



Peter O'Neill, Editor

## Welcome... Special issue on human rights and detention

**Issues relating to the detention of our fellow human beings are never far away from the headlines and it is no surprise that human rights organisations such as the NIHRC have focused on this area of work.**

People held in detention, whether in prison or other institutions, are particularly vulnerable to breaches of their human rights. The 'closed' nature of such regimes makes it vital that they are open to inspection and investigation by a range of bodies concerned with the care and human rights of those inside. This is all the more crucial because many people who are in prison, especially women prisoners, were vulnerable prior to their detention, through factors such as mental health problems, educational difficulties, drug and alcohol related issues and sexual abuse.

Recently issues such as the call for the closure of Magilligan prison, overcrowding in our prison system, sentencing policies for sex offenders, prisoner remission and deaths in custody have made headline news. Detention under immigration law and the transportation of asylum seekers and immigration detainees to Scotland and England, the rights of people detained in mental health hospitals and the care of older people in residential homes have also all captured local attention.

Because of the special vulnerability of people in detention, the Northern Ireland Human Rights Commission decided to make the human rights of prisoners one of its strategic priorities. Several factors led to the Commission's decision to carry out research participation into the care of women in Maghaberry

Prison. In October 2004 the Commission published *The Hurt Inside: The imprisonment of women and girls in Northern Ireland (Scraton and Moore)*. This highlighted our concerns on the transfer of women to Hydebank Wood and the conditions of detention there. A revised edition was published in July 2005. In 2005 the Prisons Inspectorate and Criminal Justice Inspectorate (NI) reported on an unannounced inspection of Ash House (in Hydebank Wood Young Offenders' Centre). This vindicated the Commission's research and backed its recommendation that Ash House be closed and replaced by a discrete penal institution for women.

The Commission will soon be embarking on research on prevention of suicide in prison; this will draw on work that followed the death in Maghaberry of Annie Kelly. We have also recently begun an investigation into the detention of asylum seekers and people detained under immigration law. These individuals are no longer detained in Northern Ireland but are transported to immigration removal centres in Scotland or England.

Among cases we have taken up, one assisted the mother of a young man who died by suicide in Hydebank Wood; she argued that the inquest into his death was not compliant with the European Convention. The Commission has intervened at the House of Lords, in the cases of *Middleton* (2004) and *Amin* (2003), relating respectively to a suicide and a murder in prison. The Commission funded a case brought by an Ash House prisoner, judicially reviewing the Northern Ireland Prison Service

(NIPS) in relation to strip searching, the lack of in-cell sanitation and alleged harassment by male prisoners. In April 2005, Mr Justice Girvan ruled that the policy of strip searching in Ash House was disproportionate and humiliating. The Commission has also intervened in a recent judicial review of the Prison Service and the DHSSPS regarding provision of services – inside prison and in the community - for prisoners with personality disorders. In response to consultations the Commission has submitted views on issues including prison conditions, sentencing options and the rights of victims of crime. We commented on the Sentencing Framework in Northern Ireland, saying that imprisonment for fine default should be ended and that a strategy should be adopted to reduce the numbers of people in prison.

We advised the 2003 Steele Review that separation was justified on safety grounds. The Commission has met representatives of republican and loyalist prisoners' groups, and visited separated prisoners; their concerns include 'controlled movement' and searching policies.

In 2004 the Commission drew the attention of the Committee against Torture (CAT) to violations of the rights of women in prison and to the fact that the Prison Service had refused us access to the Juvenile Justice Centre at Rathgael, and to Ash House (in Hydebank Wood Young Offenders' Centre) to visit women prisoners. The CAT called for us to be allowed access and expressed its concern at conditions for women.



An Optional Protocol to the Convention against Torture (OP-CAT) has now been ratified by the UK. The NIHRC will hopefully be designated under OP-CAT as one of many bodies with the right to enter and inspect prisons. In any case the Commission, following the NIO review of its powers, will shortly have a right of access to places of detention.

In all of this work we have been conscious of the needs of the victims of crime and the pressures faced by the Prison Service and other agencies in managing detention within limited resources. We are pleased that, in this edition, leading figures in this policy area have contributed articles setting out their vision of how human rights are engaged within their spheres of influence.

As ever we welcome your views on this magazine or indeed any area of our work. Hopefully with talk of devolution in the air, proposed new powers for the Commission and a re-energised focus on the Bill of Rights for Northern Ireland, issues relating to detention can figure more prominently on our political agenda and not just in the media.

**Peter O'Neill,  
Editor**

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## Inspecting for Human Rights



Kit Chivers, Chief Inspector of Criminal Justice in Northern Ireland

**The Criminal Justice Inspectorate (CJI) has a remit to inspect the criminal justice agencies – the police, the prosecution, the prisons and many others – in Northern Ireland.**

The Act which established the Inspectorate did not specify what was meant by ‘inspection’ or what it should cover. But in the context of the Good Friday Agreement it seemed evident that human rights must be one of the criteria.

CJI therefore mainstreamed human rights into its inspection framework. The ‘common core’ of things which CJI always look at when it inspects is: openness and accountability; partnership with other agencies; equality and human rights; learning and improvement; and delivery of results against government objectives (which includes value for money).

This poses a dilemma, however. Some would argue that combining human rights with other aspects of inspection creates a danger that the focus of human rights inspection may be blurred. This argument surfaced recently in the debate around merging the Prisons Inspectorate into a unified criminal justice inspectorate for England and Wales.

The Government’s proposal was defeated in the House of Lords, where the former Chief Inspector of Prisons, Lord Ramsbotham, argued that a single Chief Inspector

covering all aspects of the criminal justice system could not give the rights of prisoners the attention they receive from a dedicated Chief Inspector of Prisons.

The Government’s proposal will have to go back to the Commons, where it may be reversed. At the time of writing we do not know what the outcome will be. But the debate is an interesting one in any event, because there are substantial arguments on both sides.

The case for a unified approach to inspection of the criminal justice system is irrefutable. It is clearly advantageous to be able to look across the system as a whole, to see the inter-relationships and to deny the agencies the opportunity to pass blame from one to another. And a criminal justice inspectorate, like CJI, must pay attention to compliance with human rights legislation.

But there are two problems.

First, inspecting for compliance is different from inspecting for improvement. Secondly, if human rights are just one of the criteria that are being inspected against they may lose the prominence they would have in a human rights-specific report.

The first point needs explanation. Most inspectorates nowadays, including CJI, are primarily inspecting for improvement. That involves working *with* the agencies which are being inspected. The emphasis is not on finding fault but on helping them to improve.

CJI does this by making the entire inspection process interactive. We start by inviting the agency to self-assess against our inspection framework. We then ask other agencies and, where possible, ‘customers’ for their views on the strengths and weaknesses of the agency.

In the light of that evidence Inspectors form hypotheses

“Our purpose is to deliver a criminal justice system which serves and protects the people of Northern Ireland and in which the whole community can have confidence”

### Aims of the Criminal Justice System Northern Ireland

To improve service delivery by enhancing levels of effectiveness, efficiency and co-operation within the criminal justice system.

To make the criminal justice system as open, inclusive and accessible as possible, and promote confidence in the administration of justice.

To work together to help reduce the crime and the fear of crime.

To provide an independent, fair and effective criminal justice for the community.

about the strengths and weaknesses of the agency, which are then tested out in a period of fieldwork. Inspectors then feed back their findings to the agency and there is a further conversation about the proposed recommendations.

If all goes well the result is an agreed report and an agreed action plan by the agency, which can ideally be published together.

Inspection for compliance is different. If you want to check on human rights compliance – particularly in the context of custody – you need to make unannounced as well as announced inspections. The style has to be less co-operative, more confrontational.

It is not easy for a single inspectorate to operate in two different styles, particularly in relation to the same agency. The Prison Service does not need to be inspected only for human rights: there is also a need to examine other aspects of its performance, using the ‘inspecting for improvement’ approach.

The prisons are major users of criminal justice resources, second only to

the police. The way they are managed, the way they account for their work and the way they co-operate with other agencies over the resettlement of offenders are all crucial. Efficiency and value for money are critically important.

Moreover, even from the point of view of the prisoner *managerial* inspection is essential. It is not enough to know what are the shortcomings in the regime. The question is why. Are there not enough staff? Are they inadequately trained or badly deployed? Does the management know what is going on?

So how do you combine confrontational inspection for compliance with co-operative inspection for improvement? CJI cannot claim to have solved the problem yet, but we are working with the Prisons Inspectorate, who assist us in inspecting the prisons in Northern Ireland, to find the best way through.

As for the danger that human rights may be neglected presentationally by a Chief Inspector who has so many other things to report about, I see no difficulty with that in the Northern Ireland context.

This is a small jurisdiction, in which we are all very alive to the importance of human rights, and there is no way CJI’s Inspectors would allow concerns about human rights to be submerged.

This discussion is relevant to the question of whether the Human Rights Commission should join forces with CJI to inspect places of custody (which makes life easier for the inspected organisations) or should conduct its own, separate inspections. So far we have done a bit of each, and that is probably the right answer.

Human rights are coming under increasing pressure as politicians realise that the Human Rights Act sometimes prevents them from doing things which they might otherwise (rightly or wrongly) want to do in order to protect the public. CJI has a clear duty to work alongside the Human Rights Commission to protect and promote them.



## Preventing abuse and ensuring humanity

*'The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.'*

*Optional Protocol to the UN Convention against torture and other cruel inhuman or degrading treatment or punishment, December 2003*

*Inspector to prison chaplain: 'Do you know what the Inspectorate is?'*

*Chaplain (smiling): 'Oh, yes. You're the people who make potted plants appear.'*

*Conversation during inspection of private prison, 2003*



Anne Owers, HM Chief Inspector of Prisons for England & Wales

**T**hose are the extremes of prison inspection. At the highest level, the independent monitoring of places of custody is mandated under international law, as an essential safeguard for the human rights and proper treatment of those the state holds in custody. It can point up or seek to prevent abuse; signal the need for fundamental systemic change. But prisons are total institutions; and at a much more mundane level, inspection can serve to ameliorate some of the dehumanising effects of imprisonment on lives whose every movement and choice is controlled: access to clean and decent clothing, showers, phones - and even greenery.

