# NORTHERN IRELAND HUMAN RIGHTS COMMISSION

# INITIAL COMMENTS ON THE JUSTICE (NORTHERN IRELAND) BILL

# SUBMITTED TO THE NORTHERN IRELAND OFFICE, 7 JANUARY 2002

## General matters

1. The Northern Ireland Human Rights Commission welcomes the fact that legislative proposals have at last been published for the reform of the criminal justice system in Northern Ireland. The Commission hopes that the comments made in this initial paper will be carefully considered by Ministers and officials responsible for piloting the Bill through Parliament. We hope to monitor the Bill's passage and to produce supplementary papers as and when necessary. In the present submission the Commission focuses on Part 4 of the Bill – Youth Justice.

2. The Commission also welcomed the publication of the Report of the Criminal Justice Review in March 2000. We issued a 43-page response to that Report, largely endorsing what was proposed. In particular we applauded the centrality given to the protection of human rights in the Report. In September 2000 the Commission hosted a conference in Armagh on the main recommendations. The event helped the Commission make up its mind on what rights connected with criminal justice should be contained in its proposed Bill of Rights for Northern Ireland, a document which we published in September 2001 and which is currently the subject of extensive public consultation. One chapter of that consultation document is devoted to criminal justice issues; our recommendations relating thereto are reproduced in the Appendix to this submission.

3. The Commission is disappointed that the Justice (Northern Ireland) Bill does not put human rights at the centre of the reforms in the way in which the Review recommended. The first 16 recommendations of the Review, all on human rights, have not been reflected in the Bill at all, as a glance at the Index (on page 151) of the Implementation Plan makes clear. The Plan states in relation to almost all of these recommendations that their implementation is "ongoing" but in nearly every instance provides no timetable, however imprecise. At several other points in the Bill the opportunity has been missed to include references to relevant international standards on human rights (conveniently compiled by Livingstone and Doak in Research Report No.14 published by the Criminal Justice Review).

4. Substantial parts of the Bill are stated to be dependent upon devolution of the responsibility for criminal justice to the Northern Ireland Assembly. The Commission believes that in general terms this is not necessary. If changes are required in order to make the criminal justice system more human rights-compliant, these should occur as soon as possible regardless of which Parliament has responsibility for the matter.

5. Perhaps the most glaring omission in the early part of the Bill is the failure to include any statement of the aims of the criminal justice system. While the Review did not actually recommend that these aims be contained in the legislation, the Commission sees no good reason why they should not be. The Police (Northern Ireland) Act 2000 already contains a section stating the functions of the Police Service, and clause 49 of the Bill sets out the aims of the youth justice system (although the Commission does not agree with the way in which they have been formulated – see para. 30 below). We propose that the Bill be amended to set out clearly the aims of adult the criminal justice system. One of these aims should be the promoting and protecting of human rights.

6. The Commission would like to see someone appointed to serve as an "Oversight Commissioner" for the implementation of the criminal justice reforms, in the same way as Mr Tom Constantine operates in relation to the Patten Report on policing. In its recommendation no. 95, the Review envisaged the appointment of some such person in the specific context of appointments to judicial posts. We feel that this proposal should be generalised, or at any rate duplicated in relation to reforms of the judicial and prosecution systems

**Part 1 of the Bill: The Judiciary**

7. Clause 1 of the Bill asserts that those with responsibility for the administration of justice must uphold the continued independence of the judiciary. The Commission believes that the Bill should state unambiguously that one of the aims of the criminal justice system is the maintenance of the independence of the judiciary from the executive, the legislature and any other organisation. We would wish to see reference made to provisions in the UN's Basic Principles on the Independence of the Judiciary (1985). Principle 2, for example, would be worth including in full:

> *The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.*

8. As regards appointments to the proposed Northern Ireland Judicial Appointments Commission (clause 3), we would prefer these to be made after there has been a properly advertised and rigorously objective selection system put in place. This would apply in particular to the five lay members who are to be appointed by the First Minister and deputy First Minister. We believe the so-called Nolan principles on appointments to public offices should apply,

9. As regards the appointment of the Lord Chief Justice, we think the proposals contained in clause 4 (inserting a new section 12 into the Judicature (Northern Ireland) Act 1978) are too cumbersome and convoluted. We do not see why the Judicial Appointments Commission should not be responsible for recommending to Her Majesty whom to appoint. If there is a danger of members of the Judicial Appointments Commission themselves being candidates for the position, they can be disqualified from sitting on the Commission when it is considering its recommendation.

