



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

**Assembly and Executive Review Committee Inquiry  
into the devolution of policing and justice matters:  
Evidence of the Northern Ireland Human Rights Commission**

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,<sup>1</sup> advising on legislative and other measures which ought to be taken to protect human rights,<sup>2</sup> advising on whether a Bill is compatible with human rights<sup>3</sup> and promoting understanding and awareness of the importance of human rights in Northern Ireland.<sup>4</sup> 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.
2. The Commission welcomes the opportunity to respond to the Committee's inquiry. There is no overwhelming human rights principle favouring decentralisation of policing and justice, and it should be noted that the central government retains ultimate responsibility for ensuring compliance with the state's international human rights obligations. The Commission nonetheless broadly welcomes the proposed devolution of these matters, to the extent that it provides opportunities to bring a rights-sensitive area under more localised democratic control and accountability, which has the potential to enhance cross-community confidence in the wide range of organisations involved in delivering policing and justice. That

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<sup>1</sup> Northern Ireland Act 1998, s.69(1).

<sup>2</sup> *Ibid.*, s.69(3).

<sup>3</sup> *Ibid.*, s.69(4).

<sup>4</sup> *Ibid.*, s.69(6).

enhanced confidence ought, in turn, to bring about enhanced representativity and effectiveness, and thereby should improve the capacity of the policing and justice systems to protect human rights and provide appropriate responses to violations, in terms of investigation and redress.

3. In making its response, the Commission draws, in particular, on the following human rights standards relevant to justice and policing:
  - (i) The European Convention on Human Rights, in particular, Article 2 (everyone's right to life shall be protected by law); Article 3 (no one shall be subjected to torture or to inhuman or degrading treatment); Article 5 (right to liberty and security of person); and Article 6 (right to fair and public hearing within a reasonable time by an independent and impartial tribunal established by law);
  - (ii) Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) which undertakes "...to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law";
  - (iii) The Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance,<sup>5</sup> which "calls upon States to provide effective access to administrative and legal procedures and other remedial action to victims of racism, racial discrimination, xenophobia and related intolerance in the workplace";
  - (iv) General Recommendation No. 12 of the United Nations Committee on the Elimination of All Forms of Discrimination Against Women, relating to "legislation in force to protect women against the incidence of all kinds of violence in everyday life";
  - (v) UN Security Council Resolution 1325 (women's direct role in conflict resolution and reconstruction processes) and Article 7 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (women's equality in political and public life/taking part in forming government policy), and

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<sup>5</sup> Durban, South Africa, 31 August – 8 September 2001; paragraph 108.

- (vi) the UN Convention on the Rights of the Child, in particular Article 3 (best interests); and Article 12 (right to express opinion).

### **Scope of devolution**

4. The Terms of Reference seek "*To identify those policing and justice matters which are currently reserved matters under Schedule 3 of the Northern Ireland Act 1998 (the 1998 Act); and to consider which of these matters should be devolved and the extent to which they should be devolved*".
5. It is apparent that, whatever the extent of devolution, some matters will remain within the competence of the central UK authorities, and in a range of matters there will need to be effective co-operation with the Republic. It will be important to ensure that there is clarity of ministerial functions and administrative arrangements across the jurisdictions (i.e. Northern Ireland, Republic of Ireland and the UK) in relation to responsibilities for excepted and devolved matters that may cross boundaries.
6. This may include, for example, inter-relationships between PSNI; Metropolitan Police; Garda Síochána; the Security Service; Serious Organised Crime Agency (SOCA); and the Border and Immigration Agency. In particular, attention should be given to ensuring clear arrangements are in place in relation to information sharing and accountability mechanisms of the above organisations.
7. Clear protocols are required governing the handling of covert human intelligence sources (CHIS) managed within PSNI and the Security Service, alongside robust accountability mechanisms in relation to oversight of covert policing operations. It is important to ensure that the Office of the Police Ombudsman should have the necessary powers to fulfil this important function in relation to policing, and that the same or similar oversight should extend to CHIS management and covert operations of the Security Service. There is a clear risk that different levels of accountability could provide a disincentive for CHIS to co-operate with the police.