The prisons inspectorate of England and Wales has existed, in its present form, since 1981. Its statutory remit is to report, to the Home Secretary, on conditions in prisons and the treatment of prisoners - since extended to include conditions and treatment in immigration removal (i.e. detention) centres and short-term holding-facilities. Under the statutory authority of the Chief Inspector of Criminal Justice in Northern Ireland, we also inspect, together with his staff, the three prisons in Northern Ireland, using the same criteria and methodology as in England and Wales.

Unlike most other inspectorates, we do not inspect or report on a

service, its cost-effectiveness or efficiency: it reports on an institution, its culture, decency and safety. Nor are we bound by the standards that the institution, whether publicly or privately run, is contracted to deliver. We inspect by our own criteria, referenced to international human rights standards, which define what constitutes a 'healthy' prison or custodial environment.

We have four tests for a 'healthy' prison: that prisoners, even the most vulnerable, are held safely; that they are treated with respect for their human dignity; that they are able to engage in purposeful activity; and that they are prepared for resettlement into the community. We reach assessments against each of those tests by using detailed criteria, called Expectations, which are published (there are separate volumes for juveniles and for immigration removal centres). They cover all aspects of prison life, from reception to resettlement; including healthcare and education (examined by specialist inspectors).

These tests are fundamental to the human rights of those in detention. Safety can be compromised by violence and intimidation (either from other prisoners or from staff); and the vulnerability of many in prison can lead to self-inflicted deaths and high rates of self-harm (particularly by women). Prisons, operating out of sight of most of society, can

develop negative or even oppressive cultures; and lose sight of basic standards of decency, particularly when they become over-crowded. A lack of activity raises levels of depression, anxiety and sometimes violence; but equally importantly, without the opportunity to acquire skills and make good educational deficits, prisoners will simply vegetate, and come out of prison less able to function in society than before they went in. Finally, the aim of every prison system should be to prepare and support prisoners for a return to the community.

Good prison managers, and prison systems, try to ensure that these things happen: and indeed they cannot happen without the goodwill, and the day-to-day hard work, of those running and working in prisons. But independent inspection is a key part of human rights protection. It opens up those closed institutions to the public gaze, and offers a view from outside the prison and the service. Sometimes it challenges embedded practice, sometimes it commends and tries to spread good practice. Good prison governors welcome inspection; and, however good the governor, I have never yet been on an inspection where a governor did not find out something that he or she did not know was happening, or not happening.

In an overcrowded prison system, with limited

resources, inspection sometimes demands more than can currently be achieved. For example, in England and Wales, we often criticise prisons where two men are held in a small cell meant for one, where they eat their meals in full view of an unscreened toilet. Prison staff and managers do not want to run prisons like that, but they have no choice. However, if an inspectorate begins to accept this as normal, it can all too easily become normative.

It was proposed this year that the prisons inspectorate merge with other criminal justice inspectorates. That proposal has now been dropped, I believe rightly. It is important that our work

meshes and engages with other relevant inspectorates: probation, health, education and sometimes the police and the courts. We already work jointly with those partners, and plan to do more, particularly as the offender management system across prisons and probation begins to operate in England and Wales. But it is important that we do so from a clear and sometimes different focus. Our task is to inspect and report, in detail and with expertise, on the treatment and conditions of those detained by the state. We are part of a system for preventing abuse, and ensuring humanity: the two fundamentals of human rights protection.



## The Northern Ireland Prison Service and Human Rights



Robin Masefield, Director General Northern Ireland Prison Service

**The Patten Commission was very clear that human rights should be at the heart of effective policing. The PSNI has made immense progress towards that end.**

Is the Prison Service on a similar journey? What progress has it made, and will it ever reach its destination?

These are crucial questions that I want to try to answer in this article.

In 1999, ahead of the coming into force of the Human Rights Act, the Prison Service adopted a new set of core values. Two were:

- "Upholding prisoners' human rights .....
- demonstrating a commitment to fairness, equality and respect for each other and those we are in contact with."

Have we lived up to those values?

I'll be honest - we have struggled to do so. I do not want to make excuses, but these are some of the factors that have slowed progress:

- competing priorities and pressures, including the dramatic growth in the prisoner population from a low point of just over 800 in early 2001 to some 1500 now;
- material constraints in areas such as prisoner accommodation or in

resource terms; and - like many others -

- organisationally, our understanding of our human rights obligations is still evolving.

So, what actions can we point to so far? The list does contain some significant items:

- excellent training packages for both existing and new staff on human rights in the custodial context; these have previously won plaudits from both the Human Rights Commission and the Justice Oversight Commissioner.
- with gathering momentum, we have begun to view our existing and new policies through the prism of human rights; for example, our updated use of force policy.
- we are upgrading our accommodation on a prioritised basis; for example the female prisoners moved this summer to a newly-refurbished house block.

It is inevitably hard for the Service to obtain genuinely additional resources for this work. We are currently appointing our first full-time human rights specialist. A needs analysis will be an early priority. And, before much longer, we expect to receive the guidance from the Attorney-General, under section 8 of the Justice (NI) Act 2004, on the International Human Rights Standards and Instruments to which the Service (and indeed the wider criminal justice system) should have regard.

We are determined to move forward, but it cannot be done overnight. To illustrate practically, I do not believe we can fully demonstrate respect and implement the decency agenda, given the current extent to which prisoners are obliged to share a cell designed to hold only one.

We are nevertheless resolute in striving to that goal.

Here is another tangible step: in the New Year, we will be piloting the University of Ulster's Future Ways Initiative to explore how prison staff can contribute to the good relations duty under section 75 of the Northern Ireland Act 1998 across the diverse prisoner population. Both Future Ways and a sister project with Community Dialogue, working with prisoners, will directly address the core value of upholding prisoners' human rights and working with them as individuals.

This emphasis on human rights fits directly into wider themes as well. The Chief Inspector of Prisons has recently reissued a third edition of her Expectations baselines which is focused on creating healthy prisons. This covers four critical areas:

- **safer custody**
- **respect**
- **purposeful activity**
- **resettlement**

As I have said before, human rights have limited value in the abstract. There is added value for us if they reinforce the Service's growing recognition of the need to be more proactive in the related areas of equality, equity monitoring and diversity.

The Criminal Justice Review published in 2000, in the chapter on Human Rights and Guiding Principles, made clear that a primary task was the development of a concerted and proactive strategy for securing a reflective workforce in all parts of the system.

For a number of years the Prison Service did not run large-scale recruitment campaigns. With the dramatic increase in prisoner numbers, that

position is changing. There is no legislative requirement on our Service to recruit on a 50:50 basis, but we are determined to do all we can to attract a range of applicants more reflective of today's society. It is vitally important that sections of our community who may not have considered a career in the Prison Service should now do so.

For understandable reasons, for many years the Prison Service did not seek greater transparency. That is now changing. The Service is now subject to inspection and assessment from a considerable number of external bodies, and there is the Prisoner Ombudsman. We have become better in recognising what we can gain from exchanges, and partnership where appropriate, with external scrutiny including engagement with the Human Rights Commission.

The journey is not complete - we remain a Service in transition. And where we have to prioritise, sometimes for reasons outside our control, it will

inevitably take longer than we would wish.

But there can be no doubting the Service's determination to demonstrate ever more directly our commitment to human rights.

However that is not always the last word. The Service's statement of purpose rightly emphasises our role in public protection. There can be occasions when the rights or at least aspirations of a prisoner on release may appear to conflict with those of the community. Ultimately it is for the courts to decide in individual cases, but increasingly the Service is involved in very difficult judgements based on our best assessment of the risk posed to wider society. This too is an evolving area where sometimes only hindsight can show if we made the correct assessment.

The Human Rights Commission has a valuable role to play here too, in helping to explain these issues to a public that might otherwise take its lead from tabloid headlines.



## Captive Customers in Care?

Virginia McVea, NIHRC Caseworker

**T**alk about detention to most people and you conjure up images of prisoners and detention cells, however, increasingly the Commission is receiving calls of concern from the relatives of those in forms of residential care, people who are actually described as living in 'homes' not detention facilities.

Indeed, The Office of Fair Trading used the phrase 'captive customers' in their 2003 report into residential care observing that:

*"Residents and prospective new residents of care homes can be particularly vulnerable, especially as they are often frail and suffer ill health. The initial commitment to choice of a care home may also have to be made hurriedly and at a time of great stress".*

The new Regulation and Quality Improvement Authority has taken over responsibility for the oversight of residential homes and has just published guidelines on Quality Standards which refer to an expectation that residential homes will be able to demonstrate that they are

*"...committed to human rights, as identified in human rights legislation and United Nations Conventions, and to other Government policies aimed at tackling poverty, social need and the promotion of social inclusion"<sup>1</sup>*

At the root of complaints coming to the Commission is often the issue of personal autonomy and European Convention article 8 rights to a private and family life, which the choice of form and location of care is engaged with. The Commission is concerned about the basis upon which such decisions around location of care packages are made and, anecdotally, there is evidence that people are spending time in care settings against their will purely for financial cost reasons. Recent decisions around the application of article 8 to health and social care have stated that this is not a proper basis on which to make such decision<sup>2</sup>.