10. Clause 8 provides for tribunals to be established to consider the removal of judges. The Commission believes that there should be greater involvement by non-serving judges on this tribunal. Non-serving judges should be in the majority on the tribunal. Clause 8(4)(b) should therefore be amended by deleting the words "or, is" in line 1.

11. Clause 9 provides for tribunals to "provide advice about any steps which should be taken to deal with" complaints against judges. It is not clear who would be entitled to sit on such a tribunal. The Commission would prefer a more definite and independent method for dealing with such complaints. Principles 17 to 20 of the UN's Basic Principles on the Independence of the Judiciary (1985) should be applied here. We would prefer someone other than the Lord Chief Justice to be responsible for preparing a code of practice relating to the handling of complaints against judges.

12. We believe that the Judicial Appointments Commission – not the Lord Chancellor as proposed in clause 12 of the Bill - should be responsible for appointing lay magistrates.

13. Clause 16, on the judicial oath, refers to "the laws and usages of this realm". Strictly speaking Northern Ireland is not itself a realm but is part of a realm, with different laws and usages from those in other parts. The word "jurisdiction" would be a more accurate description in law of the legal system in question.

14. The Bill does not seem to require initial or in-service training for the judiciary. We think that this is a serious gap in the legislation. We would wish the Judicial Studies Board to be placed on a statutory footing and for its functions to be set out clearly. The Board should be required by law to produce an Annual Report.

**Part 2 of the Bill: Law Officers and Public Prosecution Service**

15. As regards the proposed new prosecution system, the Bill again omits to state the objectives of the system. Recommendation no. 41 of the Review, for example, said that outreach to the community should be a stated objective of the Prosecution Service, but this is not mentioned in the Bill.

16. The Review recommended (no. 28) that limits should be placed on the publication of the fact of an arrest and of the name of the arrested person. The Implementation Plan, probably rightly in the Commission's view, rejects the imposition of limits on the publication of the fact of an arrest. But the Bill does not seem to place limits on the publication of the name of the arrested person.

17. The Review recommended (no. 40) that the Prosecution Service should engage with the community about diversionary schemes. The Bill does not seem to address this (see clause 54).

18. The Review recommended (no. 45) that there should be no power in the Attorney General to direct the DPP. It is not clear from clause 37 that this recommendation is being entirely implemented.

19. The Review recommended (no. 46) that it should be an offence to seek to influence the prosecutor not to pursue a case. This does not seem to be implemented in the Bill. Whatever the difficulties in phrasing such an offence, an attempt to do so needs to be made. The existing law on contempt of court may provide one or more useful models to follow.

20. The Review recommended (no. 49) that in certain situations the prosecutor should seek to give as full an explanation as possible as to why there has been no prosecution. This does not seem to be implemented in the Bill. The Human Rights Commission has already been involved in litigation on this issue. It feels that the state of the current law (after the Court of Appeal's decision in *Ex parte Adams*, 2000) is deeply unsatisfactory.

21. Clause 34 provides for a code of practice for prosecutors, and this must include a code of ethics laying down standards of conduct and practice. The Commission would like to see a requirement inserted in the legislation to the effect that the code of ethics must be based on the UN's Guidelines on the Role of Prosecutors (1990).

22. The Review recommended (no. 55) that details of complaints procedures doe the Prosecution Service should be publicly available in the annual report. This does not seem to be implemented in the Bill.

**Part 3 of the Bill: Other New Institutions**

23. The Review recommended (no. 263) that the proposed Inspector of Criminal Justice should be "responsible for advising Ministers on standards within the criminal justice agencies". But clause 43(7) merely says that the Secretary of State "may require" the Chief Inspector to provide "advice in relation to organisations in the criminal justice system".

24. Clause 42 does not specify which standards the Chief Inspector of Criminal Justice is to apply when conducting inspections. We recommend that he or she should be statutorily obliged to measure whatever he or she sees against

25. The Review recommended (no. 263) that the Inspectorate should publish its reports and make them widely and readily available. But clause 45(3) says that the Secretary of State can exclude part of a report from publication on grounds of national security, public order or the safety of any person.

26. The Review recommended (no. 245) that the proposed Northern Ireland Law Commission should have certain functions. Some of these (the powers to commission research and to invite suggestions for reform and to consult as widely as possible) have not been expressly included in clause 47. Moreover clause 47(2) subjects the work of the Law Commission to the approval or consent of the Secretary of State. This was not part of the Review's recommendations.

