

AMNESTY INTERNATIONAL

Response to the consultation on the Powers of the Northern Ireland Human Rights Commission

Although Amnesty International welcomes the opportunity to respond to the Consultation Paper on the powers of the Northern Ireland Human Rights Commission issued by the Northern Ireland Office, it notes with concern the significant delay since the issue of recommendations for additional powers for the Northern Ireland Human Rights Commission first arose. Amnesty International urges the Government to act promptly to ensure that the Northern Ireland Human Rights Commission complies, as a minimum, with the chief source of normative standards for national human rights institutions, the United Nations Principles relating to the Status of National Institutions¹ ('The Paris Principles').

Recommendation 1

The independent procedures of selection, appointment, removal and terms of tenure for appointments to the Northern Ireland Human Rights Commission should be clearly specified so as to afford the strongest possible guarantees of competence, impartiality and independence, as envisaged by the Paris Principles. The Joint Committee on Human Rights² had recommended that the Government give consideration to a role for an independent Commission in the appointment of the Northern Ireland Human Rights Commission but the Government does not appear to have done so. It is imperative that the method of selection and appointment of the members of the Northern Ireland Human Rights Commission should be fair and transparent and should involve representatives of civil society. An independent appointment Commission could facilitate nominations of possible candidates for membership of the Northern Ireland Human Rights Commission from members of civil society, especially those representing the interests of particularly vulnerable sections of society.

Recommendation 2

Although the Government supports the principle of this recommendation, it states that the recommendation is already well covered by legislation, including sections 75 and 76 of the Northern Ireland Act 1998. The Government's submission fails to take account of the symbolic value of an impartiality clause and its utility in strengthening perceptions of the Commission's members as being free from bias and from expectations of further career advancement.

Recommendation 3

There should be sufficient staffing to fulfil the tasks of the Northern Ireland Human Rights Commission; the key issue is to ensure effective oversight and action. Whilst it

¹ UN Commission on Human Rights Res 59 (1992) 3 March 1992, UN General Assembly Res 48/134 20 December 1993.

² Joint Committee on Human Rights (14th Report of Session 2002-03) 'Work of the Northern Ireland Human Rights Commission' HL Paper 132, HC 142, at para 21.

is essential that the expenditure of public money should be subject to public scrutiny, the independence of the Commission cannot be compromised. The Northern Ireland Human Rights Commission should have the authority to appoint staff and to determine the requisite skills, human rights expertise and diverse experience. The Government does not appear to have considered, as recommended by the Joint Committee on Human Rights³, the establishment of a mechanism for an independent assessment of the needs of the Northern Ireland Human Rights Commission.

Recommendation 4

A statutory foundation for a Memorandum of Understanding between the Crown and the Northern Ireland Human Rights Commission would bolster the guarantees of independence enshrined in the Paris Principles. Independence is the attribute that underpins the legitimacy, credibility and effectiveness of the Northern Ireland Human Rights Commission. The Government's assertion that a Memorandum of Understanding is part of the 'standard framework for managing' non-departmental public bodies fails to adequately acknowledge the essential role of the Northern Ireland Human Rights Commission in the protection and promotion of human rights and the necessity of independence (and of being seen to be independent) to fulfil this role.

Recommendations 5

The Paris Principles enshrine the importance of adequate funding and of the need to be free from financial control that may affect the independence of national human rights institutions. Funding must be secured with a long-term perspective and must be secured regardless of any criticisms of the Executive made by the Northern Ireland Human Rights Commission. Parliament or a separate mechanism for the assessment of the needs of the Northern Ireland Human Rights Commission, as suggested by the Joint Committee on Human Rights, should provide public funds. Regular public financial reports alongside annual independent audits could secure financial accountability and probity. Amnesty International also notes that if the powers of the Northern Ireland Human Rights Commission are to be augmented then there must be a commensurate augmentation in public funding.

Recommendation 6

Although the Government must provide the Northern Ireland Human Rights Commission with adequate funding and resources to enable the Commission to fully carry out its mandate without restriction, the Commission should be free to raise funds from other sources. This freedom should be specific and explicit. The Government posits that a statutory amendment to reflect the Commission's current practice of raising funds from other donors could put new constraints on the Commission but again the Government appears to have given insufficient regard to the importance of strengthening the independence of the Commission. The Northern Ireland Human Rights Commission should develop guidelines to ensure that any fundraising does not compromise its independence and impartiality. The reports and audits mentioned above would also increase transparency.

³ See note 2 at para 43.

Recommendation 8

Although the Northern Ireland Human Rights Commission has withdrawn this recommendation, Amnesty International considers that the recommended amendment should still be made. In accordance with the Paris Principles, the Commission shall be given as broad a mandate as possible, which shall be clearly set forth in legislation.

Recommendation 9

As above, Amnesty International recommends that the amendment originally proposed by the Northern Ireland Human Rights Commission should be made. Again Amnesty International notes that any increase in mandate for the Commission must be met with a corresponding increase in funds.

Recommendation 10

Given the unacceptable delay of the Government in this review of the powers of the Northern Ireland Human Rights Commission, Amnesty International recommends that legislation should specify a time frame for further review and for the formal reply of Government to such reviews.

Recommendation 11

In line with the Paris Principles, the Northern Ireland Human Rights Commission should be given as broad a mandate as possible and should advise Government and make recommendations on both the legislation and administrative provisions in force as well as bills and proposals. To assist in its fulfilment of its mandate under section 69 of the Northern Ireland Act 1998, the Commission should be referred all draft laws and policies for Northern Ireland as early as possible. The decision on whether to comment should rest solely with the Commission. This recommendation would assist the Commission in discharging its commitment to raising awareness of human rights amongst public bodies.

