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Winner of the Council of Europe Human Rights Prize

CAJ's Response to the

Report of the Criminal Justice Review

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What is the Committee on the Administration of Justice (CAJ)?

CAJ is an independent non-governmental organisation, which is affiliated to the International Federation of Human Rights (IFHR). CAJ monitors the human rights situation in Northern Ireland and works to ensure the highest standards in the administration of justice. We take no position on the constitutional status of Northern Ireland, seeking instead to ensure that whoever has responsibility for this jurisdiction respects and protects the rights of all. We are opposed to the use of violence for political ends.

CAJ has since 1991 made regular submissions to the human rights organs of the United Nations and to other international human rights mechanisms. These have included the Commission on Human Rights, the Sub-Commission on the Promotion and Protection of Human Rights, the Human Rights Committee, the Committee Against Torture, the Committee on the Rights of the Child, the Committee on the Elimination of Racial Discrimination, the Special Rapporteurs on Torture, Independence of Judges and Lawyers, Extra judicial, Summary and Arbitrary Executions, and Freedom of Opinion and Expression, the European Commission and Court of Human Rights and the European Committee on the Prevention of Torture.

CAJ works closely with international NGOs including Amnesty International, the Lawyers Committee for Human Rights, Human Rights Watch and the International Commission of Jurists.

Our activities include: publication of human rights information; conducting research and holding conferences; lobbying; individual casework and legal advice. Our areas of expertise include policing, emergency laws, children's rights, gender equality, racism and discrimination.

Our membership is drawn from all sections of the community in Northern Ireland and is made up of lawyers, academics, community activists, trade unionists, students, and other interested individuals.

In 1998 CAJ was awarded the Council of Europe Human Rights Prize in recognition of our work in defence of rights in Northern Ireland. Previous recipients of the award have included Medecins Sans Frontieres, Raoul Wallenberg, Raul Alfonsin, Lech Walesa and the International Commission of Jurists.

RESPONSE TO CRIMINAL JUSTICE REVIEW

Introduction

CAJ made a lengthy submission to the Criminal Justice Review in October 1998. We also made two further submissions on specific cases and their consequences. In addition we met with the Review body for a more detailed discussion of our proposals. We also organised, in conjunction with the International Commission of Jurists, a seminar for members of the Review body, which was hosted by the Human Rights Centre at Queen's University Belfast.

The bulk of our submissions to the Review concentrated on the following areas: judiciary, emergency laws, law reform, ethos, restorative justice and the prosecution process. This response will therefore primarily be a response to the recommendations of the Review in these specific areas. However, in addition we have added a response to the Review's recommendations on prisons and juvenile justice given our history of work in these areas.

While we have criticisms of the report of the Review, and particularly its refusal to engage with the issue of emergency laws, these should be placed in the context of recognition that there is much in the report that CAJ would welcome, particularly its reliance on human rights principles.

However, we are concerned, in light of what has happened to the recommendations of the Patten report, that the elements of the Criminal Justice Review's Report which hold out the promise of real change will be subject to dilution before they are implemented by way of legislation or otherwise. The experience of Patten suggests that the changes recommended by the Review will be the ceiling rather than the floor of the process of change to the criminal justice system in Northern Ireland.

In this context we are disappointed that the implementation of the report's recommendations has been left solely in the hands of the civil service. The absence of any independent element in the implementation of the report makes its recommendations all the more vulnerable to dilution and to the opposition of elements within the existing criminal justice system which are firmly opposed to some of the more far-reaching changes suggested.

This is all the more unsatisfactory given that the Review was government-led and that the recommendations of the Review were subject to comment by relevant government departments and others in advance of publication. Indeed we understand it was this process that led to much of the delay in the publication of the Review report.

We believe that any dilution of the Review on the part of government would be unacceptable. We also believe that the dangers posed to the recommendations of the Review by virtue of the fact that their implementation is solely in the hands of the government behoves those independent members of the Review to stay involved in scrutinising the implementation process. We believe that the presence of an independent element will act as a safeguard for the recommendations of the Review.

THE JUDICIARY

Introduction

CAJ welcomed the inclusion of judicial appointments and arrangements for ensuring their independence in the review. We take the view that the judiciary has an especially important role to play in ensuring the enforcement of the human rights of all. This role is likely to become increasingly important with the full implementation of the Human Rights Act 1998, the Northern Ireland Act and the potential impact of a Bill of Rights for Northern Ireland. Whereas other public institutions in Northern Ireland have been the subject of significant inquiry in recent years, the judiciary has in our view been under-examined.

However CAJ also took the view that the terms of reference fell short of enabling the Review to conduct a thorough investigation of the arrangements for providing justice in Northern Ireland. It appears that because of this concern about its terms of reference the Review does not deal with a number of issues we feel would have been most useful to examine with regard to the judicial function. Thus, beyond a statement that the issue of a constitutional court went beyond the terms of reference, there is no examination of the potential of a new judicial institution, along the lines of the South African Constitutional Court, to deal with issues arising from the implementation of the Human Rights Act or Bill of Rights. Indeed the Review does not even examine whether current arrangements for the Judicial Committee of the Privy Council are adequate to deal with devolution issues raising human rights concerns.