That said, all problems are not necessarily solved by leaving individuals to live at home and the Commission has recently addressed concerns in relation to care packages in the home when external agencies for example fail to meet the standards expected. The Commission has found blanket bans existing in care homes relating to lifting patients and care residents in and out of beds, despite the decision against East Sussex County Council in 2003.<sup>3</sup> In that case about sisters with profound physical and learning disabilities the court ruled that:

*"The concept of human dignity may be the same as ever, but the practical standards which require to be met are not. Changes in social standards demand better provision for the disabled if their human dignity is not to be impaired"<sup>4</sup>*

The court observed that

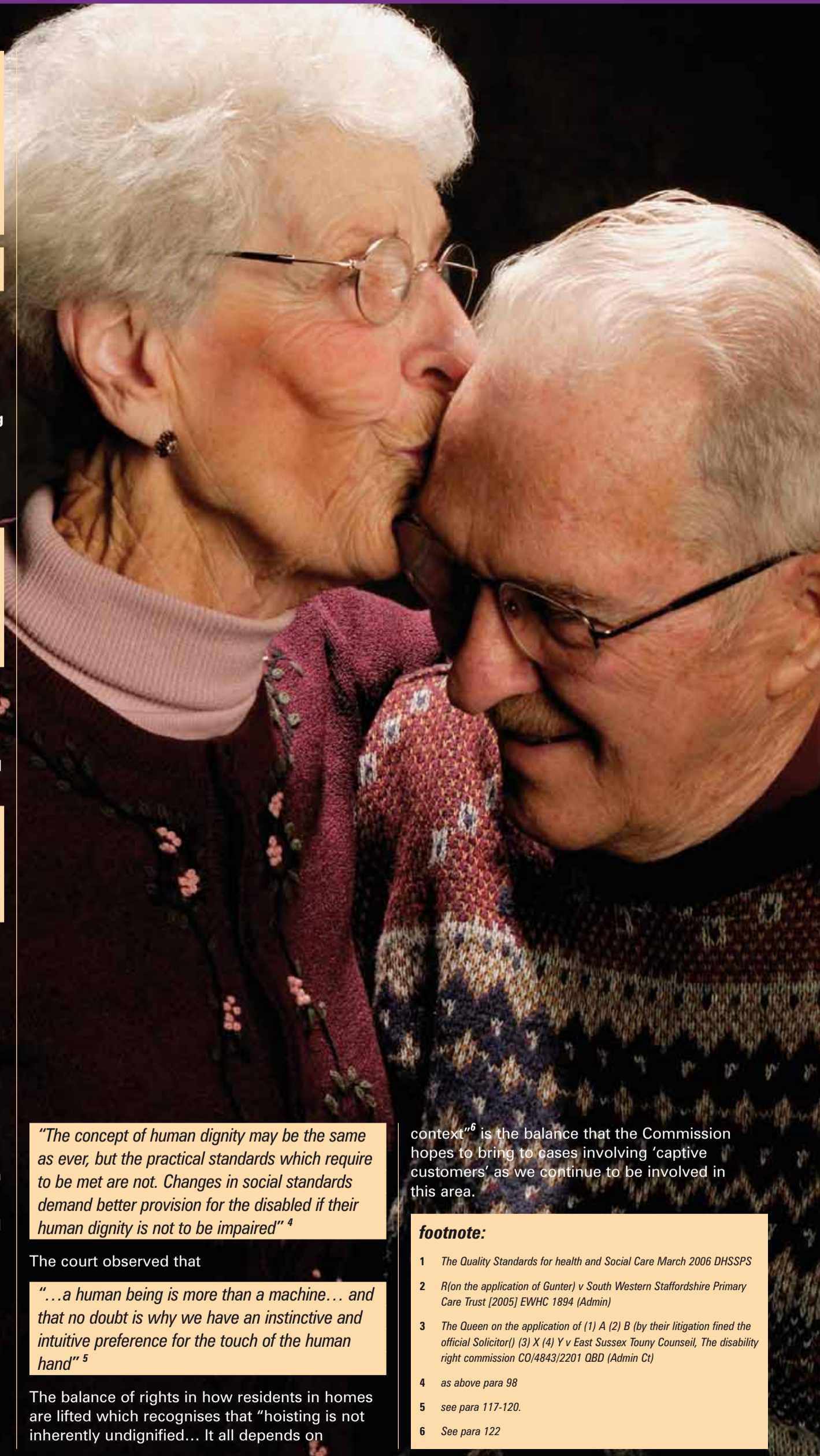
*"...a human being is more than a machine... and that no doubt is why we have an instinctive and intuitive preference for the touch of the human hand"<sup>5</sup>*

The balance of rights in how residents in homes are lifted which recognises that "hoisting is not inherently undignified... It all depends on

context"<sup>6</sup> is the balance that the Commission hopes to bring to cases involving 'captive customers' as we continue to be involved in this area.

### footnote:

- 1 The Quality Standards for health and Social Care March 2006 DHSSPS
- 2 R(on the application of Gunter) v South Western Staffordshire Primary Care Trust [2005] EWHC 1894 (Admin)
- 3 The Queen on the application of (1) A (2) B (by their litigation friend the official Solicitor) (3) X (4) Y v East Sussex County Council, The disability right commission CO/4843/2201 QBD (Admin Ct)
- 4 as above para 98
- 5 see para 117-120.
- 6 See para 122



## 'Uncuffing the Prisoner Ombudsman!'



Brian Coulter, Prisoner Ombudsman for Northern Ireland

**A**mong the most arresting descriptions of the prison environment I have heard used is that it is a toxic environment. I believe that this description is intended to suggest that prisons can be toxic both to prisoners and to those who work with them.

My experience as Prisoner Ombudsman has confirmed, consistent with evidence elsewhere on prisoner profiles, that Northern Ireland's prisons are largely populated by those who

*"... were on the margins long before they reached prison."* (Owers: 2003).

The extraordinary prevalence of illiteracy, mental disorder, substance abuse and social exclusion generally among prisoners is well documented. More disturbing still is the prospect that prisoners risk being more marginalised following or perhaps as a result of their imprisonment due to damaged family and community links or problems in securing jobs, housing or appropriate support.

The Northern Ireland Prison Service formally acknowledges the need to uphold human rights for prisoners in its Statement of Purpose commitment to 'keeping in secure safe and **humane** custody those committed by the courts' (NI Prison Service: 2006). This is made more explicit in its Value Statement which speaks of 'Upholding prisoners' human rights'. (NI Prison Service: 2006). The Prison Service intended to be overseen and supported in its deliverance of such objectives by, among others, the Northern Ireland Criminal Justice Inspectorate, the Northern Ireland Human Rights Commission, the Independent Monitoring Boards and by myself as Prisoner Ombudsman.

So what contribution am I able to make to the achievement of human rights for prisoners since by definition an Ombudsman must be independent in essence and impartial in conduct? I am not appointed as an advocate for prisoners but am concerned with establishing facts, with establishing truth, with identifying maladministration and with promoting service improvement. This is done through robust scrutiny of Prison Service policy and practice in the form of individual or thematic investigations. The standards against which I evaluate evidence are embedded in international and national human rights instruments as well as Prison legislation, Prison Rules and policy, Governors Orders and an array of professional and good practice standards.

If our prisons to begin with are toxic environments and historically are closed institutions populated by marginalised, excluded people, what must the Prison Service do to be human rights compliant? It must relentlessly and creatively strive to redress the marginalisation of prisoners within its prisons and to optimise their resettlement plans in preparation for their reintegration to their communities. Much good work is being done to this end though the tendency is for the default imperative to secure prisoners containment, exacerbated by our history of violence directed at prison staff to compromise such efforts. Crucial also to the success of such efforts is that the Prison Service, conjointly with other actors in the Criminal Justice System, move progressively beyond observance of protective rights for prisoners such as identified in the UN Rules for the Treatment of Prisoners to positive rights outlined in the UN Basic Principles for the Treatment of Prisoners (1990) which expand upon the original UN requirement that 'the treatment of prisoners should emphasise not their exclusion from the community but their continuing part in it' (UN Rules for Treatment of Prisoners: 1955). Gearty espouses the importance of positively embracing the idea of human rights. He states ...

*"The idea of human rights is a radical emancipatory one. It should always be on the side of the underdog, perpetually trying to force an invisible individual or group of individuals into public view, giving them a language with which to shout for attention ..."* (Gearty: 2005)

I consider that I can and should, as Prisoner Ombudsman, using my unfettered access to prison records, establishments and personnel, make a contribution to giving prisoners the 'language' they need to address maladministration and to redress the invisibility which arises from public, or sometimes political indifference and in some cases outright animus. Examples of how I and my Team are doing this can be found in my first Annual Report. ([www.prisonerombudsman.gov.uk](http://www.prisonerombudsman.gov.uk))

However, early after my appointment in May 2005 I identified an all too common deficiency in the standing of my Office which impinges negatively on my ability to contribute to prisoners' human rights. The Office of Prisoner Ombudsman has not been placed on the appropriate Statutory footing. The Parliamentary

and Health Services Ombudsman, Ann Abraham, responding to consultation on the proposal for a Prisoner Ombudsman for Northern Ireland, commented ...

*"I also believe that the form of 'Ombudsman' being proposed is not appropriate as the Prisoner Ombudsman would not be sufficiently independent from NIPS for the following two reasons – first the Ombudsman is not to be put on a Statutory footing, which would guarantee his or her independence."* (Abraham: 2004).

Notwithstanding the fact that I have acknowledged the courage displayed by the Northern Ireland Office and the Prison Service Director General in signing up to my appointment I consider that Ann Abraham's objection remains valid. Failure to secure my necessary independence has resulted in limiting my powers to responding to prisoner complaints and to making recommendations, to accepting a Standing Commission to investigate deaths in prison custody and to accepting specific requests for thematic investigations or for reports on special circumstances. I cannot initiate investigations as an Ombudsman should be able to do and my powers to effect change are entirely dependent upon force of argument and moral authority. Furthermore despite the fact that the Director General and his staff have co-operated positively with me it cannot be proper either that my independence and influence should be subject to the quality of relationships between individuals or that my powers should be so constrained.

The impact of this crucial deficit is that I am unable to make the contribution I would wish to the shared goal of 'upholding prisoners' human rights'. It also diminishes my contribution to that 'ultimate human rights issue' the investigation and reporting of deaths in prison custody. My endeavours to assist state compliance with the rightly rigorous investigative requirements of Article 2 of the European Convention on Human Rights are rendered open to challenge on the grounds that I am not sufficiently independent.

I am in discussion with the Northern Ireland Office on this fundamental flaw and the first positive corrective steps have been taken. Included among these is an indication (not a promise) of the possibility of a legislative slot in 2007 to place my Office on the essential Statutory footing.

The present problems of prison overcrowding and outmoded prison estate in a traditionally closed system accentuate the importance of close independent scrutiny. The Northern Ireland Prison Service aspires to be a value driven service notably including 'upholding prisoners' human rights' and in the interests of helping turn this rhetoric into reality, it is time to uncluff the Prisoner Ombudsman. Human Rights have been said to

*"... express an ethical attitude of respect for the concrete other person which points to their link with justice,"* (Douzinas: 1999)

Continued on page 7 ►

and as

**“... a value system for a godless age not requiring ... a belief in anything more than the dignity of each person”. (Klug: 2000)**

Every finding or recommendation that I and my Team make is underpinned by these central propositions concerning the dignity of or respect for each individual and I look forward to the convincing official endorsement of our work which the creation of a Statutory footing for the Office of Prisoner Ombudsman will represent.

