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cc Zaborn
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**SUBMISSION TO
THE INDEPENDENT COMMISSION ON
POLICING FOR NORTHERN IRELAND
BY
THE STANDING ADVISORY COMMISSION
ON HUMAN RIGHTS**

SEPTEMBER

1998

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SUMMARY OF RECOMMENDATIONS MADE BY SACHR

INTRODUCTION

SACHR trusts that the Independent Commission will consider afresh all areas of policing in Northern Ireland and considers that:-

1. holistic change of a fundamental nature is required.
2. sufficient resources must be made available to fund the necessary changes.
3. the Independent Commission should consult widely with individuals and groups on the ground in an attempt to ensure that as many people as possible can feel an ownership of the process.
4. there is a need for fundamental reform across all areas of policing requiring a package of measures to be delivered within a short and clearly established time-frame. Nothing less will suffice.
5. in the absence of a willingness to embrace fundamental change in the short term, SACHR would not rule out the need to start afresh to establish a new police service in Northern Ireland.

COMPOSITION AND RECRUITMENT

6. an amendment to the Fair Employment legislation should be made to permit religion to be a factor in merit when recruiting police officers.
7. consideration should be given to making similar legislative change to allow gender and race to be plus factors when recruiting on merit.
8. existing outreach measures should be extended and must operate in conjunction with a transformation of the culture of the police and the working environment to encourage applications from the under-represented groups.
9. imaginative outreach measures are needed to aid recruitment from ethnic minority communities.
10. the police should conduct anti-racism training and adopt other mechanisms to improve working relations with ethnic minority groups.
11. a special approach is also needed to ensure that the policing needs of young people and the disabled are addressed.
12. a changed job description could assist in ensuring that police women move into the mainstream of policing.

13. consideration should be given to what Hazenberg has described as 'an active exit policy' whereby an organisation can make space to include people with the skills and characteristics required.
14. an extremely generous system of retirement is required which will ensure that a package is made available to include appropriate re-training together with advice and counselling services.
15. there should be increased civilianisation of the police, administratively and possibly also operationally.
16. the Working Party's recommendation that the conviction criteria be reviewed to take account of the differing circumstances faced in Northern Ireland, should be adopted .
17. consideration should be given to the need to ensure that stringent security vetting does not have an automatically adverse effect on recruitment from the Catholic community.

TRAINING

18. consideration should be given to a fundamental overhaul of police training in Northern Ireland.
19. there should be greater involvement of professional civilian trainers operating alongside internal police trainers.
20. an external police training college should be established whereby only graduates of the college programme are eligible to apply for the police service.
21. consideration should be given to providing such training programmes for prospective police officers alongside the training given to, for example, fire service operatives and social workers.
22. the training of police officers must be delivered in such a way as to ensure that the protection of human rights features as a central issue for the average police officer in carrying out his/her daily duties.
23. community awareness training should be reinforced by being fully integrated into other subjects.
24. it would be helpful for a relationship to be established between the police and the new Northern Ireland Human Rights Commission at an early stage to ensure the delivery of professional human rights training.
25. the area of human rights training, in which common international standards are required of the police in all jurisdictions, could provide an appropriate starting point for co-operation in training delivery between the RUC and the Garda Síochána.

26. training must continue throughout all levels of the police service to ensure the organisation is committed to service delivery subject to common standards.
27. further opportunities should be provided for officers to pursue graduate and postgraduate study and to gain employment experience outside the police service as well as for an increased number of civilians to work within the police service.

CULTURE, ETHOS AND SYMBOLS

28. consideration should be given as to how to increase the use of the title 'the Northern Ireland Police Service' when describing serving police officers, perhaps with official publications and correspondence including a reference to the body being in receipt of the Royal Charter.

FLAGS AND OTHER EMBLEMS

29. the union flag is not the appropriate flag to be flown over police stations.
30. a further review of the practice flying flags on police stations should be conducted.
31. a neutral working environment must be established to encourage members of under-represented groups to apply.
32. police stations must be made more accessible and less alienating places to all members of the public by removing pictures of members of the Royal family and other symbols which are identified with only the Unionist tradition in Northern Ireland.
33. the police should seek advice from the statutory equality bodies in achieving a neutral working environment.

