



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Response on the Department of Justice Consultation 'Managing Criminal Cases'

1. The Northern Ireland Human Rights Commission ('the Commission') pursuant to Section 69 (4) of the Northern Ireland Act 1998 advises the Assembly whether a Bill is compatible with human rights.¹ In accordance with this function the following statutory advice is provided to the Department of Justice.
2. The Commission bases its position on the full range of internationally accepted human rights standards, including the *European Convention on Human Rights* as incorporated by the *Human Rights Act 1998* and the treaty obligations of the Council of Europe and United Nations (UN) systems. The relevant international treaties in this context include;
 - *The European Convention on Human Rights, 1950* ('ECHR') [UK ratification 1951];
 - *The International Covenant on Civil and Political Rights, 1966* ('ICCPR')[UK ratification 1976];
 - *The United Nations Convention on the Rights of the Child, 1989* ('UNCRC')[UK ratification 1991];
 - *The United Nations Convention on the Rights of Disabled People 2009* ('UNCRPD') [UK ratification 2009].
3. The Northern Ireland Executive is subject to the obligations contained within these international treaties by virtue of the United Kingdom's ratification. The Commission, therefore, advises that the Committee scrutinises the proposed Bill for full compliance with International human rights standards.

¹ *Northern Ireland Act 1998*, s.69 (4)

4. In addition to these treaty standards there exists a body of 'soft law' developed by the human rights bodies of the United Nations. These declarations and principles are non-binding but provide further guidance in respect of specific topic areas. The relevant standards in this context are;

- The United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"); and
- The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985.²

5. The right to a fair trial is protected by Article 14 of the ICCPR and Article 6 of the ECHR. Article 14(1) of ICCPR states:

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

² United Nations General Assembly (1985) A/RES/40/34

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

6. Article 14 therefore recognises that everyone charged with a criminal offence are entitled 'to be tried without undue delay'. The UN Human Rights Committee has found that significant delays in the court system may amount to breaches of Article 14.³ In its General Comment 32 the UN Human Rights Committee stated:

"The right of the accused to be tried without undue delay, provided for by article 14, paragraph 3 (c), is not only designed to avoid keeping persons too long in a state of uncertainty about their fate and, if held in detention during the period of the trial, to ensure that such deprivation of liberty does not last longer than necessary in the circumstances of the specific case, but also to serve the interests of justice. What is reasonable has to be assessed in the circumstances of each case, taking into account mainly the complexity of the case, the conduct of the accused, and the manner in which the matter was dealt with by the administrative and judicial authorities. In cases where the accused are denied bail by the court, they must be tried as expeditiously as possible. This guarantee relates not only to

³ Lubuto v Zambia (390/90) para 5.1-5.3

the time between the formal charging of the accused and the time by which a trial should commence, but also the time until the final judgement on appeal. All stages, whether in first instance or on appeal must take place without undue delay."⁴

7. The ECHR similarly recognises that everyone charged with a criminal offence is entitled to a fair and public hearing within a reasonable time. The European Court of Human Rights (ECtHR) receives a significant number of complaints regarding delay in legal proceedings.⁵ The ECtHR has identified the requirements of a judgement within a reasonable time as follows:

*"...[The Court] reiterates that the 'reasonableness' of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute"*⁶

8. It is imperative that delays within the criminal justice system are addressed so as to minimise the impact on those who have been deprived of their liberty prior to trial, as protected by the ECHR, Article 5 and the ICCPR, Article 10.
9. The Convention on the Rights of the Child at Article 40(2)(b)(iii) recognises that child defendants are entitled; *"..To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law"*. The Beijing Rules further obligate Government to ensure that *"each case shall from the outset be handled expeditiously, without any unnecessary delay"*.
10. The Basic Principles of Justice for Victims require judicial and administrative processes to be responsive to the needs of victims through avoiding unnecessary delay in the disposition of cases.⁷

⁴ CCPR/C/GC/32 23 August 2007 General Comment No. 32

Article 14: Right to equality before courts and tribunals and to a fair trial

⁵ Jacobs and White: The European Convention on Human Rights (Oxford University Press, 2005) Pg 272

⁶ See CASE OF DEMİROĞLU v. TURKEY App. No(s). 27459/09 (21.01.13)

⁷ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power Adopted by General Assembly resolution 40/34 of 29 November 1985

11. In light of the established international human rights standards which recognise the need to address delay to ensure respect for both the rights of defendants and victims, the Commission notes with concern the lengthy delay in cases across the criminal justice system in Northern Ireland in comparison to other UK jurisdictions.⁸

12. The Commission notes that the issue of delay has been investigated on a number of occasions by the Criminal Justice Inspectorate.⁹ However delay continues to be a significant problem. The Commission is concerned by the comments of the Youth Justice Review Team, that:

*"The delay that permeates the entire criminal justice system is by far the most serious challenge we identified... Long delays affect every part of the system, from bail and remand to sentencing and rehabilitation. It denies justice to victims and defendants, undermines human rights and erodes confidence in the criminal justice system and the rule of law. Despite considerable endeavours to tackle the corrosive effects of delay, progress has been decidedly modest if indeed discernible. It impacts more significantly on children than adults and should be addressed in the youth justice system first, with the lessons learnt being subsequently applied to the adult criminal justice system."*¹⁰