Recommendation 12

Despite the withdrawal of this recommendation by the Northern Ireland Human Rights Commission, Amnesty International urges the Government to accept this recommendation. The Paris Principles specify that national human rights institutions shall have responsibility for encouraging ratification or accession to international human rights instruments and for ensuring their implementation. This recommendation would also appear to fall within the remit of the continuing review of the adequacy and effectiveness in Northern Ireland of the law and practice relating to the protection of human rights which is enumerated in section 69 of the Northern Ireland Act 1998. The International Council on Human Rights Policy notes that national human rights institutions ‘should keep society informed about international developments in human rights law, especially those that are directly relevant to the

country...(and) should encourage their governments to ratify international human rights instruments without reservations.⁴

Recommendation 13

The Government has reneged on its decision of May 2002 to amend the Northern Ireland Act 1998 to reflect this recommendation. Amnesty International urges the Government to re-adopt its decision to make this amendment to the legislation. The Commission's role in protecting the human rights of all and in fostering the emerging human rights culture in Northern Ireland applies regardless of the speed with which Government wants to enact legislation, indeed the Commission's role may well be heightened in such situations, especially regarding the hasty enactment of counter-terrorism measures. The Commission has the ability to prioritise and expedite matters. The widely couched term 'shall have due regard to the Commission's advice' does not infringe democratic principles or the rule of law.

Recommendations 14,15,16

These issues were all addressed by the ruling of the House of Lords in R v Re: Northern Ireland Human Rights Commission [2002] UK HL 25.

Recommendation 17

Whilst Amnesty International welcomes the acknowledgement by the Government that it may be appropriate to consider this issue again in the future, Amnesty International calls upon the Government to consider this issue now. The Paris Principles envisage the Northern Ireland Human Rights Commission being able to freely consider any questions falling within its competence and in order to do this, the Commission ought to have the power to bring legal proceedings in its own name. Amnesty International notes that the Multi Party Agreement⁵ provided for the Commission to have the power to initiate litigation in its own name.

Recommendations 18 and 19

Amnesty International agrees that these recommendations have been adopted in the practice of the Northern Ireland Human Rights Commission, but to comply with the Paris Principles the Commission's mandate and sphere of competence should be clearly set forth in legislation. Amnesty International, therefore, calls upon the Government to make the necessary amendments to clearly specify these functions. Such amendments would be indications of the Government's recognition of the continuing importance of the role of the Commission in international human rights fora.

Recommendations 20 and 21

The Government believes that these functions do fall within the mandate of the Northern Ireland Commission; therefore, in order to comply with the requirement for

⁴ International Council on Human Rights Policy 'Assessing the Effectiveness of National Human Rights Institutions' (International Council on Human Rights Policy Geneva 2005) at page 20.

⁵ Command Paper 3883.

clear enunciation of the Commission's mandate that is enshrined in the Paris Principles, amendments should be made. Once again, Amnesty International urges the Government to make proportionate increases to the Commission's funding.

Recommendation 22

Amnesty International welcomes the statement of the Government that it is right that to amend the Northern Ireland Act 1998 to give the Northern Ireland Human Rights Commission the power to access places of detention. Amnesty International is, however, concerned that the Government does not propose to extend this power to *all* places of detention as recommended by the Commission. Amnesty International also notes with concern the Government's suggestions to impose requirements of notice periods and of consultations on the terms of reference and to allow injunction applications by the management of places of detention to prevent access by the Commission. The government is concerned that the recommendation is couched in 'very broad terms', referring to the phrase 'in the care of a public authority or of a person or body exercising functions of a public nature'. Amnesty International believes that the terms should be broad enough to encompass *any* place where a person might be detained.

Amnesty International notes that frequently national human rights institutions are required to seek permission or give long periods of notice of their visit. Such requirements hamper the important role of such institutions to visit places of detention with the aim of making recommendations on improving conditions. Whilst noting the important role of other bodies, Amnesty International believes that the Northern Ireland Human Rights Commission should be able to visit any place of detention at any time without prior authorisation in order to make a true assessment of conditions of detention.

Recommendation 24

Amnesty International welcomes the decision of the Government to amend the Northern Ireland Act 1998 to allow the Northern Ireland Human Rights Commission to compel production of documents and other evidence and to compel attendance of persons at hearings and to provide information. This amendment was necessary to ensure that the Commission complied with the Paris Principles, which envisage that the Commission should hear any person, and obtain any information and any other document necessary for assessing situations within its competence. Amnesty International also notes that provision should be made for effective sanctions for obstruction or other interference with the Commission's work. A number of safeguards are already in place to protect those affected by the Commission's investigatory powers, including the protection of judicial review; the protection of the Human Rights Act 1998, and in particular articles 6 and 8 of the Convention on Human Rights and Fundamental Freedoms; and the assurances given by the Commission that it does not expect to routinely exercise these powers. Moreover, procedures should be put in place to protect the legal rights of those who may be affected by litigation relating to the same matter. All evidence gathered by the Commission must be kept securely. The Commission should have full and effective access to mechanisms to ensure that witnesses and others providing evidence to the Commission are given appropriate protection.

Recommendation 25

Although the House of Lords held that the combination of subsections 69(1), (5), (6) and (8) of the Northern Ireland Act 1998 indicated the conferring on the Commission of general powers to promote the understanding of human rights law and practice and to review its adequacy and effectiveness, to comply with the Paris Principles the mandate and sphere of competence should be clearly set forth in legislation. Amnesty International, therefore, observes that this statutory amendment should be made.

Recommendation 26

Amnesty International calls on the Government to ensure that there is sufficient staffing to fulfil the tasks allotted to the Commission.

Recommendation 27

This recommendation is closely related to recommendations 2 and 4 and the comments made with regard to those recommendations refer.

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