MEMBERSHIP OF SECRET ORGANISATIONS AND GROUPS WHICH PROHIBIT MEMBERSHIP ON RELIGIOUS GROUNDS

34. membership of certain organisations is incompatible with membership of the police in Northern Ireland.
35. the prohibition on membership of certain organisations should apply both to new recruits and to serving officers.
36. from a civil liberties perspective, any limitation to these rights must be specifically justified. Given how crucial it is for there to be confidence in an impartial police service in order to build peace in Northern Ireland, such limitations on these rights could be considered justifiable in accordance with the margin of appreciation accorded to states under the ECHR.

37. such a bar would not constitute indirect discrimination. However, there could be merit in amending the law to ensure that any ambiguity is resolved.
38. there may be important symbolic and practical merit in requiring police officers to make an affirmation which includes a commitment to uphold the principle of impartiality.

STRUCTURE AND MANAGEMENT

39. the question of some form of regionalisation of the police service in Northern Ireland should be kept under review.
40. the idea of two-tier policing should be rejected.

PANI

41. there can be no substitute for a representative police authority. PANI should come to an end and be replaced by a new representative police authority which would include elected representatives.
42. consideration should be given to ensuring that any new body include representatives of those players who will have a role in the Civic Forum attached to the new Northern Ireland Assembly.

COMMUNITY POLICE LIAISON COMMITTEES

43. the existing system of Community Police Liaison Committees is not serving the needs of the community and fundamental change is required to regulate
 - (a) the composition of such committees;
 - (b) the transparency of their decision-making and discussions with the police; and
 - (c) the nature of their relationship with the police and with PANI.

LAY VISITORS

44. in agreement with PANI and the Lay Visitor Panel, the extension of the Lay Visitor scheme to the 3 Holding Centres in Northern Ireland would be an important measure.
45. there should be clarification of the financial accountability between PANI, the Chief Constable and the Secretary of State.

POLITICAL ACCOUNTABILITY

46. it may be helpful for the Independent Commission on Policing to consider what role, if any, the Northern Ireland Assembly and local politicians should play in relation to political accountability of the police.

COMPLAINTS

47. that the necessary financial and human resources should be made available to the Office of the Police Ombudsman to ensure that it can efficiently and effectively discharge the important role assigned to it.
48. the new office should have a strong investigative role and that consideration must be given as to the appropriate skills which will be required by the staff of the office.

EMERGENCY LEGISLATION

49. the adverse impact of emergency legislation on police/community relations has been significant and that the continuing derogations from international human rights law in respect of such legislation are unacceptable.
50. the Independent Commission on Policing should specifically consider the role of emergency legislation in respect of policing in Northern Ireland.

USE OF PLASTIC BULLETS

51. SACHR is not persuaded that the use of PBRs can be justified given their lethal nature and the inadequacy of the guidelines for their use. It is SACHR's view that it would appear to be impossible to ensure that PBRs are not misused.
52. the RUC and the Home Office should consider and publicise alternatives to PBRs in order to open up a debate and that the canvassing of such alternatives should include both technical information and the human rights implications of their use.

WEAPONS

53. steps should be taken to demilitarise the police in Northern Ireland. The presumption should be in favour of an unarmed police service with arms only to be carried in certain circumstances which must be specifically justified.
54. automatic long-arm weapons should be removed.

CONCLUSION

55. the importance of the existence of political will to initiate change must go hand-in-hand with its implementation to ensure that change filters through the system to the relationship between the public and the police officer.
56. incremental change is not enough. As each aspect of policing is interdependent a radical and holistic approach to change is necessary.

The Commission has found that the Commission's findings in its 1994 report are still relevant today. The Commission's 1994 report was a landmark document in Northern Ireland which set out a vision for a new police service. The Commission's 1994 report was a landmark document in Northern Ireland which set out a vision for a new police service. The Commission's 1994 report was a landmark document in Northern Ireland which set out a vision for a new police service.