27. The Review recommended (no. 252) that in drawing up its programme of work the Law Commission should take account of the views of others through a consultation process. This is not implemented in the Bill.

**Part 4 of the Bill: Youth Justice**

28. A general criticism of this Part of the Bill is that it is yet another legislative step which adds to a range of previous legislation in a piecemeal approach. Rather than supplying a fundamental redraft and consolidation of legislation in the new direction called for by the Criminal Justice Review, it provides for another cumbersome amendment to existing legislation.

29. The age of criminal responsibility

The Commission considers it unfortunate that the Government has not taken this opportunity to raise the age of criminal responsibility. Although this was not one of the Criminal Justice Review's recommendations, it would be in keeping with international standards such as the Beijing Rules and with the recommendations of the UN Committee on the Rights of the Child (1995). It would also help deal with some of the practical difficulties of the Bill outlined below.

30. Clause 49(1) and (2): Aims of youth justice system

The establishment of a set of aims for the youth justice system is welcomed as there has been a need for a clear set of guiding principles to inform all those working with children at risk of offending, from the police, probation and social services, to those working in the juvenile justice centres and delivering services to children. However the lack of any reference to human rights instruments, as recommended by the Criminal Justice Review (recommendation no. 169) is a serious oversight. Such instruments should be used as guiding principles for the operation of the youth justice system. The

Commission suggests the following wording based on the UN Convention on the Rights of the Child (UNCRC), Article 40:

> *(1) The principal aim of the youth justice system in Northern Ireland is to prevent offending by children and to promote the child's reintegration and the child's assuming a constructive role in society.*
> *(2) Every child in contact with the law shall be treated in a manner consistent with the promotion of the child's sense of dignity and worth, reinforcing the child's respect for the human rights and fundamental freedoms of others.*

Protection of the public from offending flows from the aims of prevention, rehabilitation and reintegration. In the Commission's view this does not, therefore, need to be a stated aim of the system.

The Commission considers that it is important that other principles contained in international human rights standards be included in the Bill. Amongst these are the principle of non-discrimination (Article 2 of the UNCRC) and the principle that custody should be used only as a last resort (Article 37 of the UNCRC). The Commission holds that, certainly where children are involved, society should use the least restrictive intervention(s) necessary to achieve the desired outcome. Any intervention or sentence should never be more harsh or demanding that that which could normally be imposed by the courts. This is an especially important principle in any system that takes on a restorative approach to justice.

30. The Commission is disappointed that the "best interests" principle (required by Article 3 of the UNCRC) has not been incorporated into clause 49(3) of the Bill in preference to the lesser test of regard for the child's welfare. This is in clear breach of international human rights standards.

31. The Commission welcomes the definition of children in clause 49(6) as all persons under 18.

33. New court orders

In general the Commission welcomes the emphasis on diversion from prosecution and on restoration and reparation.

34. Clause 50: Reparation orders

This new sentence is well set out and clear in purpose. It allows the court to order the child to make reparation for his or her offence, to the victim or to the community at large. The reparation order has a clear set of safeguards, particularly in relation to the nature and seriousness of the offence that warrants this community order. It requires the court to have regard to Article 8(1) of the Criminal Justice (Northern Ireland) Order 1996 (restrictions on imposing community sentences) and the consent of the offender. The order is also limited to a maximum of 24 hours' reparation within 6 months of sentence.

However, while welcoming the new order the Commission has several reservations. The order applies to 10 to 17-year-olds inclusive. This is of concern, especially for very young children (10-14 years), as it involves them in a community-based sentence. Such interventions and activities would have to be appropriate to the relative immaturity and needs of these very young children. This concern would best be dealt with by raising the age of criminal responsibility.

The order lacks clarity in relation to who will provide reports to the courts and who will supervise these children. In particular there is no mention of the skills or training requirements of those supervising the reparation orders.

The written report on a child should include an assessment of the child's needs, including psychological and educational needs (proposed article 36A(5)). In line with international human rights standards (Article 12 of the UNCRC), it should also include the child's views on any proposals.

The Commission welcomes the requirement on the court to explain the Order to the child in ordinary language (proposed article 36B(5)). In light of *V v UK* and *T v UK* [2000] 30 EHRR 121, the requirement to ensure that children understand what is happening to them should run through the whole of the youth justice system. The Commission recommends that the principle laid down in this provision should be stated in clause 49 as a requirement for the entire youth justice system.