*Brian Coulter was appointed first Prisoner Ombudsman for Northern Ireland in May 2005. He works with a small team of investigators investigating prisoner complaints, investigating deaths in prison custody and completing thematic reports relevant to prisoners. He may be contacted at:*

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Email: prisoner.ombudsman@x.gsi.gov.uk*

## References

Abraham, A., 2004. **'Response to the Northern Ireland Prison Service public consultation document' Proposal for a new prisoner complaints system and the creation of a Prisoner Ombudsman** 19th May 2004, [www.ombudsman.org.uk](http://www.ombudsman.org.uk)

Douzinis, C., 1999. **'Justice and Human Rights in Postmodernity**. In: Gearty, C., & Tomkins, A., **'Understanding Human Rights'** London: Mansell, P.P. 115-137

Gearty, C., 2005. **Can Human Rights Survive?** Cambridge. University Press, Cambridge P.157

Klug, F., 2000. **'Values for a Godless Age. The Story of the United Kingdom's New Bill of Rights.'**

Northern Ireland Prison Service., *Statement of Purpose*. [www.niprisonservice.gov.uk](http://www.niprisonservice.gov.uk)

Northern Ireland Prison Service., *Values Statement* – [www.niprisonservice.gov.uk](http://www.niprisonservice.gov.uk)

Owers, A., 2003. **BIHR Human Rights Lecture**. 22 October 2003

*Basic Principles for the Treatment of Prisoners, Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990.*

*Standard Minimum Rules for the Treatment of Prisoners., Adopted by the First United Nations Congress on the Prevention and the Treatment of Offenders. Geneva 1955. Guiding Principles paragraph 61*

*The Prisoner Ombudsman for Northern Ireland., [www.niprisonerombudsman.gov.uk](http://www.niprisonerombudsman.gov.uk)*

## Why write in Prison?

**T**he old Greeks had an adage that became a cliché. 'I think therefore I am.' It was **thought** that defined us, marked us out as human beings and confirmed we existed at all. Difficult to prove, though. For instance, you **think** you have a headache but the chemist doesn't know until the doctor **writes** a prescription or you ask for Anadin. It's through writing (a prescription) and speaking (asking) that action or change happen and it is these skills that really confirm our sense of being alive, these gifts that cure some of the ills that being alive brings with it. Words, then, are really the fundamental building blocks that confirm we exist. So let's scrub the Greek adage. Here's a new one. 'I speak and write, therefore I am.' Words, alone, are certain good.

In the context of prisons, writing and words are the simplest, cheapest, and most fundamental way that a prisoner unlocks the door of what's in his or her head. In the act of reading writing is 'made flesh'; the word – and through the word, the person – comes alive. And this bond between writer

and reader creates a connection. These days there's a lot of fancy words applied to this process: 'rehabilitation' and 're-socialization'. In essence these big words mean something much simpler. Rehabilitation, literally in its Latin sense, means 'gaining new skills' - and it is in using these skills that we reconnect with society. Speaking is virtually one of our first - often our last - act in the world (if we're lucky enough to die in our beds) while writing is a more sophisticated form of speech. I put his argument simply so it can be grasped: words are the *key* to opening doors and connecting. And opening doors and re-connecting, for prisoners, is the long-term goal of prison. If we re-open those doors and the prisoner has not the most fundamental stake or share in society – by which I mean the capacity to speak and write well – then we fail prisoners.

That's why 'speaking' and 'writing' are just about the most important things we teach in prisons. While 'civilised' or 'literate' people do commit crimes, it is also the case that they are *less likely* to commit crimes. To

produce something well 'writ' yourself is also, ironically, often the way to avoid a legal summons or 'writ' being served on you by others.

Here's a little poem written by one prisoner in Magilligan.

### Judgement

*A solitary rabbit  
Chomping the tiny vastness  
Of audacious grass beyond  
my bars  
Reminds me that there is  
no smallness  
Like the prison in the mind.*

The poem reminds us that prison is not only a physical

state that is often 'solitary' and spent behind 'bars' but, essentially, a state of mind; a state of mind that can only be unlocked or open out into that 'vastness' the rabbit, or all of us, sees by the very act of writing. The poem reminds us that, both inside and outside, prisons it is through speaking and writing that we enter, leave and remain in the world. One of the most terrifying prisons imaginable would be one without speech or writing; without these things our central humanity, our freedom and what really makes us human, is lost. If

it is through speech and writing that we really come to exist – then these are also the means by which we recognise and appreciate human dignity; these are what keep us from both mere animal existence or the scrap-heap. And that's why speech and writing are, in prisons, of primary importance.

**John Brown,  
Writer-in-Residence,  
HMP Magilligan and  
Dominic Henry,  
Education Officer  
HMP Magilligan.**



Magilligan Prison

## Building a Human Rights Culture in Northern Ireland

**It was once said that no one ever notices housework except when it is not done. Something similar might apply to human rights – perhaps we do not notice their central importance in our lives until they are absent or have been violated. This is the case whether we are talking about the ongoing agony in Darfur or closer to home in Northern Ireland. And when the political conflict recedes from the headlines of the world’s attention, there remain breaches of human rights that still need addressed. We know that building a culture of rights helps to make a country a better place to live.**

The modern culture of human rights built on treaties, conventions, legislation and case law developments was set out 58 years ago when the values of respect, dignity, freedom and tolerance were enshrined in the Universal Declaration of Human Rights. Each year we celebrate the work of its 56 signatories in Paris on 10th December, 1948 by setting this date aside to mark Human Rights Day. The signatories of the Universal

Declaration came together, after a long and terrible war, to find the principles that would ensure such ruptures between, and indeed within, countries would not happen again. Almost 50 years later, President Mandela made a similar call for countries to ‘make peace with their enemies and not just with their friends’. Fifty years later, the South Africans also showed us how social, economic and cultural rights could sit alongside the political and civil rights of the original 1948 Universal Declaration.

The argument is often made that social and economic rights are less ‘fundamental’, and therefore less important, than civil and political rights. In reality, however, human rights are indivisible and inextricably linked. For example, those who are impoverished or denied the right to education may be in little position to exercise their political rights; those without work or access to decent housing may be denied their right to marry and found a family.

The Commission has worked on a number of social and economic rights in the past year such as the right to access drug treatments for breast cancer

and rheumatoid arthritis. The Commission is also continuing its work in this area through its focus on other health care issues such as patient safety and deaths in hospital. The right to housing has also featured in our work. Sanitation standards in a high rise block of flats and the allocation of high rise flats to families with young children have been raised with those responsible for public housing. The Planning Authority and Housing Executive have also been asked to address the establishment of emergency sites to accommodate the families of Travellers living without mains electricity and clean water. The Commission attended a Planning Appeals hearing on the ‘Killyleagh Wall’ which successfully concluded with a positive agreement between the developer and local residents, part of which was the demolition of the 30 foot wall outside their homes. These are examples of intervention in cases where policies already existed but needed enforcement by the public authorities to ensure their compliance with the Human Rights Act, 1998.

In other cases, the Commission has had to go to court to test the compliance of existing legislation. For example, we have challenged the compatibility of the Mental Health NI Order 1986 with the ECHR and in particular the appropriate mental health treatment of prisoners with personality disorders. The Bamford Review on Mental Health and Learning Disability will have to take these human rights concerns on board in its review of legislation. The Commission has also lodged written submissions at the inquest of a man who died by suicide after his non-admittance to hospital due to the unavailability of psychiatric beds. All of these cases raise important points about human rights compliance and the allocation of scarce resources.

### The Rights and Responsibilities Debate

It was recognised, in 1948, that rights mean nothing if not balanced by responsibilities, both in terms of individuals exercising their rights and governments recognising them. But unlike the government’s responsibilities to enforce human rights, the relationship between the individual’s rights and responsibilities is not a simplistic one. People who breach society’s laws, who have failed in their responsibilities, may lose some rights, such as freedom of movement but as you will see in this Human Rights Review on Detention, no matter how serious their offence, they still retain their right not to be subjected to inhumane treatment or to be given an arbitrary or disproportionate punishment.

Rights also extend to people who are in no position to exercise responsibility. For example

young children or those with a serious disability or illness all retain their right to be treated with respect and to have their need for care met. Indeed, their very inability to exercise any control over, or responsibility for, their circumstances calls for even greater determination to give full protection to their rights. The Commission is currently assisting an applicant pursuing a judicial review on the Housing Executive’s refusal to carry out work to her home relating to her disability. We are also supporting, with the Equality Commission, the progress of the UN Convention on Disability which has this year completed its final drafting stages. If the debate on rights and responsibilities tells us anything, it is that there is an overarching responsibility for people to act in a way that allows other people to enjoy their rights and freedoms and that promotes the common good.

### Detention Issues

From the start the Commission has taken a keen interest in detention and we work on this issue in a variety of ways – through visits by Commissioners to places of detention; through supporting legal cases taken by prisoners or by intervening in relevant cases; commenting on draft laws or policies relating to imprisonment and through research and investigation.

We have also opposed the use of prison for immigration detention in Northern Ireland and are undertaking research on this following the decision of the Home Office to place Northern Ireland detainees in the Dungavel Removal Centre in Scotland. We are currently visiting detention centres in Great Britain to check where individuals from Northern Ireland are being detained, since we have discovered that



Professor Monica McWilliams, Chief Commissioner, NIHRC



detainees from Northern Ireland may not go to Dungavel. We have questioned the conditions of detention, including the detention of asylum applicants and victims of torture. In a recent visit to the Women's Detention Centre in Yarlswood, we noted that 61 children were being detained, many of whose parents were lone mothers, and some were being held for considerable time prior to deportation. We also noted that a number of women who were returning home had been charged for attempting to leave the country on false passports. Following an approximate three months sentence in prison, these women were then further detained in Yarlswood Removal Centre whilst awaiting deportation.