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(1) INTRODUCTION

Since 1994 and the announcement of the first paramilitary ceasefires, a wide range of initiatives have been taken, aimed at reviewing policing needs in Northern Ireland. These initiatives have included the preparation of reports, reviews and surveys by the Northern Ireland Office, the Police Authority for Northern Ireland, the Chief Constable of the RUC, the Working Party to examine under-representation, the Northern Ireland Affairs Committee and the Hayes Independent Review of the police complaints system.

SACHR's view has been that 'the piecemeal way in which reform has been approached is not helpful and is potentially dangerous as it may well mislead'.¹ There has been no review of policing in Northern Ireland of a truly fundamental nature since the Hunt Committee Report of 1969.² For this reason, the Standing Advisory Commission on Human Rights welcomes the establishment of the Independent Commission on Policing in Northern Ireland with a broad remit to consider the future of policing in its totality. While there have been recent significant policy and legislative changes in relation to policing in Northern Ireland, principally contained in the Police (Northern Ireland) Bill 1998, SACHR trusts that the Independent Commission will consider afresh all areas of policing in Northern Ireland.

SACHR has made a significant contribution to the long-standing policing debate in Northern Ireland, responding to the various consultation documents and commissioning and publishing independent research.³ SACHR's interest in the debate about policing has a particular focus - that of human rights. As Anita Hazenberg recently stated:

'The police have a key role in respecting and protecting human rights in every society. It is a symbiotic relationship.'⁴

Article 2 of the *UN Code of Conduct for Law Enforcement Officials*⁵ requires that policing must respect human rights and human dignity and, further, that domestic law make specific reference to the relevant international and regional standards in this regard. The Council of Europe, the United Nations and the Organisation for Security and Co-operation in Europe have all developed international standards which deal specifically with policing.⁶ Other key human rights instruments also establish standards

¹ SACHR's 21st Annual Report 1995-96, HMSO, p 38, para 14.

² *Report of the Advisory Committee on Police in Northern Ireland*, Cm 535, 1969.

³ See for example: '*Policing and Disaffected Communities*', Newburn and Jones, 21st Annual Report of Standing Advisory Commission on Human Rights, Annex S and '*Policing a Divided Society: The Northern Ireland Experience*', Hamilton and '*The Future of Policing*', Newburn, 20th Annual Report of the Standing Advisory Commission on Human Rights, Annexes G & H.

⁴ Anita Hazenberg '*Policing in Utopia*' presentation organised by the CAJ, Belfast 25/6/98.

⁵ Adopted 17 December 1979.

⁶ *The UN Code of Conduct for Law Enforcement Officials* (1979); *The UN Basic Principles On Use of Force* (1990); *The UN Principles on Effective Prevention and Investigation of Extra-Legal*,

for policing such as the *UN Convention Against all Forms of Torture, Inhuman or Degrading Treatment; the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights* together with the *European Convention on Human Rights* (soon to be incorporated into UK law).

Much of the debate has been polarised with calls either for disbandment or for no change. SACHR subscribes to neither view but rather considers that holistic change of a fundamental nature is required. SACHR makes 58 recommendations which propose changes of a positive nature which would, in essence, require a transformation in composition, ethos and service delivery from a police force to that of a police service. Such a transformation is in line with international best practice in policing, albeit, as Hazenberg explains, 'no country has yet finalised the total transformation from force to service'.⁷ The changes considered necessary by SACHR as outlined in this submission provide no easy solutions. Implementation of some of the changes proposed would, no doubt, cause a political storm - but it is a storm which must be weathered to ensure that Northern Ireland is served by a representative, efficient and effective police service. In addition, such change will entail significant cost implications. Sufficient resources must be made available to fund the necessary changes.

SACHR looks forward to meeting with The Independent Commission on Policing to discuss its views as set out in this submission. SACHR considers that the Independent Commission is uniquely placed to facilitate an informed debate about the future of policing in Northern Ireland. SACHR believes that it would be useful for the Independent Commission to consult widely with individuals and groups on the ground in an attempt to ensure that as many people as possible can feel an ownership of the process. This may help to gain support for the Commission's final recommendations.