The Commission recommends that the proposed article 36C(5) be amended to read the Secretary of State "shall" make rules, rather than "may".

The Commission notes that the Criminal Justice Review stated the need to pilot and evaluate reparation orders. The Commission supports this recommendation.

35. Clause 51: Community responsibility orders

This new sentence is available only for children who commit an offence punishable by imprisonment and requires the offender to attend a place specified in the order for relevant instructions in citizenship and to carry out practical activities in light of that instruction for between 20 and 40 hours. Like the reparation order the community responsibility order has a clear set of safeguards and requires the court to have regard to Article 8(1) of the Criminal Justice (Northern Ireland) Order 1996 (restrictions on imposing community sentences) and the consent of the offender.

The order applies to 10 – 17-year-olds inclusive. However, again, this type of order may be inappropriate for very young children (especially those aged 10 to 14 years), due to their relative immaturity. The Commission considers that such young children should be excluded from this form of community sentence, as they are unlikely to be able to participate with the order in any meaningful way and as it is not desirable to mix such young children together

with older children when serving a sentence. This could best be achieved by raising the age of criminal responsibility.

The concept of "citizenship" (proposed article 36E(2)) should be interpreted bearing in mind the diversity of society in Northern Ireland. Citizenship includes rights as well as responsibilities and this should be reflected in the proposed article 36E(3)(a).

As regards the proposed article 36H, the Commission again recommends that this should read the Secretary of State "shall" make rules.

36. Clause 52: Custody care orders

This order deals with 10 – 13-year-olds inclusive, who would normally be dealt with by juvenile justice centre orders, and requires that such children when sentenced be held in secure accommodation by the "appropriate authority" (the DHSS). The order uses the same procedures and process as the juvenile justice centre order and has protections and limitations regarding the imposition of such orders in relation to the offence and its seriousness, as set out in the Criminal Justice (NI) Order 1996.

The Commission fully supports the recommendation of the Criminal Justice Review that 10 –13-year-olds found guilty of offences should not be held in juvenile justice centres (recommendation no. 170). However, the Commission has serious misgivings about the proposed custody care orders.

Given the very young age of these children, further restrictions need to be placed on the imposition of such orders, beyond those in the Criminal Justice (NI) Order 1996. The Commission recommends that such orders should be used only as a last resort, after all other community and financial penalties have been considered, and that they should be used only where the child poses a significant threat to the protection of the public.

International law is clear that children should be detained only as a measure of last resort and for the shortest period of time (Article 37 of the UNCRC and Rules 1and 2 of the UN Rules for the Protection of Juveniles Deprived of their Liberty). It stipulates that deprivation of liberty shall not be imposed unless the young person has been adjudicated upon in respect of a serious act involving violence against another person or of persistence in committing other serious offences *and* unless there is no other appropriate response (Rule 17.1 (b) and (c) Beijing Rules). In the Commission's view all legislation relating to the detention of children in Northern Ireland should be revised to comply with these principles.

The custody care order raises a number of other concerns. Because the children in question are so young, and because they are to be accommodated by the DHSS, they should be afforded all of the same provisions as children held in care under the Children (Northern Ireland) Order 1995. In particular, they should be given the same protections and resources to address their

educational, social, physical and emotional needs. The care system will need to be provided with additional funding to ensure that this happens.

It is proposed in the Bill that children held under custody care orders should be held under a different regime from that applying when children are held under care orders. This is unacceptable because it is a breach of children's human rights that if held under custody care orders they are excluded from the full protection of the Children (Northern Ireland) Order, including the best interests article (article 3). This has serious implications not only for children themselves but also for those working with them, who will be expected to depart from existing best practice.

Furthermore, in view of the different regimes, it is likely that children given custody care orders will be held separately from other children in care. Because the numbers of children being given custody care orders will be tiny, they will effectively be held in isolation, which is a clear breach of their human rights. There will obviously be difficulties in providing places: the importance of family contact, however, is especially relevant to such young and vulnerable individuals and there would therefore need to be a number of regionally dispersed small units to facilitate such contact.

The alternative, to mix children in care and custody, also has dangers. Since the Black Report (1979), and with the knowledge that now exists of the failings of the training school system, there is a clear recognition that children in care should not be held in the same institutions as children sentenced for offending. If children in care and custody are mixed there will be a clear stigma attached to those in care for reasons other than offending. Indeed, the very title of the proposed new order is undesirable as it implies mixing children in care with those in custody.

