

FORUM FOR PEACE & RECONCILIATION

**CREATION OF A HUMAN
RIGHTS ENVIRONMENT**

**BRITAIN & IRELAND
HUMAN RIGHTS CENTRE**

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The Secretary-General,
Forum for Peace and Reconciliation.
Dublin Castle,
DUBLIN 2
Ireland

Dear Secretary-General,

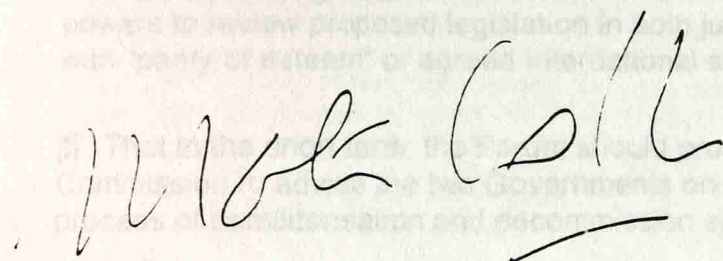
I have pleasure in enclosing a submission on behalf of the Britain & Ireland Human Rights Centre to the Forum for Peace and Reconciliation.

As a London-based Non-Governmental Organisation concerned to advance the protection of human rights in the context of the unresolved conflict in Northern Ireland, we welcome the establishment of the Forum and appreciate the decision to invite representations from the wider community of interest in Britain and around the world.

The Irish in Britain have watched recent political developments in Ireland with a new sense of hope and expectation. We have not been immune from the suffering of the past twenty-five years. As part of the general population, the Irish community has suffered its share - both of the human casualties of armed conflict and of the financial burden borne by the ordinary tax payer. As a community, the Irish have experienced the pain of wrongful convictions and miscarriages of justice. We have been labelled a "suspect community" and experienced the fear created by emergency legislation. We have felt the stigma of discrimination and prejudice.

The Forum for Peace and Reconciliation has set its sights high. We wish you every success in your deliberations,

Yours Faithfully,



Martin Collins,
Secretary

Submission to the Forum for Peace & Reconciliation

A SUMMARY

The Britain & Ireland Human Rights Centre submission argues:

- ☐ That the creation of a human rights environment is a prime objective of the Forum. It is both a precondition and fundamental requirement of a balanced constitutional settlement.
- ☐ That the immediate task should be to identify a programme of measures required to complete the process of confidence-building and create a framework for conflict-resolution.
- ☐ That required reforms can be considered most fruitfully in the context of a programme of structural change throughout the island of Ireland - an invitation to shape and share a millennial vision for a new, modern Ireland of the 21st century.
- ☐ That the principal human rights instruments of the United Nations provide a template that is tailor-made for the problems being addressed by the Forum and should be made available to all participants.
- ☐ That the UN Commissioner on Human Rights be invited to address the Forum and that time should be set aside for the Forum to hear representations from international and domestic human rights organisations.
- ☐ That in considering new cross-border institutions, the Forum considers options for establishing legal and political bodies across the two existing jurisdictions.
- ☐ That an all-Ireland Criminal Cases Review Authority to investigate alleged miscarriages of justice might be one practical step in this direction, and that the Forum should ask an advisory group of experts to consider the matter further.
- ☐ That the Forum should open a national discussion on the establishment of an all-Ireland Human Rights Commission with responsibility to promote human rights and powers to review proposed legislation in both jurisdictions if it is deemed incompatible with "parity of esteem" or agreed international standards.
- ☐ That in the short term, the Forum should promote the idea of an all-Ireland Monitoring Commission to advise the two Governments on measures required to advance the process of demilitarisation and decommission emergency legislation.
- ☐ That the Forum should consider the proposal for a Truth Commission which would facilitate the process of reconciliation and draw a line underneath the conflict of the past.