We have researched the rights of children and adults in custody, and are currently carrying out research on prevention of self-harm and suicide in prison. We take as our starting point the wide range of human rights standards covering all aspects of prison life from transportation, reception, health care, legal rights, education, protection from harm, rehabilitation, leaving custody and resettlement. Adopting the four tests of the World Health Organisation to determine whether a custodial environment is healthy, we ask whether prisoners are held in safety; if they are treated with respect and dignity as human beings; if they are able to engage in purposeful activity and if they are prepared for resettlement.

As part of its legal strategy the Commission supported a female prisoner, Karen Carson, in taking a judicial review relating to the routine strip searching and the absence of in-cell sanitation. The judge ruled that the frequent and routine strip searching breached ECHR Article 3 and Article 8 rights.

We have made clear that our concerns are not only about women's treatment in

prison, but also about women being inappropriately placed in custody – including fine defaulters, immigration detainees and women with mental health problems. There is a high proportion of women in prison who are in need of care and not custody. We are also aware that problems in accessing support for women when leaving custody also need to be addressed, especially in terms of mental health care and appropriate accommodation. We are currently in discussions with the Eastern Health Board who take responsibility for prisoners' health care from April 2007. Building a culture of human rights has meant the Commission welcoming this involvement at the start of this planning process.

The Prison Service has now accepted the need for a discrete women's custody unit but has not yet announced how it plans to achieve this. The Human Rights Commission hopes that our research and recommendations will contribute to ensuring that a new women's custody unit will be as human rights compliant as possible and that we can also be involved in this process.

## Current Human Rights Concerns

Human rights do not constitute some argument free zone. In Northern Ireland, there are serious and legitimate debates to be had about the definition of rights, their interpretation and the proper balance between different rights. In the previous edition of the NIHRC Review, I challenged some of the Government's assumptions that human rights concerns were secondary to the public safety issues around counter-terrorism measures. The Commission has commented at both the national and international levels on this subject. At a recent Council of Europe meeting involving National Human Rights Institutions, we were asked along with the Committee on the

Administration of Justice to draw on the Northern Ireland experience which shows how emergency legislation on counter terrorism measures can become a permanent feature of society. We have also made similar submissions to the International Committee of Jurists and to the Joint Committee on Human Rights at Westminster. What is of particular concern is that the recent detention powers and control orders not only infringe human rights but their application solely to Muslim males raises issues of that community's confidence in the justice system.

We have also challenged the Government's efforts to arrange deportation to countries that practice torture on the basis of diplomatic assurances and have sought assurances on Extraordinary Rendition. The concept of 'glorifying terrorism' in the recent legislation on counter terrorism measures also raised freedom of speech issues. Again the Northern Ireland experience highlights the difficulties anticipated in interpreting such concepts legally.

Covert surveillance and the interception of communications are other issues with which Northern Ireland has had long experience. These have now become part of the wider human rights debate on dealing with international terrorism. The accountability mechanisms for intelligence gathering in Northern Ireland, alongside the devolution of policing and justice, will remain a focus of policy attention for some considerable time.

## Death Investigations

The Commission, alongside the Council of Europe Commissioner for Human Rights and other human rights bodies, continues to raise concerns about the inadequacy of death investigations in Northern Ireland, in relation to Article 2 of the ECHR. The issue of collusion by law

enforcement bodies, including involvement in the unlawful deprivation of life, remains an unresolved issue. The Commission's view on the Inquiries Act, set up to investigate this issue, argued that the proposals would not lead to the full truth on alleged collusion. The Commission has recently intervened in a judicial review, on the investigation into Billy Wright's murder, to test the compatibility of the Inquiries Act 2005 with the European Convention on Human Rights.

At the same time, the Commission is also pursuing the issue of full disclosure with the Historical Enquiries Team of the PSNI, the Police Ombudsman's Office and other bodies involved in the investigations of unsolved deaths or unheard inquests. The Commission has also noted that in response to concerns raised by the Families of the Disappeared, the two governments have retained the services of a forensic expert to assist in the possible recovery of bodies but the report on this is now overdue. We have also responded to the proposals on the establishment of a Victims and Survivors Commissioner for Northern Ireland. Dealing with the legacy of the past is now the shared responsibility of a number of bodies and the Commission will work hard to ensure that the Government also prioritises its responsibilities in this area.

## Important Developments

There have been some positive developments in the last year:

- the implementation of Civil Partnerships;
- proposals to reform the law on sexual offences;
- a Commission for Equality and Human Rights in Britain;
- a Human Rights Commission for Scotland;

- the introduction of a smoking ban in public places;
- proposals for a Language Act for Northern Ireland;
- a Prisoner's Ombudsman for Northern Ireland;
- a Forum on a Bill of Rights.

Despite these developments there is much to do. This year major steps should be taken forward on the Bill of Rights work. The Government's proposals are that the Forum, will make its report to this Commission by September 2007. The Commission will then be in a good position to consider its final advice to government on the scope for a Bill of Rights for Northern Ireland.

We remain conscious of these human rights challenges, both at home and abroad. We live in one of the most prosperous countries in the world, yet our health system fails to provide beds for seriously ill mental health patients; Travellers live by the roadside awaiting services and sites that have been long promised; migrant workers are attacked in their own homes; prisons remain overcrowded and detainees are removed to a remote location in Scotland to fight for their right to stay in Northern Ireland. Countless organizations have helped the Commission with these issues and I want to pay tribute to the strength of human rights work that goes on across Northern Ireland. The Commission is to get new legislative powers which will make it stronger and more effective and in November, we were accredited with an 'A' status at the international level which means we can now play our full part at UN meetings with the other National Human Rights Institutions from across the world. I hope you can work with us on these issues and help build a vibrant rights culture in Northern Ireland.

**Monica McWilliams**  
Chief Commissioner

## Mental health

In the following article some of the issues particularly involving those with a learning disability are highlighted by Paschal McKeown of MENCAP, a member of the Human Rights and Equality Working Group and of the steering committee of the Bamford Review.

### Equal Lives

Traditionally, people with a learning disability<sup>1</sup> have been separated out from the rest of the community or lived with their families into adulthood. Most people with a learning disability live with their families and, of course, services should be in place to support such situations, where this is the choice of all concerned.



Christine Eames Commissioner NIHRC and Chair – Human Rights and Equality Group.

Over 25% of people with a learning disability, however, live at home with parents who are over 65 years, with little evidence of futures planning by social services. This not only highlights human rights issues for people with a learning disability but raises concerns that carers are being expected to continue their caring role into their 70s and 80s or until a crisis occurs not because this is what they have chosen to do, but because there is no alternative available.

People with a learning disability are rarely offered a choice about where they live or with whom they live. According to **Equal Lives**<sup>2</sup>, a report produced by the Bamford Review of Mental Health and Learning Disability (NI), around 450 people with a learning disability in Northern Ireland continue to live in a long stay hospital despite having been assessed as being ready to move to a new home in the community, and nearly 1900 people are in some form of residential provision.

Despite being a government priority and learning disability policy since 1994, attempts to resettle people with a learning disability from hospital have been slow and have been hampered by an ongoing failure to adequately resource or champion the development of community based services that are not, in effect, mini-institutions. **Equal Lives** recommended that, on average, 80 people with a learning disability should be resettled from hospital each year so that by June 2011 no one with a learning disability would be living in a hospital. There is anecdotal evidence that health and social services are failing to meet this target and that, once again, Northern Ireland is failing to ensure that people with a learning disability enjoy the most basic of rights.

### Equal Rights for All?

When Professor David Bamford was invited in October 2002 to oversee a Review of the provision of services relating to Mental Health and Learning Disability, he made it clear that fundamental principles of Human Rights and Equality would be central to any work undertaken. Separate Working Groups were formed to address the many different situations and needs the Review had to consider, one of which was the Human Rights and Equality Group. The remit of this Group was two-fold : to consider relative legislative and other requirements and then bring forward a set of recommendations and secondly, within the context of the wider Review, to develop a set of overarching human rights and equality guidelines against which each working committee could test its work.

The Group identified and discussed issues against domestic and international standards of Human Rights and Equality, and in so doing its Report seeks to remove barriers to the exercise of these rights : to help remove stigma and prejudice; to ensure that accessible information is provided and shared, enabling access to services; to acknowledge the importance of the recommendations for carers and users of services and to give protections where necessary. These are presented as 25 recommendations covering Access to Rights; Right to Vote, to Found a Family and to Life; Education Rights; Capacity, Incapacity and Human Rights; Involuntary Detention; Representation at Mental Health Review Tribunals and Advocacy. Advocacy was recognised by the Group as being of fundamental importance to users and carers and formed a large part of our work and contribution to the whole Review. Clinicians, lawyers, practitioners, users and carers all brought their understanding of the needs under discussion to the table. It was for all of us, not just a case of making a contribution, but a learning experience. It is now our hope that resources will be found to implement the recommendations put forward after intensive work and consultation over a prolonged period of time and rightly deserved by all requiring access to these services.

**Lady Christine Eames, Commissioner, NIHRC**

### Equal rights and chances

People with a learning disability are slowly beginning to benefit from the shift taking place towards viewing disabled people as autonomous individuals who should enjoy the same rights, choices and opportunities as other citizens. The central role played by social care and health services in providing additional support so that individuals can exercise their rights and maximise their independence has long been acknowledged, most recently by the Bamford Review. The importance of human rights to the work of the Review was acknowledged through the development of overarching human rights and equality guidelines which informed all its activities and the establishment of a sub-group to look specifically at human rights and equality issues<sup>3</sup>.

The extent of exclusion experienced by people with a learning disability was highlighted in the **Equal Lives**<sup>4</sup> report. It drew attention to the failure of government and public bodies to provide equality of access by people with a learning disability to mainstream services or to promote or protect their rights. **Equal Lives**<sup>5</sup> also identified 5 core values which must underpin policy and service developments:

- **citizenship** – the right of people with a learning disability to be treated as individuals and as equal citizens;
- **social inclusion** – whereby people with a learning disability are valued as citizens, enjoying equal access to mainstream services;
- **empowerment** – supporting people with a learning disability to be in control, to have

their voices heard and to have a say in decisions that affect their lives;

- **working together** – ensuring that people with a learning disability are central to the planning and delivery of services, that the role of families is valued and respected and that all organisations work together to respond to the needs and aspirations of people with a learning disability;
- **individual support** – respecting and taking account of the diversity of strengths, needs and wishes of people with a learning disability, particularly those with complex needs and those who may be vulnerable and require highly individualised supports and expertise.

