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Winner of the 1998 Council of Europe Human Rights Prize

CAJ's response to the

**Strategic Plan of the
Northern Ireland Human Rights Commission**

November 1999

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CAJ Response to the Strategic Plan of the Northern Ireland Human Rights Commission

(Paragraph numbers refer to those in the draft Strategic Plan).

Introduction

The Committee on the Administration of Justice (CAJ) warmly welcomes the publication of the draft strategic plan of the Northern Ireland Human Rights Commission (NIHRC). The establishment of an independent Human Rights Commission for Northern Ireland has of course long been one of the goals of CAJ and we worked hard during the negotiations leading to the Good Friday Agreement and subsequently during the debates on the Northern Ireland Act to ensure the creation of a body with sufficient powers.

We commend the Commission on its articulation of the seven core principles which will underpin its work. We also very much welcome the clear and concise nature of the Strategic Plan, its accessible lay-out and language.

We are broadly supportive of the thrust behind many of the proposals in the draft Strategic Plan, but have some comments on specific areas.

By way of introduction, we should note that the draft Strategic Plan commits the NIHRC to a large number of specific projects to be completed within specific time frames. While accepting your desire to be both ambitious in your goals and transparent in your detailed plans, we feel that you may have over extended yourselves in your proposals. Until sufficient resources are secured it will be vital for you to set very realistic (as well as ambitious) goals.

This general principle has practical ramifications. For example, many of the commitments that the Commission has made are to conduct audits, reviews and research in specific areas of law or practice in Northern Ireland. There is little doubt that those constituencies highlighted would benefit from such action, however there might be ways to address this area of work within the context of the wider consultation process on the Bill of Rights. In setting priorities for its work, we feel that the Commission would do well to recognise that such work was also undertaken

by the Standing Advisory Commission on Human Rights often to little or no effect. Thus Brice Dickson, the Chief Commissioner recently wrote that:

*"Its [SACHR] annual reports are therefore repositories of much concentrated thinking on human rights issues in Northern Ireland, although very few of its recommendations were actually accepted by government and only once was an annual report dignified with a parliamentary debate at Westminster."*¹

In our opinion therefore the Commission should examine what marks it out as different to SACHR and concentrate much of its resources in those areas. There are in our submission three such areas:

- The Human Rights Act which should transform the legal context in which the Commission will be working.
- The ability of the Commission to both assist cases and take them in its own right.
- The ability of the Commission to conduct investigations.

In addition we believe that the Commission has a key role to play in persuading people of all communities in Northern Ireland that the protection and promotion of human rights should be of concern to all and provides a safeguard for all.

6. Resources and grounds for choosing possible options.

CAJ welcomes the commitment of the Commission to the most marginalised groups in Northern Ireland "including those who are economically marginalised." Given this commitment we are somewhat surprised by the relative lack of focus given to the issue of economic rights in the draft Strategic Plan. For example, even when the Plan addresses the issue of international work, although it indicates the Commission will campaign to persuade the UK to accept the right of individual petition to a number of UN Committees, it remains silent about whether the Commission will try to persuade government to ratify the Revised European Social Charter. We would hope very much that economic rights are integrated into all the elements of the plan and that specifically the Commission can take a lead in campaigning for Charter ratification.

In addition in the criteria articulated on page 13 there is no indication as to which if any of the criteria will be more important than others. For instance, even though the distinction in section 75 of the Northern Ireland between having *due regard* to the promotion of equality of opportunity and *regard* for promoting good relations, there is no distinction between the two criteria when mentioned on page 13.

6 (a) A Bill of Rights for Northern Ireland

CAJ has of course worked extensively on this issue with political parties, community groups and legal experts. However, we feel it would be very unwise for the Commission to launch a "top down" approach around draft documents already in

¹ New Human Rights Protections in Northern Ireland, European Law Review Human Rights Survey 1999 (24), Brice Dickson at 5.

existence or prepared by specialists. Instead we would emphasise the importance of a broad, wide and "bottom up" process of consultation. The Commission will be aware that international experience indicates that it has often been the process of drafting such a Bill of Rights which has been as critical to developing a human rights culture in society as the content of the Bill of Rights itself.

We are therefore somewhat concerned that we are now approximately twelve months away from the date when the HRC must submit its advice to the Secretary of State on this issue and yet the vital public consultation exercise is yet to begin. We were also concerned that there was very little detail in the plan on the actual process of consultation being proposed. We would welcome more information on this point. We certainly think it is vital that the consultation process start without delay, and in particular we would hope that a process of promoting awareness about the consultation process is already underway.

We are also concerned that the process as outlined in the Plan suggests that it may not be sufficiently dynamic to engender the widespread public debate which is required. Basing the consultation on a series of working papers produced by the Commission may well make the process inaccessible to those marginalised groups the Commission is most interested in targeting.

CAJ are of course aware of the scarce resources which the Commission has been allocated. We wonder if the Commission has made any progress in securing additional resources, if approaches have been made, and what responses have been received?