1 THE HUMAN RIGHTS CENTRE

THE BRITAIN & IRELAND Human Rights Centre is a London-based Non-Governmental Organisation which was established to advance human rights protection in the context of the unresolved conflict in Northern Ireland.

The mandate of the Centre is to seek enforcement of international standards in the context of conflict and to situate the Northern Ireland conflict within the international human rights agenda.

On the international field, the Centre continues to press for effective use of human rights mechanisms established by the United Nations, CSCE, Council of Europe and other bodies.

Domestically, the Centre is engaged primarily in information and human rights education - working with a variety of coalitions, agencies and single-issue groups. The Human Rights Centre is committed to the search for justice and peace through non-violent means - advocating both legal and political action to advance rights protection.

The origins of the Centre lie in the work of an International Human Rights Assembly on Northern Ireland convened in May 1992. In drawing up a Northern Ireland human rights agenda, this Assembly received more than 300 submissions from Ireland, north and south, from Irish in Britain groups and from international bodies. With a team of international Commissioners, the Assembly was the first attempt to address these rights issues in terms of international human rights law. (Report published by Liberty as *"Broken Covenants: Violations of International Law in Northern Ireland"*. (London, 1993)

The management board of the Centre draws personnel from a range of specialist fields. It involves human rights experts from Britain and Ireland, and is assisted by an international panel of advisors.

The Centre collects information through press and media monitoring, conducting interviews, and from a team of legal and political observers. Its research draws from international experience and is orientated towards identifying appropriate responses at a domestic and international level.

The Centre commissions and publishes authoritative reports, discussion papers and an international newsletter. It is connected into a network of specialist agencies and organisations concerned to exchange information on developments and seek practical collaboration for human rights protection.

The Centre provides assistance to individuals and groups who feel their rights or the rights of others are under threat - by helping to identify human rights issues, by liaison with specialist agencies, by providing information on international protection and by seeking legal and political remedy.

2 A HUMAN RIGHTS ENVIRONMENT

IT IS THE DECLARED AIM of the Forum to examine ways in which "lasting peace, stability and reconciliation can be established by agreement among all the people of Ireland", and the steps required "to remove barriers of distrust, on the basis of promoting respect for the equal rights and validity of both traditions and identities". In our view, its objective could helpfully be described as "the creation of a human rights environment".

Dialogue between individuals, between political parties and between the two Governments; the Joint Declaration of 15 December 1993; and the accumulating benefits accruing from the cessation of violence have created a momentum towards a peaceful settlement to which our attention is fixed.

We believe that the task of the Forum at this stage must be to identify a programme of measures required to complete the task of confidence-building and create a framework for conflict resolution.

In Article 5 of the Joint Declaration, the Taoiseach, on behalf of the Irish Government:

"...considers that the lessons of Irish history, and especially of Northern Ireland, show that stability and well-being will not be found under any political system which is refused allegiance or rejected on grounds of identity by a significant minority of those governed by it. For this reason, it would be wrong to impose a united Ireland, in the absence of a freely given consent of a majority of the people of Northern Ireland. He accepts, on behalf of the Irish Government, that the democratic right of self-determination by the people of Ireland as a whole must be achieved and exercised with, and subject to the agreement and consent of a majority of the people of Northern Ireland and must, consistent with justice and equity, respect the democratic dignity and the civil rights and religious liberties of both communities..."

In a submission to the United Nations Human Rights Committee on the occasion of the first Periodic Report of the Government of Ireland, we argued that political violence in Northern Ireland "is inextricably linked to Britain's historic role in Ireland and its failure to complete the process of decolonisation." (B&I HRC, 2 July 1993)

In a paper prepared for an Amnesty International compilation presented to the UN World Conference on Human Rights, we further submitted: "The inability of the Northern Ireland state to develop pluralist institutions has sustained discrimination and subverted the rule of law. Before and after the imposition of 'direct rule' from London in 1972, 'state of emergency' laws and pervasive human rights violations have been endemic." (B&I HRC, 8 June 1993)

There is a great urgency and substantial scope for human rights reforms in Northern Ireland. However, it is our view that in each instance where immediate reform indicates the need for a structural change to entrench or guarantee protection, that change can most fruitfully be

considered in terms of structural change throughout the island of Ireland using agreed international standards.