The need for fundamental reform across all areas of policing requires a package of measures, delivered within a short and clearly established time-frame. Nothing less than fundamental reform following a strict timetable will suffice. Such reform can only come about if a genuine will to change exists within the top ranks of the RUC. Such a will to change must be operationalised at all levels to ensure that change is reflected in the way that every police constable discharges his or her duties on the ground. The RUC has demonstrated in the recent past an ability to change the way in which it polices one specific area of criminal behaviour, namely, domestic violence against women and children. If the genuine will to change exists, then change is possible. In the absence of a willingness to embrace fundamental change in the short term, SACHR would not rule out the need to start afresh to establish a new police service in Northern Ireland.

SACHR's submission will address 6 of the 8 areas outlined in the Commission's letter to the Chairman of SACHR dated 22 June 1998. SACHR will not address the last two issues, namely: structured co-operation with the Garda Síochána and other police

Arbitrary and Summary Executions (1989); *Council of Europe Resolution 690 of the Parliamentary Assembly of the Council of Europe* (1979); *The Organisation for Security and Co-operation in Europe; Moscow Declaration* (1991) United Nations.

⁷ *Op. cit.* no 4 at p5.

forces,⁸ and provision for exceptional demands on policing resources, having no specific competence in these areas.

(2) CONTEXT

It has become axiomatic that policing is at the heart of the problem in Northern Ireland, and this is reflected in the Good Friday Agreement. Even at the time of the first ceasefires, the then Chief Constable acknowledged that they would bring about inevitable change in the RUC. The renewed ceasefires and the eventual ending of all paramilitary violence should mean great changes in the way in which Northern Ireland is policed. The report of the Commission on Policing will be an unrivalled opportunity to influence that change.

Policing has to be viewed in the context of the violence of the last 30 years. It is essential, however, that any new debate about policing in Northern Ireland addresses the failures of the past, with the aim of ensuring that those failures do not recur in future. Any new arrangements in relation to policing must begin with an honest acknowledgement of the problems and the injustices of the past and combine that with a genuine desire to bring about fundamental and far-reaching change.

Northern Ireland's particular problems in that period have been reflected in many areas, including, and very markedly, policing. For example, unlike the other police forces operating in the UK, RUC members are routinely armed. It is generally acknowledged that there are particular and acute problems in the manner in which Northern Ireland has been and continues to be policed and there has been a long history of criticism of policing methods.⁹

“Northern Ireland is very different from the rest of the United Kingdom. The acute social and political unrest which has characterised the area since the late 1960s has been variously described as a ‘war’, a ‘conflict’ and an ‘emergency’. However described, Northern Ireland is politically, socially and culturally divided. These divisions are reflected throughout the whole society and create problems in areas of life which remain uncontested elsewhere. One of the key areas of dispute and concern is the criminal justice system. Alongside the development of the political/military conflict since the 1960s there has been the

⁸ See, however, comments below regarding the benefits of co-operation in delivery of training between the Northern Ireland police and the Garda Síochána.

⁹ To the extent that a series of government inquiries have been held eg Disturbances in Northern Ireland: *Report of the Commission appointed by the Governor of Northern Ireland* (Cameron Report) HMSO, Belfast, Sept 1969 Cmd 532, *Report of The Advisory Committee on Police* (The Hunt Report) HMSO, Belfast, Oct 1969 Cmd 535, *Report of the Inquiry Into Allegations Against the Security Forces of Physical Brutality in Northern Ireland, Arising out of Events on 9th Aug 1971* (The Compton report) HMSO, London Nov 1971 Cmnd 4823, *Violence & Civil Disturbances in Northern Ireland in 1969: Report of Tribunal of Enquiry* (The Scarman report) HMSO, Belfast, April 1972 Cmd 566. A succession of UN and European bodies has also criticised **policing and other security measures** in Northern Ireland.