Similarly the terms of reference may have discouraged any reflection on the past record of judges in Northern Ireland with regard to the protection of human rights (though it is also notable that the Review does not seem to report receiving many views on this in the consultation process). CAJ is concerned that although Northern Ireland's courts have given a number of decisions upholding human rights, their overall record in the past

thirty years demonstrates excessive deference to the interests of the executive. In cases involving inquests, emergency laws (notably in respect of confessions and access to defence lawyers) and the use of lethal force by the security forces we are concerned that courts have failed to give sufficient weight to human rights arguments. As Brice Dickson points out, Northern Irish courts have overall adopted a restrictive approach to arguments invoking the ECHR, something which bodes ill for the introduction of the Human Rights Act.[1] Equally we believe this approach bodes ill for the approach of the judiciary to the new Bill of Rights. Given this record, and the centrality of human rights to the new dispensation in Northern Ireland we believe it is imprudent to leave the current judiciary with sole responsibility for interpreting the new Human Rights Act, Bill of Rights and other protections. **It is therefore our firm view that a new Constitutional Court needs to be established and we would suggest that there be further consultation on this specific point.**

The Role of the Judge

CAJ is pleased to see that the Review addressed this issue. We feel that issues relating to selection criteria and accountability for judicial decisions are difficult to address without some conception of the judicial role. We would endorse the view in paragraph 6.7 that judges need to be independent of the executive and free from the influence of any particular group while remaining in touch with all aspects of society. We were also pleased to see the review's indication that interpreting the Human Rights Act may require a somewhat different approach to decision making than some judges have in the past been used to. However we would go further to argue that at the heart of the judicial role is an understanding of the constitutional role of the judiciary. In light of the Good Friday Agreement, the Human Rights Act and the potential Bill for Rights in Northern Ireland that role is likely to alter somewhat from simply interpreting and applying statutes to exploring the extent to which such statutes can be seen to be consistent with human rights

[1] Brice Dickson "The European Convention in Northern Irish Courts" [1996] *European Human Rights Law Review* 495-510

standards. Especially in relation to devolved legislation the courts will no longer be in the position of being simply subservient to parliament but will increasingly be involved in scrutinizing the extent to which the Assembly has acted in conformity with constitutional principles. **We feel that discussion of this new constitutional role should be incorporated into judicial training (see further below) and that judges should be encouraged to reflect upon it.**

Mechanisms for Appointment

CAJ welcomes the proposal for the establishment of a Judicial Appointments Commission. The present system for judicial appointments is significantly lacking in the transparency which is essential for such significant public offices. We also agree with the Review's opinion that this body should not be composed exclusively of members of the judiciary, or even of the legal profession. We would take the view that in addition to legal knowledge or court experience there are a range of other qualities which a good judge should possess (notably appreciation of the constitutional role, understanding and a willingness to listen to others, communication skills and the ability to manage a case) which people other than lawyers have the competence to assess. **While there may be merit in the Lord Chief Justice chairing this Commission we would argue for the number of lay members to be at least equal to the legal members.** It is important that anyone appointed to judicial office should have received support from both groups. Also a situation where judges and lawyers predominate on the Commission risks the marginalisation of the lay members. **Given the small number of appointments to the High Court and Court of Appeal bench, combined with the importance of these judges in ruling on Human Rights issues, we would recommend that the full Commission be involved in interviews and appointments for these posts. However for appointments between Resident Magistrate and the High Court we accept that the number of such appointments means that it is sufficient if a sub-committee of the full Commission is involved.**

We would not accept the view of the Review at paragraph 6.106 that the First and Deputy First Minister should be able to reject initial recommendations of the Commission. One of the aims of the Review is to enhance the independence of the judiciary; this is unlikely to be achieved if the Executive has an opportunity to pick the judges and decline to appoint those it may feel are too independent. Indeed we see little reason for the Executive to be involved in reviewing the decisions of the Commission at all if the Commission contains a sufficiently wide range of individuals to cater for the concerns expressed above. Given the wide range of interests and expertise represented on the Commission, combined with a thorough selection procedure, it is difficult to see that elected politicians could improve on the choices made.