In our view, the winning of consent across two distinct traditions in Northern Ireland and among all the people of the island can best be achieved through an invitation to shape and share a millennial vision for a new, modern Ireland of the 21st Century.

Fifty years ago, the founders of the United Nations grappled with a statement of aims which best expressed their determination to mark the end of the old and the beginning of a new order. The preamble to the Universal Declaration proclaimed:

(That) "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world..."

(That) "Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of common people..."

(That) "Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law..."

We believe that discussion on a "balanced constitutional settlement" must go wider than the issue of sovereignty and the right of self-determination.

In order to lay the foundation for a new, modern Ireland, **recognition of diverse identity and parity of esteem should be legally entrenched throughout the island.** The Forum should work towards a mutually acceptable and consensual expression of this recognition that is suitable for adoption within existing, transitional or permanent constitutional arrangements

If "parity of esteem" is to have real meaning, it needs to be justiciable. A victim or a class of victims who feel they have been denied parity of esteem should be able to obtain legal remedy through judicial review or other mechanism.

A new, modern Ireland requires a formal **separation of Church and State**, and a replacement new commitment to "cherish the children of the nation equally" expressed in terms of an affirmation of equality and determination to eliminate all forms of discrimination based on nationality, religion, gender, race, colour, disability, language, life-style or sexual orientation

We regard creation of a human rights environment to be both a precondition for and fundamental prerequisite of a balanced constitutional settlement.

3 INTERNATIONAL STANDARDS

THE PRECISE FORMULA for a statement of democratic aims which best expresses the hopes and aspirations of the peoples of Ireland will be arrived at through a spirit of partnership, of co-operation and mutual trust in inclusive dialogue between the Governments, political parties, and other non-governmental organisations representing the breadth and diversity of opinions and views.

In creating a vision for a human rights environment, however, it is not necessary "to re-invent the wheel". In fifty years of debate and discussion aimed at deriving a set of universal standards against a diversity of experience - the declarations, conventions and guidelines of the United Nations provide a template which is tailor-made for the current situation.

The two Governments are already obliged by treaty law to ensure observance and respect for the principles from which the detailed guidelines are derived. It remains to involve all parties in a discussion about how best those principles are to be implemented in the next century.

In order to guide this discussion the Forum should provide all participants with copies of the principle international human rights instruments:

- ① International Covenant on Civil and Political Rights and its Optional Protocol
- ① International Covenant on Economic, Social and Cultural Rights
- ① International Convention on the Elimination of All Forms of Racial Discrimination
- ① Convention on the Elimination of All Forms of Discrimination Against Women
- ① Convention against Torture and Other Cruel, Inhuman or Degrading Punishment
- ① Convention on the Rights of the Child
- ① Declaration on the Rights of Persons belonging to National or Ethnic, Religious or Linguistic Minorities
- ① Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions
- ① Code of Conduct for Law Enforcement Officers
- ① Basic Principles for the Treatment of Prisoners
- ① Body of Principles for the Protection of All Persons under Any Form of detention or Imprisonment

The Forum should invite the UN Commissioner of Human Rights to address a plenary session.

The Forum should set aside a sufficient period of time to hear and discuss representations from other international and intergovernmental bodies, from international and domestic non-governmental human rights organisations.

4 CROSS-BORDER INSTITUTIONS

Informed discussion on cross-border institutions has so far concentrated on bodies which attempt to overcome the dislocation and economic dysfunction of partition. Bodies on tourism, energy, transport, environment, inward investment etc, meet an immediate need and can play a vital role in equipping a new, modern Ireland meet the challenges of the 21st Century.