### **Departmental model**

8. The Inquiry additionally seeks "*To identify the preferred ministerial model and procedures for filling the ministerial*

*post/posts for the new policing and justice department". We are not clear from the call for evidence as to whether the Committee intends to limit discussion to the departmental model as specified in Schedule 5 of the Justice and Security Act (2007), or whether there is scope to explore the range of models outlined in the discussion paper produced by the NIO, *Devolving Policing and Justice in Northern Ireland* (2006).*

9. Whatever departmental model is proposed, ministerial appointment procedures need to ensure that the interests of the diverse population of Northern Ireland are fully represented. While it may be considered more urgent or more necessary to address this issue in terms of "the two main communities", given the history of sensitivities around policing and justice, we should not lose sight of the fact that Northern Ireland society is becoming ever more diverse. The Commission would not venture to intrude on the discretion of democratically elected MLAs to determine whether representativity at this level requires a dual ministry or deputy minister, or may be secured by robust oversight mechanisms. It would, however, point out that if opting for a dual model that at least in the short term will *de facto* represent only the two main traditions; there is some risk that this would serve to entrench difference and could marginalise the attention given to other interests.
10. There should therefore be scope to review the ministerial model and procedures for fulfilling the ministerial posts as we progress towards a more stabilised society and increased confidence within communities of policing and criminal justice functions. This might involve reviewing any requirement that restricts ministerial candidates to membership of the larger political designations. It may also involve reviewing the efficiency of a dual ministry, giving consideration to the desirability of moving towards a more 'normal' model of a single ministry. It is surely to be hoped that, over time, we may move towards a situation where the policing and justice ministry is no more contentious than any other major department.
11. Whatever model is preferred, there should be a clear delineation of ministerial responsibilities in relation to decision making processes across the criminal justice agencies, particularly if the model is headed up by two ministers.
12. Robust scrutiny and oversight and accountability mechanisms governing devolved matters must be in place so as to build

public confidence in the criminal justice system. If at some future date those mechanisms are themselves to be devolved, they must remain independent of the ministry.

### **Preparations: not merely institutional issues**

13. The inquiry is asked "*To identify what preparations need to be made by the Northern Ireland Assembly to facilitate the devolution of policing and justice matters and what preparations have been made*".
14. It is important that the Inquiry considers the necessary steps needed to establish *structural* arrangements, but *conceptual* issues around policing and criminal justice should also figure in the discussion. While the focus to date has been on constitutional/ministerial arrangements for the devolution of criminal justice functions, opportunities present themselves in which to consider issues relating to the *vision and values* that underpin a future devolved criminal justice system in Northern Ireland. This might include, for example, ensuring that alternatives to prison are thoroughly investigated for low-level, low-risk offenders (this category would include women prosecuted for non payment of fines); and that community-based restorative justice schemes are fully utilised wherever appropriate.
15. It might also include re-visiting *definitions of security* within a post-conflict society. For example, recent research<sup>6</sup> has demonstrated that many women characterise security as a "holistic concept which encompassed a range of 'securities', and within which personal and economic security is central". This concept has a direct bearing upon values and targeting of resources that underpin initiatives to deliver and sustain safe environments in the public and private domain.
16. This research also refers to the need for a "more robust analysis of how policy makers analyse and think about the impact of different policies". This highlights the importance of UN Security Council Resolution 1325 (women's direct role in conflict resolution and reconstruction processes) and Article 7 of CEDAW (women's equality in political and public life/taking part in forming government policy).
17. Other relevant research that may be of interest to the Committee is the international comparative research carried

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<sup>6</sup> Re-Imagining Women's Security and Participation in Post-Conflict Societies: Key Findings, October 2006.

out by the Committee on the Administration of Justice (CAJ), *Change and Devolution of Criminal Justice and Policing in Northern Ireland: International Lessons* (2006). This report examines possible institutional models that a devolved criminal justice system might adopt and seeks to identify institutional models that maximise human rights protection, promoted accountability and afford protection to minorities.

### **Assessing cross-community confidence**

18. Although not expressly addressed in the Terms of Reference, the Committee may wish to explore what steps need to be taken to assess the level of confidence within communities prior to the Assembly requesting devolution of policing and justice matters. This is particularly relevant to Northern Ireland where there is a long legacy of mistrust and lack of confidence in the criminal justice system amongst some communities, making achievement of meaningful consultation with communities difficult and complex.
19. To the extent that cross-community confidence in any proposed model for devolution is a pre-requisite, this might be a timely opportunity for the relevant oversight and consultative bodies (for example, the Policing Board, District Policing Partnerships, Community Safety Partnerships) to assess their respective and collective roles in terms of an ability to provide space for diverse interest groups wishing to contribute to discussions relating to the future shape of policing and justice functions. Groups that may not to date have engaged with the issues include, the traveller community; the children's sector; minority ethnic groups including migrant workers and the lesbian, gay, bisexual and transgender population.
20. We hope that this response will help inform the work of the Committee. At this time, the Commission is not requesting an opportunity to present oral evidence; we will of course be pleased to provide clarification of any matters arising from this response.

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