations which will pave the way for their coverage in a Bill of Rights. Again this may require the Group to make a recommendation concerning how laws need to be *interpreted*.

3) Oversight of the Criminal Justice System:

The NIHRC can see no reason why the prosecution service should not be subject to oversight by the Parliamentary Ombudsman, where there are allegations of mal-administration. More generally the Commission is supportive of the establishment of a Criminal Justice Ombudsman (or similar type office) to deal with general complaints regarding the operation of the criminal justice system. The NIHRC would be content to work alongside such a body in the same way as it does alongside existing bodies such as the Criminal Cases Review Commission and the statutory equality commissions.

4) The Investigation Powers of the NIHRC:

While the NIHRC has been given a power of investigation under the Northern Ireland Act 1998 it has no power to subpoena witnesses or require the disclosure of documents. During the passage of the Northern Ireland Bill through Parliament the Minister stated that the Government would fully co-operate with any investigation launched by the NIHRC³. The Commission considers that this ministerial undertaking could be reinforced in respect of the criminal justice system in Northern Ireland were the CJRG to recommend that all agencies involved in the operation of the criminal justice system in

³ 593 HL Official Report (5th series) col. 1543 (21 October 1998)

Northern Ireland should co-operate fully with any investigation by the Commission. More generally the Commission would urge the CJRG to make positive recommendations regarding public access to information about the workings of the criminal justice system. This is particularly important given the current exemption of certain criminal justice matters from the draft Freedom of Information Bill.

5) Prosecutions

The Commission has received a number of complaints regarding the lack of information for victims regarding the reasons why a prosecution did or did not proceed. While the Commission is mindful of the need to balance the rights to privacy of the defendant with the rights to information of the victim or the victim's family, the NIHRC considers that undue secrecy currently attaches to the prosecution process

The NIHRC notes the recommendation of the Committee for the Administration of Justice in this regard:

“In cases where controversy has arisen because of the actions of the police or of the prosecutor's office, such as the Hamill case, and prosecutions do not take place, the new Human Rights Commission should be able to get access to the prosecution and police files to determine what transpired.⁴”

The NIHRC would endorse this recommendation of the CAJ, which reflects the Commission's recommendation in respect of its own powers of investigation under para (4) above.

6) Victims

The NIHRC has stated that it is to conduct an audit of the services available to victims in Northern Ireland. In so doing, the Commission will be reviewing the work already conducted in this field by, for example, the Bloomfield Commission, the Cost of the

⁴ Submission by the CAJ to the CJRG, November 1998, p24

Troubles study and the CJRG. The NIHRC would however at this stage wish to stress to the Group the minimum international human rights standard for the treatment of victims, namely Principle 6 of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. This states:

The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

- (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;*
- (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected without prejudice to the accused and consistent with the relevant national criminal justice system;*
- (c) Providing proper assistance to victims throughout the legal process;*
- (d) Taking measures to minimise inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;*
- (e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.*

7) The Duty to have due regard to equality of opportunity under section 75 and Schedule 9 of the Northern Ireland Act 1998

At its meeting with the CJRG the Commission asked whether the Group was considering the impact of the statutory equality duty upon the various actors in the criminal justice field. While the Group indicated that it was unlikely to make recommendations regarding the preparation of the criminal justice system for the commencement of this duty, the CJRG's Progress Report of February 1999 states that one of the issues raised with the Review Group was:

“Whether criminal justice actions and decisions, and those who work within the various parts of the system, should be monitored routinely in terms of community background, gender, age, ethnicity and/or other factors – and action to be taken where possible imbalances or inequities are identified.”

The NIHRC understands that no specific preparation or training is underway within the Northern Ireland Office in order to ensure that bodies within the criminal justice field comply with the section 75 duty. The Commission would point, however, to the establishment on 6 July 1999, of the Statutory Duty Unit of the four Northern Ireland Equality Commissions and would urge the CJRG to make a positive recommendation regarding the need for those within the criminal justice system in Northern Ireland to liaise with the new unit in order to prepare for the new duty. Such a positive recommendation from the Review Group would be of particular significance given the exemption to date of the Royal Ulster Constabulary and the Police Authority of Northern Ireland from the section 75 duty. The NIHRC believes that both the RUC and the Police Authority should voluntarily comply with the new duty.

8) Incorporation of the European Convention on Human Rights into domestic law by way of the Human Rights Act 1998

The NIHRC is concerned that insufficient resources have been made available in Northern Ireland to prepare for the incorporation of the ECHR. The Commission is represented on the Home Office Task Force on Incorporation but has recommended to the Secretary of State for Northern Ireland that what is needed is a separate task force for Northern Ireland to be established by the Northern Ireland Office and the Northern Ireland Government Departments. The NIHRC believes that it is the responsibility of Government to ensure that public authorities are ready for incorporation in advance of October 2000. While the NIHRC would be happy to sit in an advisory capacity on a Northern Ireland Incorporation Task Force it does not have the resources to deliver the widespread training which is required for public authorities, other sectors and the public.

The Commission would urge the Review Group to support its recommendation for a multi-agency Incorporation Task Force for Northern Ireland.

The role of the judiciary and the way in which they carry out their decision-making will be significantly altered by the introduction of the Human Rights Act. The NIHRC has sought a meeting with the Judicial Studies Board to discuss, *inter alia*, the extent of judicial education within Northern Ireland in relation to the Human Rights Act. Principle 7 of the UN Basic Principles on the Independence of the Judiciary states:

'It is the duty of each member state to provide adequate resources to enable the Judiciary to properly perform their functions.'

The NIHRC would urge the CJRG to make a positive recommendation in relation to enhanced and more diverse judicial education in Northern Ireland to include some form of social context education as is now provided to judges in other jurisdictions such as Canada.

CONCLUSION

Improvements to people's experience of the criminal justice system will not come about solely through changes to the system itself. The public needs to have accessible information about how the system works and about their rights and responsibilities in relation to criminal justice. To this end, the CJRG may wish to consider recommending that the new Northern Ireland schools curriculum, which is currently being devised by the CCEA, include education for all school children regarding the criminal justice system and human rights.