We believe that the Forum should build on such an approach - examining the options for all areas of economic activity and investigating appropriate forms of institutionalised co-operation which would be mutually beneficial for state, semi-state and private sector enterprises.

Such a discussion, we believe, would establish the case for a thoroughgoing review of economic activity and policy, throughout the island. Such a review would provide an opportunity for involving producers and consumers, employers and employees, in establishing priorities for the next Century and play a vital role in democratising the peace process.

While examining the infrastructural requirements for enhancing the north-south axis, the Forum should also consider the east-west axis and rural-urban dimension.

By 1995, the common-sense case for bodies to overcome aspects of economic dysfunction created by partition has been well-established and relatively non-controversial. It must be the task of the Forum to develop the less well-established case for measures designed to shift the centre of gravity of manufacturing and finance in Ireland to enhance the development of the one-island economy.

5 MISCARRIAGES OF JUSTICE

The Britain & Ireland Human Rights Centre also believes that the principles on which a degree of consensus has been built for economic integration should be applied equally in addressing the issue of dysfunction at the political and legal level.

An immediate application of this principle in the area of law may be in the proposal for a Criminal Cases Review Authority.

Both jurisdictions have experienced a public debate focused on remedy for wrongful convictions arising in the context of conflict-related criminal cases. In Ireland, this led to legislation in the Criminal Procedure Act, 1993. In England and Wales, a Parliamentary Bill to establish a Criminal Cases Review Authority is currently being prepared. This authority would be empowered to investigate alleged miscarriages of justice and refer cases back to the Court of Appeal.

It is also proposed that the jurisdiction of the Criminal Cases Review Authority for England and

Wales extend to Northern Ireland.

In representations to Members of Parliament, the Britain & Ireland Human Rights Centre will argue that this proposal is unsatisfactory.

Firstly, we will argue it ignores differences in the legal system between England & Wales and Northern Ireland.

Secondly, we will argue that the difficulties encountered by the Stalker Inquiry indicate that a CCRA for Northern Ireland requires additional authority, expertise and resources.

Thirdly, we will argue that it is a short term expedient which breaks with the principle of the 1991 intergovernmental understanding that "nothing is agreed until everything is agreed".

Fourthly, we will argue that the successful conclusion of the peace process in Northern Ireland requires a greater sensitivity towards miscarriage of justice issues, particularly in the context of no-jury courts.

Fifthly, we will argue that the proposal underestimates the extent of the problem of wrongful convictions in Northern Ireland.

Finally, we will argue that a prospective appellant in Northern Ireland should enjoy the same rights and remedies as a prospective appellant in the Republic of Ireland.

Notwithstanding the issue of a general amnesty for prisoners convicted of scheduled offences in Northern Ireland and without prejudice to the argument that all convictions made in non-jury courts should be regarded as unsafe, we can see a strong case for supplementing existing mechanisms in Northern Ireland and in the Republic of Ireland with the establishment of an all-Ireland Criminal Cases Review Authority.

Such a body would be empowered to investigate alleged miscarriages of justice throughout the island of Ireland and refer cases back to the Court of Appeal in the appropriate jurisdiction. It would not be a substitute for existing remedies for a wrongful conviction, but provide a complement to them.

While the Republic of Ireland lacks a body which can investigate alleged miscarriages of justice, such an authority would enhance available remedies. While Northern Ireland lacks such a body, or may in the near future possess one which is ill-equipped to address its specific problems, the establishment of an additional mechanism will augment the available options.

The Forum should set up an advisory group of professional and lay experts to suggest the best way of defining the powers of such an all Ireland Criminal Cases Review Authority and the legislative means by which it might be established. The advisory group could make recommendations on the appropriate composition and resources to be made available to such an Authority.

6 A HUMAN RIGHTS COMMISSION

This paper has argued that in each instance where immediate reform indicates the need for a structural change, that change can most fruitfully be considered in terms of structural change throughout the island of Ireland using agreed international standards.