### Delayed discharge from hospital

People with a learning disability are more likely to experience mental health problems than the rest of the population. Three learning disability hospitals<sup>6</sup> in Northern Ireland currently provide assessment and treatment facilities for people with a learning disability. There are few local, community based services available for people with a learning disability who may have a mental health difficulty or who behave in a way that others find challenging or which cause concerns about the safety of the individual concerned or the safety of others. The lack of community placements has resulted in growing concerns about the numbers of people with a learning disability who have been admitted to hospital for assessment and treatment but are forced to remain in hospital after their period of treatment has ended.

Continued on next page ►

## Bournewood

The Human rights and Equality of Opportunity report from the Bamford Review drew attention to the decision of the European Court regarding the informal detention of a man with autism who was admitted to hospital following an incident in a day centre, who made no attempt to leave hospital.

The European Court overturned an earlier decision by the House of Lords by finding that the informal detention of people without capacity was a “deprivation of liberty”, that the detention was arbitrary and there was an absence of procedural safeguards available to challenge the lawfulness of the detention. It also found that the judicial review process did not constitute an appropriate mechanism to challenge such a decision.

The Bamford Review has recommended that there should be appropriate safeguards defined in legislation for “Bournewood detentions” in accordance with the European Court’s ruling.

## Funding priorities

The Bamford Review recognised that learning disability and mental health services were seriously underfunded. It acknowledged that, if the government is to take seriously its responsibility for promoting and protecting the rights of people with a learning disability or mental health difficulty, then additional funding is needed to resource its recommendations.

Whilst the announcement of the Minister to appoint a champion for both mental health and learning disability is to be welcomed, we wait to see the outcome of the current comprehensive spending review for decisions on government priorities. People with a learning disability have waited for such a long time to be treated fairly, to have their autonomy and dignity respected and to have their contribution to our community valued. They and their families cannot afford to wait another 10 or 15 years for the changes envisaged by the Bamford Review to take place.

**Paschal McKeown, Mencap**

### footnotes:

- 1 *Learning Disability has been defined in Equal Lives, The Bamford Review of Mental Health and Learning Disability, as a significantly reduced ability to understand new or complex information or to learn new skills (impaired intelligence), with a reduced ability to cope independently (impaired social functioning), which started before adulthood with a lasting effect on development.*
- 2 *Equal Lives, The Bamford Review of Mental Health and Learning Disability (Northern Ireland), 2005, DHSSPS, pp60-66. The report sets out recommendations for policy and service development for children, young people, men and women with a learning disability for the next 15 to 20 years.*
- 3 *Human Rights and Equality of Opportunity; The Bamford Review of Mental Health and Learning Disability (Northern Ireland), 2006, DHSSPS*
- 4 *Equal Lives, op cit pp22-33*
- 5 *Ibid pp6-8*
- 6 *Muckamore Abbey Hospital, Longstone Hospital, Lakeview Hospital*

## New powers for the NIHRC

### Paddy Sloan, Chief Executive, NIHRC

**When the Northern Ireland Act 1998 was being drafted, there were some issues still worrying those who had campaigned for the inclusion of a Human Rights Commission, regarding the extent of the powers being provided to it. As a compromise, a clause was added at section 69(2) requiring the Commission to make recommendations to the Secretary of State on the adequacy and effectiveness of its powers, within two years of its commencement. This was duly done, and in February 2001, the Commission submitted a report with 25 recommendations for change. On 29 November 2006, the Justice and Security (NI) Bill was published, in which a series of amendments are proposed, which will address some of the original concerns.**

The Commission is itself a product of the Belfast (Good Friday) Agreement 1998 and its powers and functions have been debated in various inter-governmental fora, with a commitment to change being given at Hillsborough in December 2004

and again in the recent St Andrews Agreement, leading to the publication of the Justice and Security Bill. The original intention, stated in Parliament in the debates on the Northern Ireland Act, was that all public bodies would cooperate fully with the Commission in the exercise of its functions. In fact, this turned out not to be the case, and it proved necessary to resort to the courts in some instances to secure the cooperation needed to undertake investigations. Core problems related to the powers to compel the production of witnesses and documents, and to visit places of detention. The Commission also had to take a case to the House of Lords to establish its power to intervene in the courts.

While the Commission welcomes the introduction of legislation, it is at this stage a qualified welcome. Several of the original recommendations from 2001 have either been introduced through administrative means, or are addressed in the Bill which is to be welcomed. However on preliminary analysis there are others which may require further debate as the Bill proceeds through its various stages. Initial reservations centre on the powers of

investigation and access to places of detention. For example, the investigatory powers will apply only to situations which occur after the commencement of the Bill on 1 January 2008 and appear to have excessive limitations.

Restrictions have also been placed on the power to access places of detention, which is limited to the duration of an investigation.

At the time of writing, the Commission is currently considering the legislation and its implications and will prepare a response in due course, with a view to giving evidence and lobbying for any changes considered necessary as the Bill progresses.



*Paddy Sloan, Chief Executive, NIHRC*

Northern Ireland Act 1998      Parliament  
 powers      Belfast Good Friday Agreement  
 Justice and Security (NI) Bill      legislation

## Still in our care: Protecting children's rights in custody in Northern Ireland

Dr Una Convery and Dr Linda Moore

*"Fell out with most of my family. They didn't talk to me for a while. I felt like nobody wanted me. None of my friends would hardly talk to me because I was in the children's home. ... My dad died when I was 11. ... I just get this big thing of anger inside me and it's coming out bit by bit. A wee bit's coming out at a time, but if I get that worked up it's all going to come out at once. ... She [the psychologist] asked me about my whole life and I don't really like talking about it because there's that much things has happened in my life, between watching my friends die. You know I've actually seen two of my friends die. And then watching one when he was getting knee-capped, getting shot, punishment beat and whatever. I don't like talking about it because I go nuts."*

(young person aged 15, Juvenile Justice Centre)

Our recent publication "Still in Our Care: Protecting children's rights in custody in Northern Ireland" reports on research into the care of children in the Juvenile Justice Centre (JJC) in Bangor, Co Down. The JJC accommodates up to 40 boys and girls, aged 10 to 17 years.

International human rights standards stress that custody for children must be a last resort for the shortest possible time. Still in Our Care found a persistent high level of custodial remand and too many children detained under PACE<sup>1</sup>. There is an over-representation of children from Looked After Care in the JJC. Staff and young people expressed concern:

*"There's a lot of good work in the community, but there's still too many coming into custody that shouldn't. It's a lot about support accommodation."* (Staff)

*"The judge just had me remanded because they can't get me a place."* (young person)

Developments intended to reduce the use of custody, including bail support, should be built on through provision of additional placements and specialist services.

The research found a more child-centred approach than in the former JJC's, evident in terms of physical conditions, policy developments, attitude of staff and management and emphasis on training.

*"The role of care workers changed here. There is a lot more responsibility on each care worker's shoulders. ... I like the change. You get to know the young people better. It makes you want to do more for the young people."* (Staff)



Prison photograph

This was reflected in young people's comments:

*"I thought it was going to be something where you were locked in a cell and you weren't out of it. ... You come in here – you're out; you're doing football."* (young person)

*"Staff [in this house] are friendly. This here's one of the best houses. They took it all [money for a barbecue] out of their own money and bought us the barbecue stuff. All the other houses were complaining and all. Staff just care, that's all it is."* (young person)

Children who had not been to school for months and even years were enthusiastic about the centre school:

*"I'll be doing cartooning, art and design, maths, geography. There's so many classes I haven't done yet. I've done business studies and I've done swimming. I ended up swimming in here and I haven't swum for about three years. ... I thought 'I can't believe I've just done that!'"* (young person)

There remain significant concerns including use of handcuffs for children travelling to court; a security-driven dynamic which impinges on children's privacy and independence. Young people have no freedom to move about the campus unless accompanied by care and security staff. The use of isolation and physical restraint have been significantly reduced over recent years through enhanced staff training. However, some young people expressed their distress at having been restrained or witnessing the restraint of others and staff raised concerns about the safety of the current method:

*"It's not fair ... shouldn't take six people to hold a wee boy down. They got a shield and made his nose bleed. Bent his fingers back."*

*"It's supposed to calm you down, but it makes you more angry."* (young person)

Many problems go well beyond the jurisdiction of the JJC. The quote from the young person at the top of this article demonstrates the complexity of children's problems. Staff commented on of children coming into custody with mental health problems:

*"... young people are coming in now with more mental health issues. Psychologists [in the community] won't touch them with a barge pole."* (Staff)

*"A boy here was on the borderline of psychosis. Everyone else here thought he was just a bad git ... mental illness in young people presents differently. You wouldn't know unless you know the signs to look for."* (Staff)

Many children are released from custody to uncertain, fragile situations. The risks of homelessness for children leaving custody and poor accommodation capacity within Trusts are well documented. Additional specialist accommodation and services are needed.

For many it is not a question of being 'reintegrated' into communities for they were never integrated in the first place.

Early in 2007 a new Juvenile Justice Centre will open on the Rathgael site replacing the existing centre. Human rights Chief Commissioner, Monica McWilliams, has visited the site and commented that "although questioning the wisdom of creating a single custodial facility for children", she was "impressed by the level of thinking that has gone into this project." The Commission will continue to monitor the rights of children in custody - who after all remain children in our care.

footnote: 1. Police and Criminal Evidence (NI) Order

## Commission gains UN speaking rights

**Ciarán Ó Maoláin, Head of Legal Services, Policy and Research, NIHRC**

**T**he high quality of the domestic and international work of the Human Rights Commission has been recognised by its sister bodies from around the world. Following the 8th world conference of national human rights institutions (NHRIs), held in Bolivia in October, the International Co-ordinating Committee of NHRIs upgraded the status of the Northern Ireland Commission to full ("category A") membership.