We agree that the position of Lord Chief Justice gives rise to particular issues, not least because the LCJ will chair the Commission. Hence both the Commission and the elected politicians have an interest in the question of who is appointed to this post. **Here there is a case for any recommendation of the Commission being subject to the approval of both the First Minister and Deputy First Minister.**

We would strongly disagree with the view of the Review that the establishment of such a Commission should take place only when justice functions and legislative capacity have been devolved to a Northern Irish Executive and Assembly. We can see no reason for delaying the creation of the Commission. The goal of a representative and diverse bench is too vital to public confidence in the criminal justice system to await further political progress. As the Review notes there is already significant concern as to the adequacy of the existing procedure for judicial appointments and significant public support for the idea of a Commission. The early years of the Human Rights Act and any Bill of Rights may well be crucial for the development of jurisprudence on these issues in Northern Ireland. It would seem imperative therefore that if such changes are likely to strengthen public confidence in the administration of justice (which we believe they would) that they are made as swiftly as possible. Awaiting the devolution of justice functions risks key precedent setting decisions being made by judges appointed under procedures which are not as satisfactory in terms of transparency or accountability. Even

in terms of the Review's own model of the Commission as a body to advise elected politicians there is no reason why it could not be established swiftly to offer advice to the Prime Minister or Lord Chancellor. However our preference remains for a body which will have the power to make decisions rather than offer advice.

Criteria for Appointment and Promotion

CAJ was especially interested in the discussion in paragraph 6.20 of the present qualities relevant to the appointment of judges. We feel this marks an important move towards breaking down the criteria of "merit" into more precise competencies. While agreeing that merit should remain the primary criteria for the appointment of judges we feel that in the past this term has been stated too simplistically, without a further explanation of what "merit" connotes. The danger is therefore that the term becomes simply a reflection of the subjective views of those making appointments as to what makes a "good judge," if not simply a case of appointing in their own image. We feel there will clearly be a need for further debate among members of the Commission as to what criteria are relevant to judicial appointments and what weight should be given to each of the criteria. We agree that experience of advocacy in the courts should no longer be a prerequisite for appointment. **We believe that amongst the criteria should be a commitment to equal opportunity and non-discrimination and understanding and awareness of international human rights standards. With a broader debate on the criteria appropriate for judicial appointment we believe it will become apparent that there is merit in opening up all judicial appointments to a wider range of people including solicitors, legal academics and those with Tribunal experience.**

Reflectiveness/Representativeness

CAJ welcomes the Review's recognition that it is desirable that there be a greater correspondence between the composition of Northern Ireland's population and that of its

judiciary. As Malleson observes, a more diverse bench can play an important role in increasing public confidence in the judiciary.[2] We understand the sentiments behind the Review's decision in paragraph 6.87 to use the word "reflective" rather than "representative". However we are uncertain as to whether the latter term carries the connotations which the Review attributes to it. As the Review itself notes, recent legislation on appointments to public bodies in Northern Ireland such as the Human Rights Commission, Equality Commission and Parades Commission has referred to the idea of such bodies being "representative" without this carrying the implication that once appointed members of such Commissions must advocate or be influenced by the views of a particular group. We would agree that judges should not see themselves as being placed on the bench to advocate or defend a particular group but feel it is legitimate for them to advance a particular view of their constitutional role, providing it is one consistent with treating each case on its merits and one which is in line with the criteria the Commission approves for appointments and promotion.

Of course it is difficult to reach a definite conclusion on the necessity of affirmative action programmes in relation to judicial appointments due to the lack of information on the current composition of the judiciary. **Here we would strongly take issue with the Review's opinion in paragraph 6.120 that candidates for judicial office should not be asked questions on their community or ethnic background.** Such questions are now routine in many other circumstances in Northern Ireland, indeed even candidates for judicial office may have previously been asked to supply such information when applying for other jobs or public posts. Such information is normally supplied anonymously for monitoring purposes only, not as part of the information on which selection is based. The Review's idea of "proxy indicators" is not likely to be satisfactory. In any case we feel that recent developments on whether Industrial Tribunal Chairs come within the scope of EC equality law raise the likelihood that judicial appointments will eventually be seen as coming within the scope of anti-discrimination legislation. If this is so candidates mounting a challenge on discrimination grounds may well be able to discover information on perceived community background. While the Review notes that

[2] K. Malleson *The New Judiciary: The effects of expansion and activism* (Ashgate, 1999) p.105

information on gender is available and less controversial, this may only be because it is more obvious!

If such information were available it might be easier to examine whether affirmative action programmes are required. The most obvious deficiency is, as the Review notes, in the appointment of women to judicial office. **For the present we would agree that the sort of outreach measures recommended by the Review, combined with a review of the criteria for judicial appointments, might produce significant change. However, the pace of change needs to be kept under regular review by the Judicial Appointments Commission to ensure that in the near future Northern Ireland has a sufficiently diverse judiciary.**

Oath of Office

We agree that the current oath is outmoded and hardly complies with the spirit of the Good Friday Agreement. The suggestion of the Review is clearly an improvement. However CAJ would welcome something which placed a greater stress on the role of the judiciary in protecting the human rights of all. **Therefore we would recommend the inclusion of language to the effect that a judge will "give effect to the rights of all as recognized by law." We would also recommend the deletion of the word "realm" and its replacement with the word "jurisdiction."**

Judicial Training

CAJ, like the Review, attributes considerable importance to judicial training, especially in light of new developments such as the Human Rights Act, the Northern Ireland Act and the Bill of Rights. **It is especially important that judges are educated in the interpretative approaches to broad human rights provisions and do not treat them in the narrow way that has often characterized statutory instruction. There is also a**

need for judges to be aware of the wide range of other international human rights standards that informed the content of the Review, even if these are not directly incorporated into Northern Irish law.