6(b) Promoting a Human Rights Culture

Consequent to our general exhortation to the Commission to concentrate resources on the areas which differentiate it from SACHR, we feel that the draft Strategic Plan does not sufficiently emphasise or seek to take advantage of the opportunities for change presented by the Human Rights Act. These opportunities are most obvious in promoting a human rights culture in Northern Ireland.

We therefore feel that the Commission needs to do more than simply offer human rights training to legal practitioners and the judiciary. We believe the Commission should be promoting and seeking to enforce the Human Rights Act. The HRC should be monitoring compliance with the Act and preparation for its coming into force. Should the Commission not have a role now in terms of ensuring and promoting awareness of the Act amongst public authorities, the judiciary etc? If the Commission does not do this in Northern Ireland, who will? CAJ believe that the Human Rights Act has the potential radically to transform the human rights environment in Northern Ireland. We believe the Act (in conjunction with the consultation around a Bill of Rights) will be the cutting edge of developing a new vibrant and inclusive human rights culture in Northern Ireland.

6 (c) Victims' Rights

We are unclear why the draft Strategic Plan separates this issue from the rights of the other marginalised groups which it identifies. Although the Plan correctly states that the Good Friday Agreement made specific reference to the importance of addressing the suffering of victims, it did not place a specific burden on the Commission in this regard. At the same time, we welcome the fact that the Commission will be giving attention to this important area, and feel it is vital for the NIHRC to focus on those aspects of the problem not covered by others. In that context, for instance, we believe that the proposed audit of current practice in the delivery of services to victims, may well duplicate work already done in the course of the Bloomfield review and subsequently by the Victims Liaison Unit.

We also have concerns about the suggested public hearings into the experiences of victims. While there is a reference to specific consultation in this regard, we remain concerned at what these hearings would be designed to achieve, what legal implications they would have for those cases where inquiries are underway or are likely to be established, and the general argument for a mechanism to establish the truth of disputed killings during the conflict. It is also clear, even at this preliminary stage, that the resource implications of any initiative in this area would be enormous.

6(d) (i) (ii) (iii) (iv) (v)

The Rights of Children, the Rights of Persons with a Disability, the Rights of Ex-Prisoners, the Rights of the Elderly and the Rights of Person Discriminated against on the Basis of their Sexual Orientation.

While obviously we are aware of the necessity for work to be done to protect the rights of the above groups, and indeed others such as ethnic minorities, the mentally ill, carers, and the economically disadvantaged, we are again conscious of the need for the Commission to be careful in deploying its resources. In particular therefore we feel the Commission should consider:

- Will their work duplicate work that has already been done or is likely to be done within the next two years?
- What distinguishes the Commission from other agencies likely to do work in this area, for example the Equality Commission?

Examining the various commitments the Commission makes in these sections, we are conscious that much is promised by way of audits and reviews of law and practice affecting these constituencies. However, it may well be that supervision of the Equality Schemes by the Equality Commission will lead to these problems being addressed to some extent. It certainly seems very important to keep work in the area of childrens' rights, the rights of the elderly, the disabled and those discriminated against because of their sexual orientation, under very regular review, and perhaps the elaboration of clear Protocols between the two Commissions (referred to elsewhere) will allow for more clarity in this area. At the same time, we believe that the Human Rights Commission is in the ideal position to effectively assist these constituencies by

taking cases and/or investigations in these areas, and that those measures should be the priority.

On the other hand, prisoners and ex-prisoners have no obvious body to turn to for help, given that the statutory duty does not apply to them and the Equality Commission does not have them in its brief. Obviously there will be considerable work which needs to be done in relation to the large number of paramilitary prisoners released from custody because of the Good Friday Agreement, but it would be unusual for a Human Rights Commission not also to be concerned with those in custody, often the most vulnerable group in terms of potential human rights abuse in society.

In similar vein, the problem of people in institutional care (whether those detained under mental health legislation, juveniles in Lisnevin, or young women offenders detained in Maghaberry), are obviously in need of the Commission's attention and have no other statutory body to act in defence of their rights.

6(e) Criminal Justice and Policing

Firstly, it is somewhat misleading to suggest that the introduction of emergency laws has been a response to campaigns of violence, since they have been a permanent fixture in the legal environment in Northern Ireland. Indeed, it is this very "permanence" that makes it so necessary to remove these powers if we are to emphasise a new rights-based dispensation. This should be the case even in the context of the government introducing permanent anti-terrorist legislation in Northern Ireland. Northern Ireland has been in deficit in this area for 75 years. We believe there is much value in being in credit for a number of years, particularly in terms of seeking to influence the behaviour of the police and the judiciary.

We therefore believe that the Commission has a key role to play in persuading the government to withdraw the current emergency legislation. We believe that the Commission should be in a position to promise to do more than examine the continued use of emergency legislation where there no longer appears to be an emergency as defined by emergency law. We would urge the Commission to explicitly state that the maintenance of such legislation in the current security environment is unlawful.