13. The Commission has advised the NI Executive¹¹ and reported to the UN¹² on a number of occasions regarding delay in the

⁸ Whilst comparisons with other European countries is complicated the Criminal Justice Inspectorate in its report 'Avoidable Delay' of June 2010 reported 'The Criminal Justice Simple Speedy Summary Justice initiative, which was launched in England and Wales in 2006, set a target of 42 days from charge to disposal for an adult charge case in the magistrates' courts. The actual performance for 2008-09 was 48 days. Adult charge cases took 127 days to disposal in Northern Ireland'

⁹ Ibid

¹⁰ Youth Justice Review Team 'A Review of the Youth Justice System in Northern Ireland' 2011 page 16

¹¹ NIHRC Response to Department of Justice (DoJ) Consultation on 'Reducing Offending: Towards a Safer Society' 8 October 2012

¹² Submission by the Northern Ireland Human Rights Commission (NIHRC) to the UN Human Rights Council's Universal Periodic Review of the United Kingdom (UK) November 2011 see: <http://www.nihrc.org/documents/treaty-and-international->

criminal justice system and, in particular has raised the issue of the number of prisoners detained on remand.

14. The Commission advises that the need to address delay has been acknowledged as an issue across Europe. The Commission refers to the Council of Europe's Committee on the Efficiency of Justice report, '*Delay in judicial proceedings in Europe: a preliminary inquiry*', which considers initiatives undertaken throughout Europe to tackle delay.¹³ This report refers to 'old' and 'new' conventional wisdom on efforts to reduce delays. Old conventional wisdom sees delays as related to a chronic lack of resources, workloads and formal rules of procedure. New conventional wisdom sees delays as a result of a complex system of practitioner' attitudes and practices. The analysis included in the consultation paper refers to both elements of new and old conventional wisdom.

15. The current consultation paper proposes the establishment of case management rules, modelled on those in place in England & Wales.¹⁴ Case management rules will specify when various actions should be completed for the trial to continue. The consultation paper states that the rules will not *be "too prescriptive"*. The Commission advises that the rules must be sufficiently flexible to allow for circumstances in which delay has occurred for a legitimate reason. The Commission also advises that the case management rules must fully conform with the right to a fair trial, the content of which has been developed by the jurisprudence of the European Court of Human Rights and General Comment 32 of the UN Human Rights Committee.¹⁵

16. The case management rules should provide sufficient flexibility for the court to take into account the particular circumstances of victims, witnesses and defendants. The Commission in particular

[work/2011/submission-to-un-human-rights-council-universal-periodic-review-of-uk-november-2011.pdf](#)

¹³ Working party n° 2 of European Commission for the Efficiency of Justice (CEPEJ-GT2) *Delay in judicial proceedings : a preliminary inquiry into the relation between the demands of the reasonable time requirements of article 6, 1 ECHR and their consequences for judges and judicial administration in the civil, criminal and administrative justice chains* CEPEJ(2003)20rev

¹⁴ Criminal Procedure Rules 2012

¹⁵ CCPR/C/GC/32 23 August 2007 General Comment No. 32

highlights the obligation to have particular regard for the rights of disabled persons. Article 13 of UNCRPD requires state parties to:

1. ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

17. In addition the case management rules must take into account the need to treat victims with dignity and respect. The Commission refers the Department to our advice on the draft Victims and Witnesses Strategy, submitted on 30th January 2012.¹⁶

18. In developing the case management rules and their implementation plan the Department will wish to draw on international best practice. In this regard, the aforementioned report of the Committee for Efficiency identified the following as critical factors which should be included in any measure to address delay:

- judicial commitment, leadership and adequate accountability mechanisms;
- involvement of the different actors in the system;
- court supervision of case progress;
- definition of goals and standards;
- monitoring of cases by an information system;
- a case management approach;
- a policy against unjustifiable continuances, like a firm trial date and a 'backup judge' system for trials;
- an individual assignment system; and
- education and training¹⁷

¹⁶ See <http://www.nihrc.org/index.php/news/item/686>

¹⁷ Ibid

19. It is important that the preferred approach adopted by the Department contains elements of the identified critical factors. In this regard the Commission notes that the consultation paper states that a principal factor influencing the high frequency of adjournments is inadequate preparation for court by legal representatives. As set out at paragraph 5 of this submission, Article 14 of the ICCPR obliges the NI Executive to assign legal assistance to a defendant where the interests of justice so require. In General Comment 32 the UN Human Rights Committee has made clear that "*Counsel provided by the competent authorities on the basis of this provision must be effective in the representation of the accused*".¹⁸ The Commission advises that if there are concerns that legal representation provided to accused persons is ineffective this should be investigated and appropriate action taken.
20. The Commission advises that a broad ranging approach should be adopted to address the issue of delay. Such an approach must identify all relevant factors to ensure that justice is delivered within a reasonable timeframe in full compliance with the human rights of both the defendant and the victim.

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¹⁸ CCPR/C/GC/32 23 August 2007 General Comment No. 32
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