However we feel there are two areas of judicial training which have been omitted by the Review but which are vital to ensure that the judiciary adequately protects the rights of all. **The first is training in issues of race and gender awareness, plus awareness of disability issues and in particular the new statutory duty to promote equality of opportunity under section 75. This is especially important for the lower judiciary. A second is understanding of the judge's constitutional role in the light of the Human Rights Act, the Good Friday Agreement and the Bill of Rights.** Training from judges in other countries which operate with a Bill of Rights or indeed from political scientists who work on such issues might be useful in this regard. Indeed judges might even benefit from participation in some sort of structured dialogue with politicians or public officials on these questions, providing, of course, contemporary cases were not raised. Recent constitutional developments seem likely to alter the nature of the judge's constitutional role. If judges are effectively to protect the rights of all (including performing more explicit balancing exercises) it is important that they reflect in an informed way on what this new role may be.

We also suggested in our initial submission that the judiciary may benefit from training in the use and importance of plain English. **We remain firmly of that view and believe this should form part of induction training for judges.**

We would agree with the Review that judges have an important role to play in judicial training. They alone are likely to be able to provide the practical guidance that other judges require and their "ownership" of the process means that it is more likely to be taken seriously by other judges who are anxious to guard their independence. However just as people other than judges can usefully comment on what qualities are needed to be a judge, so they can comment on what attributes a good judge should develop. **We would argue that there is a need for greater non-judicial involvement in the**

organization of judicial training (including perhaps psychologists as well as academic lawyers and political scientists) than the Review appears to envisage. In addition we believe that continuing training, as well as induction training, should be mandatory.

Tenure

Unfortunately the Review did not adopt our recommendation that judges, as with other public servants, retire at 65. **We remain convinced that this should be the case in order to sustain public confidence in the judiciary and also as a means to accelerate the process by which the bench becomes more representative of the community it serves.**

PRISONS

CAJ has had a long interest in the circumstances of those detained in Northern Ireland's prisons. It has consistently advocated measures, for example in respect of the release of life sentence prisoners or the transfer of prisoners between Britain and Ireland, which will strengthen the protection of the rights of those in prison.

Overall we find the Review's approach to the issue of prisons to be limited and disappointing. In light of the extensive programme of releases of those involved in politically motivated offences Northern Ireland's prisons are set to undergo a major period of change. The number of prisons, prisoners and staff will decline. The Review offered an opportunity to look back over the past 30 years and decide what of value has been learnt from the turbulent history of Northern Ireland's prisons. CAJ believes that there are lessons in terms of the management of prisons which should be reflected on and that the last 30 years should not simply be written off as an "abnormal" period with nothing of value for the running of "normal" prisons. We also take the view that the present time does offer an opportunity for critical reflection on how prisons should move forward, given the likely population and issues in times to come. The Review does not really achieve this, being limited to a number of specific issues or regimes and sentences. **We feel that there remains a need for a more thorough review of where the Prison system in Northern Ireland has been and where it is heading.**

Human Rights Background

Although paragraphs 12.4-12.9 offer reference to a range of international standards relevant to the treatment of those in prison we were surprised to see little reference to the European Convention on the Prevention of Torture or the work of the Committee for the Prevention of Torture (CPT). The CPT has developed some of the most valuable recent guidance on human rights in prisons and has conducted missions to Northern Ireland, including looking at prisons in Northern Ireland. We would recommend that any future

training of prison staff in Northern Ireland in relation to human rights pay close attention to the recommendations of the CPT.

Indeterminate Sentences

The CAJ welcomes the Review's recommendations in paragraphs 12.64 and 12.65 on changes in respect of indeterminate sentences. We feel these would be sufficient to ensure compliance with the ECHR although we would have doubts as to when, if ever, a whole life tariff is appropriate. Although it is not stated in the Review recommendations we assume that present practices whereby prisoners lack information on what goes before the LSRB would be changed and that prisoners would have a right to see and challenge the material which would go to the new independent body.

Adjudications

The CAJ endorses the view that Board of Visitors role in adjudications should end. We feel this is inconsistent with Article 6 of the ECHR. We also note that it appears to be little used currently, outside the Young Offenders Centre. In view of this latter fact we would question the assumption in paragraph 12.75 of a need to increase governors' power to remove remission. CAJ remains concerned that a governor's power to deprive a prisoner of remission may amount in itself to a breach of Article 6's independence and impartiality requirements. We note that thus far the ECHR has been prepared to uphold the exercise of disciplinary powers by prison directors and the potential difficulties of instituting a completely independent system for all disciplinary adjudications. However this is a matter which should be kept under review. In any case we feel that a prisoner's right to some sort of representation (perhaps by an advice worker or law student) should be provided for in all cases, while a prisoner retains the right to legal representation when the circumstances so require.