In addition we are concerned that the issue of inquests does not seem to be mentioned in the draft Strategic Plan. We understand that the Commission has already assisted in two inquest cases, but we believe such assistance should be combined with more strategic efforts to persuade government to replace the inquest system with a mechanism which complies with international standards.

7. The Commission's Methods of Working

Generally in relation to this section we felt that one flaw was the omission of a media strategy. We believe the Commission would find it beneficial to develop a strategy for dealing in a proactive way with the media in terms of its own initiatives

and in terms of responses to media queries. Clearly effective media work will be crucial to developing a culture of rights and the Bill of Rights debate may be an important vehicle for stimulating more media interest in issues of rights.

7(b) Forming Strategic Alliances

We welcome wholeheartedly the Commission's desire to work closely with a wide range of groups and individuals. It will of course be impossible for the NIHRC to undertake all the work itself and you should act as the energiser, if not engine, of a much broader alliance of interests. We believe, however, that the key principle governing such arrangement should be flexibility. Tying the Commission into close institutional links with other groups would in our view be a strategic mistake. The strength of the Commission is in its independence and its statutory remit.

In addition it seems the focus in much of this section appears to be on funding. Again we would be concerned that given the limited nature of the Commission's funding, this may raise false expectations. Although we believe the general restriction on funding conferences may be too restrictive, we believe the key resource the Commission can bring to its relationships with other groups is its expertise.

Reference should also be made here or elsewhere to the importance of working closely with other relevant statutory bodies such as the Ombudsman, the Police Ombudsman, the Mental Health Commission, the Office of Law Reform, the Data Protection Registrar, and other similar bodies.

7(c) International work

Amongst the other proposals you make, we think it would be important that the Commission undertake to encourage UN Special Rapporteurs to visit Northern Ireland.

7(d) (i) Keeping Law and Practice under review

There is a reference to the Commission making decisions as to whether and how reports from the Legislation and Policy Committee will be made public. On what criteria will such decisions be made?

7(d) (ii) Advising Government and the Assembly

There is also a reference in this section in relation to decisions being taken as to how the reports will be made public. Does this mean that the Commission may decide not to make such reports public? Is there any significance in the different wording used between the different wording used here and on page 38?

The wording relating to the timescale (page 39) is a bit unclear in that it fails to reflect the fact that the Commission is obliged to respond to requests for advice from the

Assembly, and this is an area of work that would need to be budgetted for. We assume that the NIHRC is undertaking to advise on at least three draft bills even if it receives no requests - but it may of course well be required to do a lot more.

Does the Commission see a role for itself in the training of Assembly and Executive members in human rights, in addition to its statutory role of advising and commenting on legislation? Also if the Assembly establishes its own Human Rights Committee to determine conformity of Assembly legislation with the Human Rights Act (as envisaged by the Agreement), what role does the Commission see for itself in working with such a Committee?

7(d) (iii) Reviewing our duties and powers

We believe that the Commission should undertake to publish the report submitted to the Secretary of State as to the adequacy and effectiveness of its functions.

7 (d) (iv) Establishing a Joint Committee

It may be that the section on the Joint Committee in the Strategic Plan does not fully reflect the terms of the Good Friday Agreement, which specifically mandates the Joint Committee to acts as a "forum for consideration of human rights issues in the island of Ireland". While the text of the Strategic Plan could be interpreted to envisage such a role, it is presented more as a discretionary matter than as one mandated by the Agreement.

7 (d) (v) Casework

We would be interested in obtaining more detail on how the Commission foresees the development of its mixed model of in-house and outside professional legal work.

It is unclear if the Casework Criteria apply only to those cases which the Commission may assist or whether they apply also to cases the Commission might take in its own right.

Does the word "assistance" in Casework Criteria (b) relate simply to financial assistance?

We are also unclear as to what the "profile" of the Commission's caseload means when mentioned in paragraph (iii).

We also feel that the Commission should give consideration to the development of guidelines to govern its relationship with lawyers acting for those it is assisting. In other words does the Commission acknowledge that the lawyers will remain solely responsible to their clients in the instant case or will the Commission be seeking an input by way of instructing the lawyers to raise certain arguments etc?

Concluding Remarks

We understand from the draft Strategic Plan that the Commission will soon be publishing its draft Equality Scheme. This will obviously be of central importance to the Human Rights Commission's work, and we look forward to discussing it with you. Aside from its significance to the Commission's work, others will be looking to the Human Rights Commission for benchmarks in setting standards which other public bodies ought to meet. We think that your work in this area could therefore be very important.

Clearly it is important that you build into your plan room for flexibility, so as to respond effectively to new developments, and to monitor the impact of your work. This will allow you to adapt your priorities according to changing needs on the ground, and the learning that takes place from ongoing work. However, on the basis of the proposals being made at the current time, we would like to reiterate our support for the general thrust of the plan. If implemented successfully, CAJ believes that the Commission's proposed programme of work would make a major contribution to the protection and promotion of human rights in Northern Ireland.

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