The decision to upgrade the Commission was warmly welcomed by many of the conference delegates, and reflected their appreciation of the high regard that the Northern Ireland body enjoys on the world stage. It has hosted UN and European conferences, and has contributed extensively to work to develop new national institutions, including five consultative or training visits in the past year. The only reason that the Commission was previously limited to observer status was that it does not have UK-wide jurisdiction. The NIHRC is now the only sub-national agency among the more than 50 "A" institutions.

The importance of the "A" status to the Commission is not so much that it serves as a

quality mark, but that it guarantees access to the United Nations and regional human rights systems. The UN system in particular is having to reform the way it interacts with NHRIs because of the volume of work generated by its many treaty bodies. In future only "A" accredited institutions will be allowed speaking rights at sessions of the new Human Rights Council, and this will probably also be applied in the committees that oversee specialist treaties on, for example, racial discrimination, torture, women's rights and so on. The Northern Ireland Human Rights Commission has in the past been able to work well with the treaty bodies, but the enhanced status should ensure that it is even more effective.

The International Co-ordinating Committee (ICC), which operates with the support of the UN High Commissioner for Human Rights, decided that the NIHRC complied fully with the UN guidelines for NHRIs, the so-called Paris Principles, in almost every respect except its sub-national scope. It also took account of the proposals to give the Commission new powers to enter places of detention, to compel the production of evidence, and to take cases under the Human Rights Act without the need to act on behalf of a specific 'victim'.

Because there is not and probably will never be a UK-wide human rights agency, the ICC decided that it could award the NIHRC full recognition as the UK representative. The establishment of a

Commission on Equality and Human Rights in Great Britain, and the recent passage of the Scottish Parliament's Bill to create a Human Rights Commission for Scotland, will allow the agencies to work together on domestic issues, but the new bodies will have to apply in their own right to the International Co-ordinating Committee if they wish to work in the same way as the NIHRC on international issues. If the new agencies meet the Paris Principles benchmarks, the NIHRC will work with them in the UN and other international systems, and will share representation in the NHRI networks where there will only be one UK vote. The NIHRC already co-ordinates with the Irish Human Rights Commission, which is also an "A" accredited institution.



*Ciarán Ó Maoláin, Head of Legal Services, Policy and Research*

## UN General Assembly endorses Arms Control Resolution

**Clara Di Dio, NIHRC intern, summer 2006**

**O**n 27 October 2006, the UN General Assembly endorsed a resolution calling for the establishment of an Arms Trade Treaty. An overwhelming majority of governments (139) voted in favour of the resolution while 24 countries abstained; the United States, the world's largest supplier of small arms, was the only country that opposed the resolution. The resolution draws on the principles of the 1997 Nobel Peace Laureates' International Code of Conduct on Arms Transfers proposed by Dr. Oscar Arias and comes after the three years campaign launched by Amnesty International, Oxfam International and International Action Network on Small Arms (IANSA), for a global Arms Trade Treaty to bring the trade in weapons under control.

The human cost of an uncontrolled arms trade is huge. Currently there are around 639 million small arms and light weapons in the world and every year eight million more are produced;

such arms fuels violent conflicts, crime, and domestic violence, perpetuates poverty, and increases State repression and human rights abuses.

"This massive vote to develop a global Arms Trade Treaty is an historic opportunity for governments to tackle the scourge of irresponsible and immoral arms transfers. Any credible treaty must outlaw those transfers, which fuel the systematic murder, rape, torture and expulsion of thousands of people," said Kate Gilmore, Amnesty International's Executive Deputy Secretary General. At the moment, the arms trade is out of control and the widespread availability of weapons causes the death of a person every minute according to Jeremy Hobbs, Director of Oxfam International, "since the Control Arms campaign began three years ago, an estimated one million people have been killed by conventional weapons". Reducing the availability and use of arms has become particularly important in the developing world where a person is twice as likely to die from arms violence as a person in the industrialized world.



The resolution commits the United Nations to set up a Group of Governmental Experts to look at the feasibility, scope and parameters of the treaty, which must report back to the first committee by the fall of 2008. The ultimate goal is the adoption of an international treaty establishing common international standards for the export, import and transfer of conventional arms and providing an operative mechanism for their application to the arms trade. The Arms Trade Treaty should provide a firm and unambiguous international mechanism to prohibit the transfer of weapons to places where they are likely to increase human rights abuses, or fuel existing conflicts. Such a treaty would not hinder responsible trade, but it would prevent the illicit arms trade and its serious humanitarian and economic consequences.

This resolution is just a first step, but it is also a unique opportunity for the UN to create an effective treaty that will finally bring the arms trade under control.

## Bringing home equality: CEDAW as a tool for change

**Peter O'Neill, Head of Information, Education and Development, NIHRC**

**A**s it bases all its work on the human rights standards – including treaty obligations and non-binding recommendations and standards ('soft law') - the NIHRC engages frequently with the main international and regional systems. As part of this work, the Commission is delivering a new training programme on the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) consisting of a series of half-day workshops for those concerned with women's rights and equality.

The aim of the training series is to raise awareness about:

- What CEDAW is
- How the Convention addresses women's rights as human rights, and gender equality issues,
- How the Convention works
- And how you and your organisation can be involved.

The awareness raising session will be of interest to women's groups (including community, training, and support groups for women) and to groups and organisations concerned about women's rights and gender equality.

Time 9.30 a.m. to 13:30 p.m. (lunch included)

### Dates and venues

Friday January 19	Temple Court, 39 North Street, Belfast
Monday, January 22	Women's Resource Centre, 7 Downshire Place, Belfast Road, Newry, County Down
Friday, January 26	South Tyrone Empowerment Programme, Enterprise Park, 2 Coalisland Road, Dungannon, County Tyrone
Friday, February 2	St. Columb's Park House, 4 Limavady Road, Derry/Londonderry

CEDAW is the Convention on the Elimination of All Forms of Discrimination Against Women: a comprehensive, legally binding international instrument and was drawn up by the United Nations in 1979. Both the UK and the Republic of Ireland have ratified the agreement. CEDAW touches on all sorts of areas that affect women's daily lives: health care, discrimination, employment, equal pay, childcare, violence and abuse, and other issues.

Every four years governments have to make a report on how they have carried out their obligations under the Convention to a UN committee. The UK Government is due to report

in early 2008 and the Commission is keen to start the process of raising awareness of the importance of this instrument and encourage NGOs to submit evidence to this examination.

Many non-governmental organisations write their own 'shadow' reports to the committee

as well. Shadow reports can hold governments to account and help change policies.

If your organisation is concerned with women's rights or gender equality, you can contribute to this process during 2007.

For further information, or to register for the courses, please contact:

Roisin Carlin, NIHRC at telephone (028) 9024 3987, textphone (028) 9024 9066, or email [Roisin.Carlin@nihrc.org](mailto:Roisin.Carlin@nihrc.org) or [information@nihrc.org](mailto:information@nihrc.org)

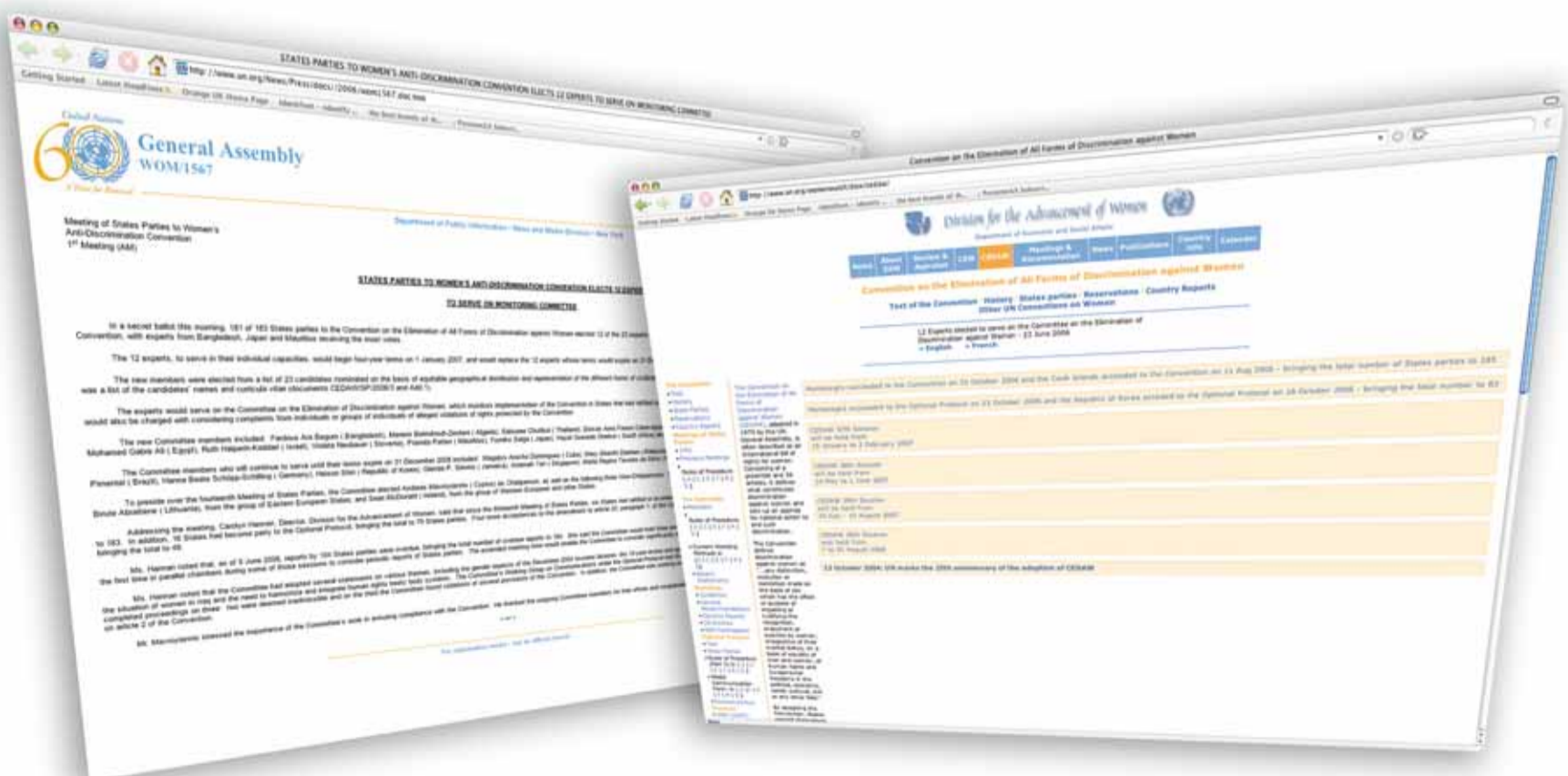
This information is also on our website [www.nihrc.org](http://www.nihrc.org)

'CEDAW doesn't do anything for you unless you use it.'