We were very surprised to see no reference to the potential value of a Prison Ombudsman or Complaints Adjudicator in this section. The office of Ombudsman has proved a valuable one in England and Scotland, especially with regard to complaints relating to adjudications. CAJ is of the view that there is a clear need for such an institution in Northern Ireland. This could be on a part time basis, but would nonetheless be vital given the lack of adequate accountability mechanisms short of resort to judicial review.

Training and Organizational Issues

We welcome the recommendations on cultural awareness training and on the review of uniform requirements. However we were disappointed to see little by way of specific recommendations for training of prison staff in human rights standards (contrary to Patten recommendations in relation to the police or the recommendations of this Review in relation to the judiciary). In our view it is essential that an awareness of human rights standards should pervade the entire criminal justice system, not just selected parts of it.

Other Issues

As observed earlier we feel the Review falls short of an adequate review of the prison system. Structural issues, such as the role of the Board of Visitors, the value of having a Prison Board or the need for a new Prison Act are ignored or skated over. Regime issues like the use of searches or segregation powers (likely to become more significant in light of the changing prison population), indeed the whole issue of what sort of regime should be developed are also discussed in a cursory way. Suicide prevention or the treatment of the mentally ill in prisons are also matters which should have been explored. There is a clear need for an examination of the prison system in Northern Ireland, where it has been and where it is going. The Criminal Justice Review does not provide it.

THE PROSECUTION SERVICE

We believe that fundamental change to the prosecution system was second only in importance to judicial change in terms of the task faced by the Criminal Justice Review. We are firmly of the view that if all of the recommendations contained in this chapter are implemented, significant progress will have been made to ensuring a much more open and accountable prosecution service.

We commend the recommendations of the Review in relation to the establishment of a new prosecution service, its responsibility for all prosecutions in Northern Ireland, the rights of victims, and the obligation on the prosecutor to investigate fully allegations of police malpractice. However, in relation to this last issue, we would ask for confirmation that the Police Ombudsman and not other police officers will undertake any such investigation. In addition we are concerned that the decision as to whether evidence obtained as a result of police malpractice be used in court remains a matter for the discretion of the prosecutor. At the very least we believe that an obligation should be placed on the prosecutor to inform the defence that the evidence was obtained as a result of police malpractice in order to inform defence efforts to have the evidence excluded.

International Standards

CAJ welcomes the consideration and weight attached to the relevant international human rights standards in this area by the Review. In particular we welcome the emphasis placed on certain themes which the Review found recurring frequently in the relevant international standards; impartiality, fairness and objectivity. We also are pleased at the recognition that these standards can only be upheld where the prosecutor can act free from political interference or prejudice.

The outworking of these international standards is also to be welcomed. The new Code of Ethics, which is to be based partly on the UN Guidelines for Prosecutors, is an

important step. However we are unclear as to how the Code of Ethics in particular will operate. How will prosecutors be bound by the Code? Will consideration be given to them having to undertake to abide by the provisions of the Code and will breach of the Code mean that prosecutors will be subject to disciplinary action?

The creation of an effective complaints procedure is vital and in particular the requirement that there be an independent element in the system. In addition the Review's recommendation in relation to the publication of details of the complaints procedure and the outcome of complaints made is welcome. **However, we are concerned that not activating the independent element of the system where the complaint is about prosecutorial discretion may be used to undermine the effectiveness of the system. For instance if a complainant believes that prosecutorial discretion was exercised in such a way that it violated the Codes of Ethics or Practice what practical recourse will that complainant have? How will the public be reassured in a case such as Nora McCabe (highlighted in our original submission) that prosecutorial discretion was exercised correctly? We believe this issue needs to be addressed in the course of implementation of the Review's recommendations.**

We also welcome the proposed focus on training envisaged by the Review. **We would emphasise that such training needs to take place for all staff not just those newly recruited and that this training should focus predominantly on human rights.**

Case Studies

The Review does not appear to have actually examined files in the office of the DPP relating to a number of the controversial cases we outlined in our submission. Given this, we wonder how it was able to conclude that there was no doubt as to the commitment and professionalism, objectivity of the DPP and his senior staff. Nevertheless it is apparent that the Review has taken on some of the difficult issues raised by the cases we detailed and those mentioned by others. We acknowledge that the views shared by us and others

about these cases were reflected in the section dealing with the consultation exercise. We remain concerned however that if these cases are not resolved they will continue to cast a shadow over the new prosecution service envisaged by the Review. **We are strongly of the view that satisfactory resolution of these cases in the context of institutional and personal accountability is essential if the new prosecution service is to command public confidence.**

While we welcome the recommendations in relation to these concerns and particularly the presumption towards giving reasons for decisions not to prosecute, we remain concerned that in cases involving security force personnel, security considerations may be used to stymie inquiries as to why prosecutions have not been undertaken. We argued that in such cases the Northern Ireland Human Rights Commission should be able to gain access to prosecution case files in order to allay public concern. While this is discussed at 4.72, the Review does not recommend it. **We are aware that there is ongoing discussion between the Commission and the office of the DPP but we believe that there is a role for the Commission to play in such cases as an added safeguard.** This is particularly so given the fact that although the Review suggests that the presumption should shift towards the prosecutor giving reasons for decisions not to prosecute, the recommendation still appears to leave a wide degree of discretion to the prosecution service.

