

## **SDLP Paper to Chairman**

### **Criminal Justice**

#### **Suggested Possibilities for Change and Role for a Justice Commission**

Outside of the institutional arrangements to be agreed as part of the overall agreement, appropriate changes in the criminal justice system will be an important objective measure for the nationalist community and others that their concerns are being met on key substantive issues.

The SDLP believe that as part of an overall agreement, a mechanism must be agreed to take forward the issue of change in the criminal justice system. We have reservations on the British Government paper on this subject. That paper reviewed current deficiencies - both general and specific - in the present system and offered a range of imaginative possibilities for change. The following is the SDLP's reading of the implications of that paper and the SDLP's recommendation on how to take forward the issues raised.

1. Overall, the British paper accepts that the formal criminal justice system "is seen as deficient by some because they consider it to be politically unacceptable under present arrangements, by others it is sometimes perceived as slow distant and unresponsive." The challenge, says the paper, "is therefore to make the formal system more acceptable and accessible to all for example by building confidence, speeding up processes improving the focus on the needs of victims and communities." The issue on many elements of "the formal system" is not making these elements "more acceptable" but changing the fundamental structure and culture of these elements.
2. Clear deficiencies are also identified by the paper - the absence of an independent inspectorate for the system (prisons, probation, youth needs, courts administration and other services) and the absence of an independent mechanism for the review of criminal law and procedure. However, and in respect of the latter, it is not acceptable that any or all reviews of criminal law should be delegated to a criminal law review mechanism or justice commission. There is a requirement for immediate action on aspects of the criminal law and administration which cannot be delegated to any mechanism and should be acted upon solely by the British government.
3. The British paper sets out broadly the aims of criminal justice which point to the obvious deficiencies. It says, for example, that the system should have the confidence of *all* parts of the community, that should encourage community involvement and that it should be responsive to the community's needs (making direct references to the



is should be responsive to the community's needs (making direct references to the vacuum filled by punishment beatings).

4. The paper also explores the merits of keeping criminal justice as a reserved matter or of devolving it. If the former, the paper asks for suggestions on possible consultative arrangements. If the latter, it offers the possibility of a Department of Justice for Northern Ireland or a more modest home affairs/justice department. Certainly from the SDLP point of view, great care must be taken in terms of change on justice issues and the role of an Assembly. Before there is a realistic possibility of making any formal connection between the two, both would have to be seen to operating satisfactorily. The SDLP would very much endorse the view that the Assembly should not be burdened in its early stages with such a complex, sensitive and profound issue as that of change in the criminal justice system.
5. The British paper suggests a variety of possibilities for change which would require careful exploration. Options mentioned include;
  - giving the Department of the DPP responsibility for all criminal prosecutions (as opposed to those currently undertaken by the police - bearing in mind that the DPP itself does not enjoy widespread acceptance).
  - appointing a Northern Ireland Attorney General.
  - appointing an independent DPP outside any devolved executive.
  - enhancing the role of the prosecutor by adopting aspects of the Scottish system of Procurator Fiscal.
  - enhancing judicial involvement in the investigative process by providing for examining magistrates.
  - greater community involvement.
  - establishing a Criminal Justice Inspectorate.
  - establishing an independent Northern Ireland Law Commission.
  - opening up opportunities for local lay involvement in judicial appointments.
  - establishing an independent Judicial Appointments Commission (where "the Irish Government might have a role in putting forward views and proposals on the membership of the Commission").
6. These are clearly an extensive array of options. The SDLP believes that they should, necessarily, be considered in tandem with a view to proposing a holistic approach which preserves only those elements that enjoy public confidence, rectifies deficiencies, establishes mechanisms for fundamental change and makes provision for adaptations in the longer term, as in the proposal for a Law reform Commission.



7. The SDLP believes, therefore, that options for change should be carefully examined by an independent Justice Commission in consultation with the public, its representatives, professional bodies, relevant NGOs and the Irish Government. The membership of the Commission should reflect the expert nature of the subject, the need for an international dimension and the role of the Irish Government. The role and remit of the Justice Commission would differ from that of a Policing Commission - expertise is radically different and issues require deliberation. Other issues require immediate attention by the British government and cannot be deferred to a justice commission.
8. Early and fundamental change is anticipated in policing. This requires to be accompanied by appropriate early changes in the administration of justice and thereafter the early implementation of further changes deemed appropriate.
9. Any changes need to be fully grounded in and respect human rights. On all issues of justice, human rights are the main pivot against which practices and procedures should be judged. Any changes in the administration of justice should be based in the incorporation, codification and implementation of all relevant human rights standards.
10. Independent of the Justice Commission, there are areas that should form part of an agreement, in respect of the administration of justice, including the creation of a judicial appointments commission, repeal of emergency legislation, abolition of the Diplock courts and other aspects of criminal justice system in conflict with accepted international human rights standards.
11. As with the implementation of changes in policing, confidence in the efficacy of a independent justice commission to bring about real and meaningful change requires a forthright commitment as part of an overall agreement that, following appropriate consultation, the recommendations of such a commission will be acted upon by the British Government, and where relevant, Irish, Government. Only when such changes have been satisfactorily implemented can consideration be given to the question of transfer of responsibilities for these complex and sensitive issues.

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