Finally, the issue of remands in custody is not addressed in the proposed legislation. In particular, use of the provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989 has resulted in persons under 14 years being held overnight in Lisnevin Juvenile Justice Centre. Government needs to address this problem.

In summary, the Human Rights Commission recommends that the best way to deal with the issue of very young children in the criminal justice system is to raise the age of criminal responsibility. Additionally, the Commission recommends that all children detained by the state should be given the full protections afforded by the Children (NI) Order, particularly article 3, which enshrines the best interests principle.

37. Clause 53: Youth conferences

The Commission welcomes the introduction of youth conferences and a restorative approach to youth justice. This will have profound implications in relation to the operation of youth justice in Northern Ireland. Given the importance and newness of this approach the Commission would welcome

further consultation by Government with those who will be involved in working with the proposed measures.

The Commission has nevertheless some serious concerns regarding the practical operation of youth conferences. In relation to the proposed plans, which will form the basis of diversionary youth conferences as well as court-ordered youth conferences, our concerns relate to fairness, proportionality, the range of requirements that can be imposed, the nature, combination and severity of requirements, and the process of gaining consent.

The youth conference and plan are based around consent, particularly the consent and agreement of the child. This is in keeping with Article 12 of the UNCRC. However, this is by no means a straightforward issue, especially for a child, and is one of the reasons why in law children are not allowed to enter into financial contracts etc.

We know that children are easily influenced by adults, particularly adults in authority. Therefore, obtaining the consent of a child in a group situation (which the youth conference is), when the child has admitted the offence and the other participants are adults of authority – with the threat of court action should the child not agree – is obviously not a fair way of obtaining true and informed consent. Children could be willing to consent to arrangements in such situations which are not in their best interests. Children may be unaware of the possibility of acquittal and may fear appearing in court, making them more likely to consent and to waive their rights to a court hearing. Children may also be unaware that they could end up with harsher penalties following a conference than they would have been given if they had been dealt with through the courts.

Parents may be willing to consent to a conference plan in order to avoid court action, to have the matter dealt with quickly or to be seen to be in control of their children, and they too may be unaware of the likely outcome had the matter been dealt with in court.

For these reasons the consent of the child and participants in the youth conference is not in and of itself a sufficient safeguard that the rights of the child will be protected, particularly in relation to the imposition of harsh penalties. One of the consequences of the restorative conferencing system in New Zealand, upon which the proposed system for Northern Ireland is to be based, is that it can sometimes result in very onerous outcomes, considerably more harsh than a court would have imposed. This is undesirable, as it increases the probability that the child will be unable to complete the order. This not only fails the restorative process, it fails the child and the victim, and can lead to the child being brought back to court.

1. The proposed youth conference plans include a range of activities and actions which the child will be required to complete. The range is extensive and almost unfettered, except for some minor restrictions – such as the requirement that they should be completed within one year. Actions which the

- "make reparation for the offence to the victim…or community..": no limits are mentioned as to the nature or amount of reparation to be made;
- "submit himself to the supervision of an adult": this does not state what any of that supervision may entail; the provision is completely vague and open-ended;
- "perform unpaid work or services in or for the community" (if the child is has attained the age of 16): this too is open-ended and does not state the nature of the work, the amount or maximum number of hours the child will be expected to complete, or the types of services he or she could be required to perform;
- "participate in activities...": again this does not state the amount or nature of activities, or the minimum or maximum number of hours of activities;
- "submit himself to restrictions on his conduct or whereabouts (including remaining at a particular place for particular periods)": this in effect is a form of house arrest without limits - except that it can apply for a year.

It is a further cause of concern that *all or any of these*, and other requirements, may be placed on the child, and that they are couched in language that implies they are imposed to help the child (suggesting more may be better). In theory, therefore, a child who admits to an offence and agrees to a plan could be required to: apologise to the victim, complete an almost unlimited amount of unpaid work and reparation, be placed under the supervision of an adult, attend a whole range of activities, submit him- or herself for treatment and be placed under 24 hour house arrest for up to a year.

It is highly undesirable to give conferences such open powers when the courts themselves are restricted in the penalties they can impose. Youth conference plans should therefore have maximum limits and restrictions on how they can be combined in the order.