Other issues

We are pleased that the Review has taken on board our suggestion that a local Attorney General be recruited from the ranks of senior lawyers and not be a political appointee or a member of the Assembly/Executive. It is clear that considerable thought has been given to how the relationship between the Attorney, the head of the prosecution service and government might work. However, we are concerned that the recommendation in relation to the appointment of an Attorney General says simply that "consideration be given" to the establishment of an Attorney General's office. It may well be that this ambiguity will be used to undermine any prospect of such an office being established.

We would therefore urge that this recommendation and its implementation be tracked with particular care.

We also note that while reference is made to the breakdown of the staff of the DPP in terms of community affiliation and gender, no detail is given beyond a general assertion that the breakdown is reasonably reflective of the community in Northern Ireland. **We believe that the annual report, which the new prosecution service is to publish, should contain detailed information about the gender and community affiliation of the staff generally and at various levels in addition to those newly recruited. We do not see any reason for this request not being complied with.**

We welcome the change in emphasis which the Review recommends in relation to the prosecutor's obligation to consult with victims (13.51) but we are concerned at the description of the prosecutor's role in relation to victims which is described in 13.42. Implicitly it is suggested that the prosecutor may not be obliged to inform the victim when the case is coming before the court. We believe that this should be a primary obligation of the prosecutor and in particular if a change of plea is anticipated which may mean that an arraignment date, for instance, acquires more importance than it would usually have.

Although the Review appears to have taken cognisance of our suggestion that the office of the prosecutor becomes more locally accountable we feel that the recommendation in this regard (4.178) is unduly limited. While opening a number of local offices will help at least in terms of increasing the visibility of local prosecutors, it will have little effect on accountability. **We believe a specific mechanism should be put in place which will allow for the communication of relevant concerns from the local community to the local prosecutor.**

ETHOS AND CULTURE

Obviously the most important aspects of the recommendations of the Review are those that deal with substantive changes to the criminal justice system. However, there is much to be welcomed in the recommendations of the Review in this sensitive field. In particular and to the extent that they reflect the submission we made, we welcome the recommendation to end the declaring of "God Save the Queen" on entry of the judiciary into the courtroom, the proposal to ensure that the inside of courtrooms are free from symbols, and the proposal to end the wearing of wigs except on ceremonial occasions.

The rationale of the proposals for change inside the courtroom is the necessity of creating "an environment in which all those attending court can feel comfortable." We believe that by retaining symbols on the outside of courthouses and allowing the continued flying of the Union flag, the Review will not achieve the desired environment. This is particularly so when one considers that the Review also refused to make recommendations in relation to the name of the Royal Courts of Justice and the Crown Court, or the term Queens Counsel. This reticence on the part of the Review is made all the more difficult to understand by the comment that "[I]n time it may be more fitting to move towards symbols that emphasise the separation of the courts from the executive." In our view the appropriate time for such symbolic separation is now in the aftermath of the Agreement and when the Review has been tasked with the overhaul of the criminal justice system. We believe making such changes in the context of a mechanism, which received widespread support from the electorate, has more legitimacy and will be less divisive than if such changes are left to court action (as with the declaration on the taking of silk) or unilateral action on the part of the government.

RESTORATIVE JUSTICE

In our submission to the Criminal Justice Review CAJ welcomed the focus in the Consultation Paper on Restorative Justice, and its emphasis on repairing and restoring relationships between offenders, victims and communities. Then, as now, CAJ's primary focus as a human rights group is to ensure that the rights of victims, offenders and communities are protected in any Restorative Justice Scheme.

The Use of International Standards

We welcome the fact that the review has drawn upon the relevant human rights standards, namely the UN Standard Minimum Rules for the Administration of Juvenile Justice, the Convention on the Rights of the Child, the UN Declaration of Basic Principles of Justice for Justice for Victims of Crime and Abuse of Power (1985) and the UN Standard Minimum Rules for Non-Custodial Measures (1990).

Limited Application in the Formal Juvenile Justice System

CAJ welcomes the recommendation that the integration of restorative justice "youth conferencing" (para 9.60) will be subject to the full range of human rights safeguards. Given the benefits articulated in the restorative justice chapter with regard to using restorative justice philosophy and techniques to meet the needs of victims, offenders and community, CAJ is curious as to why in effect such benefits are envisaged as applying only to the juvenile system and not equally to the adult system.