We would submit that the Forum should open a national discussion about the establishment of an all-Ireland Human Rights Commission in the context of a balanced constitutional settlement.

Canada and South Africa present different working models of a Human Rights Commission. The first being brought into existence following a prolonged public debate about a Bill of Rights; the second created to enhance a process of rapid democratic change.

Article 116 of the draft Constitution of South Africa Bill defined the powers and functions of a Human Rights Commission as follows:

1 The Commission shall, in addition to any powers and functions assigned to it by law, be competent and be obliged:

a) promote the observance of, respect for and the protection of fundamental rights;

b) develop an awareness of fundamental rights among all people of the Republic;

c) make recommendations to organs of state at all levels of government where it considers such action advisable for the adoption of progressive measures for the promotion of fundamental rights within the framework of law and this Constitution, as well as appropriate measures for the further observance of such rights;

d) undertake such studies for report on or relating to fundamental rights as it considers advisable to the performance of its functions; and

e) request any organ of state to supply it with information on any legislative or executive measures adopted by it relating to fundamental rights.

2 If the Commission is of the opinion that any proposed legislation might be contrary to Chapter 3 (section of the Constitution setting out fundamental rights) or to norms of international human rights law, it shall immediately report that fact to the relevant legislature.

3 The Commission shall be competent to investigate on its own initiative or on receipt of a complaint, any alleged violation of human rights, and if, after due investigation, the Commission is of the opinion that there is substance in any complaint made to it, it shall, in so far as it is able to do so, assist the complainant and other persons adversely affected thereby, to secure redress, and where it is necessary for that purpose to do so, it may arrange for or provide financial assistance to enable proceedings to be taken to a competent court for the necessary relief or may direct a complainant to an appropriate forum.

A Human Rights Commission with powers to review and, if necessary, refer back proposed legislation on grounds of its incompatibility

with human rights standards or "parity of esteem" could provide an additional safeguard on the exercise of powers by existing, transitional or permanent legislative bodies.

The authority of a Human Rights Commission may derive from a Bill of Rights or by legislative provision within each jurisdiction. Its powers may enhance the functions of existing institutions or, providing there is consent, replace them.

In the Republic of Ireland, it would be an innovative measure to complement progress being made on the progressive ratification of international instruments. In Northern Ireland, it could complement or, if there were consensus around the proposal, substitute for the Standing Advisory Commission on Human Rights.

In addition to making proposals for a Human Rights Commission, there are two further areas we wish to address: Firstly we examine the case for a Monitoring Commission. Secondly, we discuss the arguments for establishing a Truth Commission.

7 A MONITORING COMMISSION

THE MOST PRESSING TASK of the moment must be to create an authoritative body to advise the two Governments on the adoption of the appropriate measures to advance the process of demilitarisation and to decommission emergency legislation in both jurisdictions.

A Monitoring Commission could form a vital contact point with local or community monitoring groups in Northern Ireland. It could oversee the progressive easing of tension on the streets. It could investigate breaches or violations of the ceasefire.

The composition of such a Commission should be thoroughly versed in international human rights law and sufficiently authoritative to raise human rights issues above party political wrangling.

The need for a body that can transcend "day-to-day" controversy is evident from the row that followed the transfer of a number of prisoners from England to Northern Ireland shortly after the IRA ceasefire.

Even though identification of prison transfers with "concessions to the IRA" flies in the face of the findings of the Ferrers report published over two years ago, the "backlash" surrounding the transfer of prisoners, Gerard McDonnell, Pat McLaughlin, Peter Magee and Tom Quigley on 1 September 1994 seems to have halted any progressive moves in that direction since.