2. There are two types of youth conferences: diversionary and court-ordered conferences. In relation to diversionary conferences, the decision to refer the child to the conference may be made by the Director of Public Prosecutions, for any offence before court proceedings are commenced, if the child admits guilt and agrees to the conference. Following the conference and the plan which has to be agreed with the participants (including the police), the prosecutor has also to agree the plan. If the plan is rejected the prosecutor can restart court proceeding and the child can be prosecuted should he or she fail to complete the plan. We consider the logic of this decision-making to be flawed, as it opens the child to a process that does not serve the best interests of justice. This is due to the prosecutor's role in rejecting or accepting the plan: this does not address the interests of justice as his or her role is not independent (unlike the judiciary). He or she is by definition there to prosecute individuals. It follows that overly harsh and disproportionate plans may be acceptable to the prosecutor and imposed on the child.

More fundamentally, the range and severity of penalties agreed to in a diversionary plan are not linked to the severity of the offence and there is a lack of safeguards in place in relation to this, such as reference to those contained in the Criminal Justice (Northern Ireland) Order 1996. Despite the fact that a number of the options available to a conference are in effect community sentences and some affect the liberty of the individual, they may be imposed without reference to offence severity or the limitations imposed by the Criminal Justice (Northern Ireland) Order 1996.

Diversionary conferences with an agreed plan result in a criminal record, which may be cited in later criminal proceedings. This makes one wonder to what extent it represents real diversion, or whether it is simply diversion away from due process and proper judicial oversight

40. Court-ordered youth conferences are less problematic. They involve some form of judicial review of the process. This is a new form of court sentence for the court. However, the Commission is concerned about the prospect of a youth conference order being combined with a custodial order. This appears to be incompatible with the notion of restorative justice, which emphasises putting right the damage caused by the offence and reintegrating the offender back into his or her community. A custodial sentence does not represent reintegration in any form. Attempts to impose a custodial sentence with the consent of the individual, or getting a child to agree to lose his or her liberty, which is the most severe penalty available to the courts, would demonstrate the flawed notion of "agreement" and "consent" in this context.

41. Under the proposed articles 36J(3) and (4) for youth conference orders, we note that the court must be of the opinion that the offence was serious enough to warrant the conference, but no mention is made of the Criminal Justice (Northern Ireland) Order 1996 in arriving at that decision. Such minimum protections should be in place, especially when sentencing children.

42. The case has not been made as to why the conference co-ordinator has to be a civil servant, as proposed in the new article 3A of the Criminal Justice (Northern Ireland) Order 1998 (clause 53 of the Bill). More importantly, there is no mention of the skills a person needs to possess in order to fulfil such a role. Is the intention to exclude community-based restorative justice facilitators?

43. There is no mention of police-based restorative justice schemes in the Bill. Why are decisions made prior to prosecution not included?

44. The Commission welcomes clause 58, which provide for the inclusion of 17-year-olds within the remit of the youth court. However, the Commission is concerned that 17-year-olds can still be held in Young Offender Centres. This is in clear breach of international human rights standards, which state that children must be held separately from adults in detention. The Commission is of course also alarmed that 15 and 16-year-olds can still be detained in Young Offender Centres when they are considered by the court to be a danger to

45. The Criminal Justice Review recommended that Lisnevin Juvenile Justice Centre was unsuitable for holding children and should be closed (recommendation no. 177). The Commission recommends that this should happen with urgency.

**Part 5 of the Bill: Miscellaneous**

46. It appears from clause 62(1) (prohibiting display of the Royal Arms inside the courtroom) that the intention is to "neutralise" the appearance of the courts. This would be in keeping with the removal of references to the monarch in the judicial oath or affirmation (clause 16) and with recommendation no. 142 of the Criminal Justice Review (and current Court Service policy) in relation to the declaration of "God Save The Queen". It is also consistent with the commitment to parity of esteem in the Belfast (Good Friday) Agreement and with the general principle that workspaces should be free of partisan displays.