Training and Accreditation

CAJ acknowledges that our submission concerning human rights training and accreditation for *all* involved in restorative justice was reflected in the Review section

on views expressed during the consultation process (para 9.24). CAJ is however entirely unconvinced by the relevant recommendation in para 9.98 (which appears to apply to the community based projects) that such schemes should be *"...accredited by, and subject to standards laid down by the government ..covering such issues as training of staff, human rights protection...."*

CAJ continues to believe that all involved in restorative justice (both statutory and community practitioners) should receive proper and accredited training in human rights. However CAJ does not believe that government should be solely charged with deciding upon either the curriculum or accreditation of human rights training for restorative justice practitioners. **As with the new policing service, *independent* human rights training and accreditation of either statutory or community restorative justice practitioners by groups such as the Human Rights Commission, international or local human rights groupings, the Human Rights Centres at the two Universities or an amalgam of the above would command much greater respect and authority than any government devised scheme.**

Relations with Community Based Restorative Justice Schemes

CAJ notes that our submission that the government should *take " a sensitive and pragmatic approach*" to community based programmes is acknowledged in the section on the consultation process. As is noted in para 9.26, we suggested that such an approach *"would recognise that statutory involvement from different criminal justice agencies...may occur in different ways and over differing timeframes in the context of evolving projects."* We also argued that *"..provided that activists are suitably trained, acting within the law, the relationship between restorative justice projects and the various elements of the criminal justice system should be permitted to evolve at the chosen pace of local communities."*

CAJ is disappointed that such pragmatism and sensitivity is not universally reflected in the relevant recommendations. Our reservations regarding the provisions of human rights training and accreditation are discussed above. CAJ has no difficulty with community projects being subject to independent inspection. Whether the Criminal Justice Inspectorate is suitable for such a task would presumably be a process of discussion between the Inspectorate and the projects. We would also agree that projects should not determine innocence or guilt. However it is our view that the recommendations on referrals are unnecessarily restrictive, controlling and probably unworkable.

The recommendation that such projects should only receive referrals from statutory criminal justice agencies rather than the community and that the police should be informed of such referrals appears to us as somewhat bizarre and may be seen by some as an attempt to retain control of such projects. Surely one of the key strengths of restorative justice is its close relationship with local communities. If local restorative justice projects are acting non-violently, lawfully and have been properly trained to protect the rights of all participants, we cannot understand why local communities should not be able directly to take advantage of restorative justice service in their area. By way of analogy, as a voluntary organisation, CAJ has good links with a range of communities. We also work on sensitive issues pertaining to the criminal justice system. While we accept referrals from a range of statutory agencies, it would simply be unthinkable for us to deny local communities access to our services unless routed first through a statutory agency.

We would strongly urge that this recommendation be reconsidered. As we argued in our initial submission, relations between community projects acting in a lawful and non-violent fashion and statutory agencies will develop at a natural pace and in an organic fashion. Partnership cannot be imposed; it must be encouraged and nurtured at the pace of the local communities themselves.

JUVENILE JUSTICE

Human Rights Standards

CAJ welcomes the strong emphasis in the Review report on international human rights standards and norms. As the review notes there are a wide range of international instruments that bear upon juvenile justice arrangements in Northern Ireland. These represent the *minimum* standards for the care of children.

CAJ supports the recommendation that a set of aims and principles for the juvenile justice system should be developed and that the Government should include in law a clear statement of aims and principles for the juvenile justice system in Northern Ireland. We agree that these should take account of the human rights standards to which the United Kingdom is committed.

Age of criminal responsibility

The age of criminal responsibility in Northern Ireland is 10 years. This is considerably lower than most Western European countries. CAJ is disappointed that the Review did not recommend raising the age of criminal responsibility. While international standards do not lay down a particular minimum age for criminal responsibility, the Beijing Rules recommend that age "shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity"(Rule 4.1). The commentary on this rule notes that in general "there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority, etc)." In Northern Ireland children can be held criminally responsible at 10 but the ages for marriage and voting rights are considerably higher.

CAJ welcomes the recommendation in the Review that 10 – 13 year olds should not be held in juvenile justice centres but should be accommodated in care. However, we

recognize the strain that the care system and staff are currently under and would welcome the views of those working in the care system as to how this recommendation might work out in practice. Staff in the care system are unlikely to have specialist training in dealing with offending behaviour in children. There is also a danger that accommodating a convicted child in care may stigmatise the other children in the care system. There must be no return to the Training School system. Given the small number of children convicted of offences CAJ continues to believe that raising the age of criminal responsibility is the best way of dealing with this issue.

CAJ welcomes the review's recommendation that 17 year olds should be brought within the jurisdiction of the youth court. The current position where 17 year olds are dealt with through adult courts is in our view in breach of the United Nations Convention on the Rights of the Child. We are disappointed, however, that the review recommends that 17 year olds should continue to be housed within the Young Offenders Centre. While understanding the practical considerations which would be involved in arranging for 17 year olds to be accommodated in juvenile justice centres, CAJ notes that international guidelines state clearly that children and adults should not be housed together in custody (e.g. Beijing Rules 26.3).