A Monitoring Commission could: ensure all armed patrols by security forces were proportionate to the security risk; encourage "good practice" in low profile policing operations; enable advance consultation with local communities to avoid rows over "sensitive" units such as the Paratroop regiment; facilitate the use of Police and Criminal Evidence Act codes for all arrests; conduct a consultation exercise on the redrafting of Army

"Yellow Card" rules on the use of lethal force; make recommendations on the revision of rules governing Coroners' Courts in Northern Ireland; facilitate public inquiries on all incidents involving the use of firearms; supervise consultation with border communities on reopening closed roads; encourage the demanning and demolition of intrusive observation posts; and conduct a public debate on alternate forms of policing acceptable to local communities.

A Monitoring Commission could act in a proactive way to receive representations from community organisations who have been subject to political vetting; to encourage a judicial check on the use of public interest immunity certificates; to investigate allegations concerning discrimination against language and cultural organisations.

While the Standing Advisory Commission has a valuable role to play, particularly in the planned Review of Fair Employment legislation, we feel its position would be supplemented rather than usurped by the proposal to establish a Monitoring Commission.

The SACHR should be working with the Independent Commissioner on the Holding Centres and J.J. Rowe QC who advises the Secretary of State on the operation of the Prevention of Terrorism Act and Emergency Provisions Act to institute a thorough review of emergency law. Existing exclusion orders, proscription and the power of internment should be dropped. The EPA and PTA should be either suspended or allowed to lapse. This would require police in Northern Ireland to operate in the framework of ordinary criminal law and apply PACE codes. SACHR should also look at transitional arrangements to restore the right to trial by jury.

On the issue of prisoners, SACHR should press the UK government to give immediate effect to the recommendations of the Ferrers Report for prison transfers. The Irish government has already given a commitment to introduce legislation to facilitate transfer of prisoners between the two jurisdictions.

The work carried out by the Monitoring Commission would equip it to make a major contribution to intergovernmental and all-party talks on the establishment of a Human Rights Commission.

8 A TRUTH COMMISSION

TO PROGRESS FROM confidence building to conflict resolution requires both a hard-headed approach to see through the inevitability of problems or reverses and a visionary approach to the future. At some point a line must be drawn underneath the current conflict and the situation moved on.

First and foremost, this means addressing the issue of an amnesty for "political" prisoners - a demand which finds support in large measure from both nationalist and loyalist communities. The purpose of imprisonment combines retribution,

deterrence, public safety and rehabilitation of the offender. In the light of a permanent cessation of violence, it can be argued that: deterrence is no longer required; that public safety is no longer threatened; and that there is no risk of a prisoner re-offending. It remains to deal with the issue of retribution.

From the point of view of society as a whole, it is legitimate to consider that the desire for retribution may be set aside as part of a political settlement. For the victims and survivors of violence however, it may be helpful to institute a mechanism that will address this issue.

The international experience of Truth Commissions is varied. In Chile and South Africa, Truth Commissions were established after a gradual process of democratisation; in El Salvador, a Truth Commission was established at the end of a civil war; in Uganda and Chad, Truth Commissions were established after a military victory; in Argentina and Uruguay, such commissions were set up following a rapid democratic opening.

A Truth Commission can be seen as an exercise in catharsis - an important step toward acknowledging the past and moving on. The relatives of those killed on Bloody Sunday in Derry want the British government to admit that the conclusions of the Widgery report were false. Secret files of Governments and paramilitary codes of silence presently prolong the grief of bereavement. An acknowledgement, an apology, an admission is often all that is required.

A Truth Commission is not the same as a war crimes tribunal - it is an act of atonement and reconciliation. To work effectively, it would require a strong mandate, an unassailable sponsoring authority, public confidence, access to records, sufficient resources to carry out its task and the power to subpoena witnesses. It must also operate with transparency in the public domain.

Establishment of a Truth Commission should not be seen as "digging up the past", but an opportunity to learn from the past, to prevent the same mistakes being made in the future and to affirm the permanence of a lasting peace

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7 December 1994