



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

16 January 2009

Strategy Consultation
Community Safety Unit
4th Floor, Millennium House
Great Victoria Street
Belfast BT2 7AQ

Dear Sir/Madam

Re: Together. Stronger. Safer. Community safety in Northern Ireland: A consultation paper

The Northern Ireland Human Rights Commission 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 responding to the recently published consultation paper on community safety in Northern Ireland, the Commission acknowledges the complexity of issues involved in efforts to improve community safety, including the provision of increased support to vulnerable groups and tackling environmental issues. However, given that the stated purpose of the paper is to establish a 'strategic framework' for a new community safety agenda, it is our view that many of the proposals require much greater scrutiny.

Our primary overall concern is the failure of the consultation paper to adequately consider and make clear the relevance in a community safety context of the human rights obligations assumed by the state. The document makes no reference at any point to the UK's obligations under international law, even in respect of the European Convention on Human Rights (ECHR) rights domesticated in the Human Rights Act 1998. There are a number of particularly relevant ECHR rights, other treaty obligations, and best practice guidance or 'soft law' standards developed within the UN and European human rights systems.¹

In discussing a strategic approach to violent crime, policing, criminal justice, anti-social behaviour and other aspects of community safety it would be preferable to provide evidence of awareness of the specific human rights instruments and standards that are engaged in these areas, for victims, vulnerable groups, suspects, offenders, witnesses, those who work in and alongside the criminal justice agencies, communities and others affected by the issues. The concept of community safety, like the related concept of human security, is intimately linked with human rights, and we would have wished to see rights-based language throughout the document. The term "human rights" is entirely absent from the consultation document, and in the few places where "rights" are referenced this is in vague terms and coupled with references to "law-abiding communities" or "responsibilities" as though the enjoyment of human rights were conditional on good behaviour, and not universal.

¹ The most relevant standards in relation to the community safety agenda include ECHR 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); General Recommendation No. 12 of the United Nations Committee on the Elimination of All Forms of Discrimination Against Women (legislation in force to protect women against the incidence of all kinds of violence in everyday life); the UN Convention on the Rights of the Child, in particular Article 2 (equal access to protection), Article 3 (best interests), Article 6 (fullest level of development), Article 12 (right to express opinion) and Article 40 (rights of the child alleged as, accused of or recognised as having infringed the penal law); UN Standard Minimum Rules for the Administration of Justice (the Beijing Rules); the UN Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines); the UN Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules); the EU Framework Decision on Restorative Justice; Council of Europe Recommendation 99(19)E Concerning Mediation in Penal Matters, and subsequent guidance on implementation; and the UN Economic and Social Council-endorsed Basic Principles on the use of Restorative Justice Programmes in Criminal Matters.

It is disappointing that the paper makes no reference to the UK's obligations under the UN Convention on the Rights of the Child particularly given the examination of the UK under the treaty which took place in September 2008. The UN Committee's Concluding Observations, issued on 3 October 2008, were critical of a number of initiatives which are proposed for or already adopted in Northern Ireland and come within the scope of the proposed strategy. The UN Committee recommended, for example, that an independent review be carried out of ASBOs with a view to abolishing their application to children. The Committee also expressed concern about restrictions imposed on the freedom of movement and peaceful assembly of children by a number of initiatives including the introduction of the concept of "dispersal zones", an idea found in the consultation document.

The human rights issues arising from proposed new powers must be fully addressed prior to a strategic framework being agreed. Here, our concerns relate in particular to the designation of 'dispersal zones' and 'disorder zones' as part of a strategy to create safer neighbourhoods. In relation to families and young people, potentially problematic areas include the creation of individual support orders, parenting support orders, parental compensation orders and family support panels.

With regard to the stated aim of building strong and confident communities, the Commission has concerns relating to the proposal to introduce 'community payback' as an option for community sentences. In particular, the State's obligations under the European Convention must be fully considered. Within this, Article 2 (right to life), Article 3 (inhuman or degrading treatment or punishment) and Article 5 (the right to liberty and security of person) have particular relevance, as, of course, does the Convention on the Rights of the Child. Whatever might have been the experience in other jurisdictions of visibly 'branding' those engaged in 'community payback', there are quite specific Article 2 and Article 3 considerations in doing so in the Northern Ireland context where so-called 'punishment beatings', and worse, are not distant memories. Community-based activities should ensure the safety of offenders within their communities, should be constructive, should respect the human dignity of the offender and should aim to secure reintegration and acceptance rather than publicly branding the individuals as different and deviant.

In terms of positive aspects of Northern Ireland's experience, in addition to the mention made of the 'official' youth conference service we would have expected the document to make reference to community based restorative justice (CBRJ) schemes and the

potential for further development of the CBRJ approach. Such schemes are based largely in areas where historically there has been an unwillingness to go to the police and this has led to communities seeking alternative ways to tackle crime within their communities. Even if confidence in the police is now increasing, the restorative practice developed by CBRJ schemes has made a useful contribution to community safety and this should not be discounted or discarded. Some 15 such schemes have now been accredited and receive government funding for some aspects of their work. The contribution of such schemes should be acknowledged, and they should form an integral part of a community safety strategy proposed by the NIO as the very department responsible for accrediting them. There is a large body of human rights standards that support mediation and restorative justice principles.

The Commission has previously commented on a number of other pertinent issues raised in recent consultation papers issued by the NIO. These include responses to consultations on Fine Default; Alternatives to Prosecution; and the Draft Criminal Justice (NI) Order (here specifically, Test Purchase Orders and ASBOs). In these submissions a strong preference has been expressed for the strengthening of alternative diversionary measures with a restorative element that address the root causes of offending, offer appropriate support and advice and provide routes out of the cycle of re-offending rather than the imposition of financial or other penalties which, if breached, may lead to a custodial sentence for low-level offending.

There appears to be a failure in this document to make an adequate case for the introduction of a number of new powers and initiatives through statistical or other reasoned policy argument. Indeed, given the stated 15 per cent reduction in recorded crime in the last five years, a compelling case needs to be presented for the introduction of such a range of punitive new powers. Reference is also made in the foreword to an increase in public confidence in the criminal justice system. This begs the question as to whether the strategy is overly influenced by the fear of crime and/or perceptions of crime, rather than the actual incidence of crime and low-level offending behaviour. Further, it is important that any future community safety strategy should both advance the realisation of human rights in Northern Ireland and deliver a coordinated and integrated approach to tackling community safety issues.

It appears that the document has transposed initiatives from other jurisdictions that are not sensitive to the Northern Ireland context and that a fresh approach is required that reflects the particular circumstances of this region.

If the Community Safety Unit would like clarification on any of the concerns that we have raised, please do not hesitate to contact us.

Yours sincerely

A handwritten signature in black ink that reads "Monica McWilliams". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

**Professor Monica McWilliams
Chief Commissioner**