More particularly, these changes are consistent with international standards:

- The Universal Declaration of Human Rights asserts the rights to "equality before the law" and a hearing before an "independent and impartial tribunal". It ought to follow that court premises are so designed as to express the concepts of equality, independence and impartiality.
- Those rights are restated in the UN's International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights. They are reaffirmed in substantially identical terms in the European Convention on Human Rights and in other major regional and national instruments.
- The UN Basic Principles on the Independence of the Judiciary (1985) affirm that "the organization and administration of justice in every country should be inspired by those principles, and efforts should be undertaken to translate them fully into reality".
- The Principles further state that "The judiciary shall decide matters before them impartially…without any …improper influences…or interferences, direct or indirect, from any quarter or for any reason" and that "The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected." The latter passage is especially important in this context because it establishes that judicial independence is not merely a matter of the relationship between judges and the executive but also requires the business of the courts to be conducted in ways that ensure the equal treatment of, and demonstrate equal respect for, all persons before the law.

In this context, it is difficult to understand why recommendation no. 141 of the Criminal Justice Review and the subsequent sub-clauses of clause 62 should permit the display of controversial symbols (the Royal Arms and the Union flag) on or outside court-houses.

Recommendation no. 124 of the Criminal Justice Review included the statement that the courts should operate in a way that promotes confidence in the criminal justice system. It is clearly desirable that justice should be administered in circumstances which proclaim parity of esteem and inspire public confidence in equality of treatment. The system of civil and criminal justice in Northern Ireland must, in order to be effective, avoid endorsement of either of the main political identities. Courts are public buildings, and should be accessible to, and welcoming of, all members of the public.

At present the Commission is inclined to the view that it would be preferable that clause 62 should require, or as a minimum permit, the removal of all symbols which are not regarded as neutral. At the very least, the clause should explicitly permit the removal of signage that is not physically part of the fabric of the building, e.g. free-standing signs or detachable plaques rather than carved representations of the Arms.

47. Clause 63 substantially addresses recommendation no. 242 of the Criminal Justice Review in relation to information about the release of prisoners. It also seems to be in line with the Human Rights Commission's proposal for victims' rights in a Bill of Rights in that it adopts a broad definition of "victim". The Commission's proposed Bill of Rights does not specifically propose a right to information about prisoner release but there do not appear to be any human rights objections to such a provision. The safety point should be carefully interpreted so that where there is any reasonable prospect that the release of information could endanger someone (presumably, in most instances, the prisoner) it should be withheld.

The Bill does not address the other information rights for victims proposed in recommendations nos. 232-241 of the Criminal Justice Review. However the Implementation Plan indicates that these measures are being or will be implemented, and they do not appear to require legislation.

48. Clause 64 (Views on temporary release) appears to be an alternative approach to that proposed in the final part of recommendation no. 242 in the Criminal Justice Review. The Secretary of State should be obliged to assess the victim's perception of a possible threat against other information available and a victim should not be able to delay release unless there are reasonable grounds for believing that the threat is real. The prisoner should be informed of, and be given the opportunity to make representations about, any information presented against him or her.

49. Clause 66 (Community safety strategy) falls short of the inclusive approach outlined in recommendations nos. 192 and 193 of the Criminal Justice Review. The list of consultees should be considerably extended, either by listing specific agencies and NGOs relevant to the field, or by specifying a widespread public consultation. Additionally, or alternatively, there could be a regional body constituted on similar lines to the local community safety partnerships set up under the following clause. (The wording of clause 67 does not preclude the establishment of a regional partnership as well as local

50. Clause 67 (Local community safety partnerships) departs in several important areas from the detail of recommendation no. 196 of the Review, particularly as regards the role of elected representatives. We note from the Explanatory Notes the intention that membership of the LCSPs should be drawn from a wide range of bodies, and the reasons why they are not specified in the clause, but clause 67(3) could at least state in general terms that the Secretary of State should ensure that each partnership includes elected representatives and persons drawn from relevant statutory agencies and voluntary and community organisations. Although this was not stated explicitly in recommendation no. 196, there should be a requirement, or even a mechanism, for ensuring that LCSPs are representative of the local community, broadly on the lines required by section 75 of the Northern Ireland Act 1998.

51. Clauses 68 and 69 (Exceptional legal aid and proceedings before a coroner) appear to be tidying-up measures to put on a statutory footing the *ex gratia* scheme already operating. The Commission would prefer the law to be that legal aid is available as of right at inquests to those who are otherwise financially eligible for it. While this is not necessarily required as a result of the judgments of the European Court of Human Rights in *Jordan and others v UK* (May 2001), it would be very much in the spirit of those judgments.

52. Clause 72 (Powers and duties of court security officers) does not specify whether the power to search articles extends to the examination of documents. The Human Rights Commission believes that it should not, particularly in relation to legally privileged documents.

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