Shanti Dairiam, CEDAW Committee member, Human Rights Activist, Malaysia



*Peter O'Neill, Head of Information, Education and Development*



## Welcome for the Bill of Rights Forum

**T**he Northern Ireland Human Rights Commission (the Commission) was established on 1 March 1999 as a result of the Belfast (Good Friday) Agreement 1998. Its core functions, the protection and promotion of human rights in Northern Ireland, are detailed in sections 69 and 70 and Schedule 7 of the governing legislation, the Northern Ireland Act 1998.

At section 69(7) of that Act, the Commission is required to provide, to the Secretary of State for Northern Ireland, advice on the scope for a Bill of Rights:

s69 (7) *The Secretary of State shall request the Commission to provide advice of the kind referred to in paragraph 4 of the Human Rights section of the Belfast Agreement.*

The relevant passage in the Agreement provides as follows:

*The new Northern Ireland Human Rights Commission [...] will be invited to consult and to advise on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and - taken together with the ECHR - to constitute a Bill of Rights for Northern Ireland. Among the issues for consideration by the Commission will be:*

- *the formulation of a general obligation on government and public bodies fully to respect, on the basis of equality of treatment, the identity and ethos of both communities in Northern Ireland; and*

- *a clear formulation of the rights not to be discriminated against and to equality of opportunity in both the public and private sectors.*

The Commission has since its inception regarded the formulation of this advice as one of its highest priorities. It is clear from the particular phrase in the Agreement, "to consult and to advise", that prior consultation is an essential element of the exercise, and that responsibility for formulating the advice lies with the Commission. The Commission needs to ensure that consultation with the general public, with political parties and with civil society organisations, is properly conducted, extensive and inclusive, and at the same time, that it does not in any way compromise the independence of the Commission derived from its statutory mandate.

On 1 March 2000, the Commission launched a major consultation process on a Bill of Rights, which has involved several major public events, a large scale advertising campaign, capacity building exercises including 'training for trainers', and direct engagement with dozens of community organisations. Literally thousands of people, including children and those vulnerable groups whose rights are in most need of protection, have been engaged in meetings, conferences and seminars, submitting hundreds of responses and other correspondence throughout this process. While acknowledging and paying due regard to the submissions received during the consultation to date, and to the work already done, Commissioners are committed to taking their own minds and fulfilling their statutory obligation to formulate their advice independently.

The Commission has always acknowledged the desirability of securing the greatest possible

degree of popular and political support for its proposals prior to submitting final advice to the Secretary of State. To this end, the idea of a round table, or forum, of political parties and civil society was proposed by the Commission, and the UK and Irish Governments confirmed their support for this proposal in the Joint Declaration of April 2003. Since then, the Commission, amongst others, has actively encouraged the establishment of the Forum. It has engaged constructively with political parties and civil society groups, including regular liaison with the Human Rights Consortium and a meeting on 5 October 2006 with what was then the Preparation for Government Committee. The Commission welcomed the agreement at St Andrews to establish a Forum, with its inaugural meeting in December 2006.

It does need to be acknowledged however, that having discussed this initiative for some three years, it is unfortunate that the implementation was condensed into such a short period of time.

Given the fact that not all parties were engaged in the discussions on a Bill of Rights round table leading up to the Joint Declaration in 2003, it is important that the Forum be inclusive of all Assembly parties. The representation of wider civil society, we hope, will be equally inclusive and reflect the obligations described in section 75 of the Northern Ireland Act 1998.

Conscious of its mandate through the Belfast (Good Friday) Agreement 1998 and the Northern Ireland Act 1998, the Commission looks forward to receiving the report of the Forum which will be of great value in informing the Commission's final advice on a Bill of Rights for Northern Ireland to the Secretary of State. The outcome of the deliberations of the Forum should be of great benefit to this process.

In conclusion, the Commission wishes the Forum every success and assures its Chairperson and members of the fullest cooperation possible, while protecting a necessary independence from the process. The Commission looks forward to receiving the agreed conclusions of the Forum in due course.

## Message of support from Louise Arbour

**I**t is an honour and a pleasure to lend my support to the annual conference of the Northern Ireland Human Rights Commission, an institution whose commitment to the values and principles central to the human rights community is well known.

This year the conference is particularly important because it proposes to do something that many of us take for granted: to explore what human rights are and specifically, what we mean when we refer to "building a culture of human rights." The last 60 years have seen undeniable progress in human rights at the normative and institutional levels. And the reach of human rights protection continues to expand, as we set new standards that recognize the entitlements of individuals that were vulnerable to abuse or neglect in specific ways, such as persons with disabilities and indigenous peoples.

Yet rights violations persist to a greater or lesser degree in all countries, and there is far from a common understanding of what a "human rights culture" is. Even today, for example, economic, social and cultural rights are still given short shrift by some governments and institutions. Part of

our work is to serve as a corrective to this narrow view of human rights, with initiatives like this conference and my own office's campaign for Human Rights Day 2006, focusing on the right to be free from poverty and want.

I am aware of the recent discussions concerning further powers to be granted to your Commission in January 2008. This should be welcomed. Institutions are not static and we learn more and more about the positive impact national human rights institutions can have. Their strengthening should be encouraged. Strong unfettered powers of investigation are critical as are those relating to having access to places of detention without any prior consent. Indeed many lives depend on such powers for an independent institution.

Your Commission has recently undertaken a number of important studies which can only contribute to an enhanced culture of human rights. Many of these relate to the difficult work of protection such as the treatment of children and young people in juvenile detention centres; the investigation into the treatment of women and girls in prison in Northern Ireland;

and the importance of the State conducting investigations in accordance with international procedures of any death caused by lethal force by security forces in Northern Ireland. The work you and others are doing in relation to a Bill of Rights is essential for the people of Northern Ireland.

I wish you all success in your deliberations and look forward to the results of the proceedings.

**Louise Arbour, United Nations High Commissioner for Human Rights, 7 December 2006**



## Interview with Kevin McLaughlin, NIHRC Commissioner

**K**evin McLaughlin is a freelance trainer and consultant on disability issues. He currently sits as a user/community representative on the Mid-Ulster Local Health and Social Care Group. Kevin is also a member of the Ofcom Consumer Panel and the Civic Forum.

A graduate of the University of Ulster and Queen's University Belfast, he also holds an MA in Disability Studies from Leeds University.

Kevin was appointed as a part-time member of the NIHRC in December 2001 and re-appointed to serve another 3 year term from the 1st December 2004.

### *What prompted you to first apply to be a Commissioner?*

I had initially applied to join the Commission when it was first being established because I felt then, and still do, that it is vitally important that Northern Ireland should have a Human Rights Commission and a Bill of Rights. Although I had always been interested in human rights since my school days, that interest became more acute and focussed when I was asked to carry out some research into the needs of disabled people in North and West Belfast in the late 1980s. That work led me to becoming actively involved in campaigning for the rights of disabled people and to working in the disability sector.

### *Given your length of time as a member of the Commission, what have been the most important developments in its work?*

One aspect of the Commission's work that has always made me proud to be a member is how it tackles issues that would otherwise not be looked at. For example the work the Commission carried out on Transgender and Gay, Bisexual

and Lesbian issues brought public attention to the daily discrimination people within that community face. I also think the investigation work carried out by the NIHRC into women in prison, children and young people in detention, deaths in hospital and mental health, to name but a few, has added to the high standing the Commission has both here and internationally.

### *In your work on disability issues, how do you see the relationship between human rights and equality?*

Obviously working in the disability sector most of my primary focus has been on the rights of disabled people and I am encouraged by the use of the Human Rights Act to protect and promote greater understanding among statutory providers of the need to ensure their policies, practices and procedures meet certain standards. The Disability Discrimination Act 1995, which came about through campaigning by disabled people, has also had an impact in relation to employment and the provision of goods and services and has led to the realization that disabled people have a very positive role to play in society.

### *How do you think the new UN Convention on the Rights of Disabled People will make a difference to the lives of disabled people in Northern Ireland?*

I was fortunate enough to attend the United Nations Ad Hoc working group on developing a Convention on promoting and protecting the rights of disabled people in 2003 and was impressed at how disabled people were being given the chance to input to the debate around this issue. From this event a working group was established which not only included country representatives, NGOs, disabled people, and for the first time ever a member of a National Human Rights Institution. That work has now been

completed and the United Nations have now adopted the new Convention on the Rights of Disabled People. This means that the rights of the 600 million disabled people throughout the world will now be recognised in law and that countries will need to work on incorporating those rights into their own domestic legislation.



Kevin McLaughlin, NIHRC Commissioner

### *As an activist in the disability sector, what aspect of government policy would you most like to see changed?*

For a number of years in Northern Ireland the statutory sector has recognized the need to not only consult with local communities but to actively encourage users to get involved in the decision making process. That was evident in the work of the Local Health and Social Care Groups throughout Northern Ireland and the benefit it brought to those local areas. I am extremely disappointed that in the changes coming about through the Review of Public Administration in relation to health services that there is scant regard paid to the voice of the users and I would urge that this be re-considered.

### *The Bamford Review of Mental Health and Learning Disability has been widely welcomed. How do you think it will make a difference in your life and the lives of other disabled people?*

I feel that the invaluable work carried out by my fellow commissioner, Lady Christine Eames, in chairing the working group which produced "Human Rights and Equality of Opportunity" as part of the Bamford Review of Mental Health and Learning Disability will have long term benefits for people with mental health problems. The introduction of a new legal framework to address issues of involuntary detention along with the inclusion of policies that deal with welfare provision, medical treatment and patient's affairs are all to be welcomed. However, what I would most like to see put in place is the introduction of a statutory right to independent advocacy support.