Custody

CAJ has consistently raised concerns about Lisnevin Juvenile Justice Centre. Our concerns have been about the environment, building and regime. CAJ therefore, welcomes the Review's recommendation that Lisnevin should close. Lisnevin's closure should be carried out as soon as possible.

We do not, however, agree with the Review's conclusion that the best option for the future of custody for children in Northern Ireland lies in the development of a single site to house up to 40 boys and girls. Children should be kept as close to their families and communities as possible both to maximize the prospect of rehabilitation and to respect

their right to family life (European Convention Article 8). Thus, we argue that small-scale family sized units based throughout Northern Ireland are the best option for the future of a custody system, which hopefully will house only a small number of children.

Whatever the outcome of the discussion on the future of the juvenile justice estate, CAJ feels strongly that it is important that young people with experience of the system are consulted about options (Article 12 of the UN Convention) and that an analysis is undertaken of the regimes in question as well as the physical environment.

Right to Silence

CAJ maintains that children and young people should have a right to silence. While we firmly believe that the right to silence should apply to adults and children, it is particular important in relation to under 18s in light of their increased vulnerability. We therefore, support the recommendation of the Review that the Government should commission independent research into the effects of the Criminal Evidence (Northern Ireland) Order 1988 on juvenile defendants as a matter of urgency, and that the findings of that research should be published (Review paragraph 10.89). Indeed we believe the Criminal Evidence (NI) Order should be repealed in the interests of fairness and justice.

Complaints Procedures

It has been a source of concern to CAJ that there is no independent complaints mechanism for all children in custody, particularly given the serious nature of some children's complaints, for example, in relation to physical abuse. We support the recommendation that complaints mechanisms be reviewed as a matter of urgency to ensure that they conform to the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, and to ensure that they include an independent element (Review paragraph 10.98).

We also support the Review's recommendation that young people admitted to a juvenile justice centre should be given a copy of the rules and details of their rights in a language they can understand (Review paragraph 10.98). CAJ has expressed serious concern to government about the nature and content of the Juvenile Justice Centre Rules and looks forward to contributing to the promised review of the rules.

Management of the System

On the issue of the management of the juvenile justice system, CAJ has commented on the weaknesses in the current system in terms of accountability. CAJ welcomes the discussion in the review of possible options for the future management of the system. While we welcome moves in the direction of increased accountability, we are concerned about juvenile justice being seen as a criminal justice rather than a welfare issue. Again we would welcome hearing the views of those working with young people in trouble before forming a definite view on these issues.

CONCLUSION

CAJ believes that if all of the Recommendations of the Criminal Justice Review were implemented, they would have the potential to herald the beginning of a new and accountable criminal justice system. However, we are concerned that the implementation of these recommendations may well be undermined by the fact that the independent members of the Review are not involved in the implementation process. We are therefore firmly of the view that a role for the independent members of the Review be found in the implementation process and that an oversight mechanism, such as the Oversight Commissioner recommended in the Patten report, be established in relation to the Review's recommendations. We urge those independent members of the Review to ensure that the recommendations that they helped to shape retain their integrity and are not substantially diluted during an implementation process controlled solely by government.

In addition we are concerned that the failure of the Review to engage with the issue of emergency laws has left government in sole control of the pace of change in relation to that vital area. As the Review itself recognised their "efforts to develop proposals for a fair, rights-based, and effective criminal justice system which inspired the confidence of the community as a whole could not be divorced from the outcome of those separate reviews" [into policing and emergency laws]. In the event that emergency laws continue to operate the future of the recommendations of the Review may be fatally flawed in terms of public confidence. While the Review felt that it was constrained by its terms of reference from engaging with the issue of emergency laws, this distinction will undoubtedly be lost on many of those on the receiving end of the use and abuse of such laws. We believe the chances of a new criminal justice system commanding the confidence of the public will be maximised if the use of emergency laws becomes consigned to the past.

Our concern with regard to emergency laws is mirrored with respect to the research that the Review body has recommended in relation to the right to silence and pre-trial

disclosure provisions. It is vital that such research is not simply shelved. It is our firm view that these particular pieces of legislation do not in practice contribute to a fair trial. We would have welcomed the Review body calling for the repeal of such legislation.

In the introduction to our main submission to the Review we said that the issue for the Review was not "whether change is needed, but how much change is needed. In our view fundamental and thoroughgoing change is required to undo the damage to community confidence in the system of the administration of criminal justice in this jurisdiction." We believe the Review, as reflected in the number and extent of its recommendations, agreed that significant change was required. While, as indicated above we believe that the Review has made a significant beginning to the task of creating a new accountable criminal justice system, we are of the firm view that its recommendations are a floor not a ceiling for the required programme of change. We will be working to ensure that this is the case.