development of a whole infrastructure of 'emergency powers' and a massive increase in the numbers of police and army. While critical questions can be raised about the aspects of policing and the criminal justice system in the rest of the United Kingdom and in other liberal democracies across western Europe and beyond, the nature and extent of emergency legislation and policing in Northern Ireland suggests that the situation here is 'abnormal'.¹⁰

The RUC is overwhelmingly Protestant.¹¹ It is often claimed by those in authority that the primary reason for the under-representation of Catholics and nationalists is intimidation, perceived or real, from Republican paramilitaries. Whilst no-one can be in any doubt as to the reality of such threats - at least in the past, the reasons why the RUC is so unrepresentative are much more complicated. It is certainly the case that applications from Catholics rose after the ceasefires of 1994.¹² Nonetheless, the results of a recent survey conducted by the RUC itself indicate that at least 29% of all Catholic members of the RUC had experienced religious harassment from colleagues and 21% reported contemplating leaving the RUC due to discrimination or harassment.¹³ There are also continuing concerns over the under-representation of women and ethnic minorities in the force.

The RUC has itself acknowledged some of these problems and has introduced measures with a view to addressing such concerns. It established an Equal Opportunities Unit in 1987 and has introduced an Equal Opportunities policy. More recently a joint RUC, PANI and Civilian Working Group was instituted "to review the representation of Catholics, women and ethnic minorities within the RUC; to assess the reasons for any under-representation and to make recommendations how suitable applicants from all communities can be encouraged to apply; and to examine selection procedures and satisfy the group that they assure equality of opportunity".¹⁴ More

¹⁰ McVeigh, R. 1994 *It's Part of Life Here: Security Forces and Harassment in Northern Ireland*, CAJ, Belfast, p11.

¹¹ 92% Protestant, 8% Catholic. Police Authority for Northern Ireland, 1995, *Annual Report*, PANI, Belfast. More recent figures supplied by the RUC to Human Rights Watch suggest that 88.67% of regular RUC members and 88.12% of full-time reservists are Protestant. Of those in the part-time reserve, 93.62% are Protestant. (Letter from RUC Chief Constable to Human Rights Watch/Helsinki, March 7 1997, quoted in Hall, J *To Serve Without Favor: Policing, Human Rights and Accountability in Northern Ireland*, Human Rights Watch/Helsinki, May 1997, at p18.)

¹² In 1993 11.73% of applications to join the full-time RUC were from Catholics. The numbers of Catholics actually accepted that year amounted to 4.62%. In 1994, there were two intakes, the latter of which recorded a figure of 21.50% applications from Catholics and 15.32% acceptances, the second 18.25% applications and 16.47% acceptances. The figures for 1996 show that for the first intake, there were 17.52% applications and 10.98% acceptances, for the second 14.77% applications and 8.39% acceptances. Terms of Reference, House of Commons Written Answers for 6 Nov 1997, Parliamentary Written Answers (Hansard) col 631.

¹³ See McKittrick, D "Widespread Discrimination against Catholics in RUC", *Independent* 12 Nov 1997.

¹⁴ Terms of Reference, House of Commons Written Answers for 6 Nov 1997, Parliamentary Written Answers (Hansard) col 13069.

generally, the RUC's "Fundamental review" noted that the paramilitary ceasefires of 1994 "provided an opportunity for the RUC to consider the service it provided to the community and to assess what changes it might make to enhance the delivery of that service".¹⁵

The violence in Northern Ireland has taken its toll on the RUC. Over 300 of its members have been killed¹⁶ and thousands maimed by paramilitary organisations in the past decades and many RUC officers have seen their colleagues and friends murdered. Many members of the RUC have served the various communities of Northern Ireland with decency, integrity and above all bravery. However, the RUC and numbers of its members have also been the subject of numerous, serious allegations of human rights abuses in the past 30 years.¹⁷ The most recent US State Department Human Rights report notes that "some members of the [RUC] have committed human rights abuses police occasionally abused detainees".¹⁸ It also notes "widespread antipathy in the Catholic community to the security forces".¹⁹ Nor is the antipathy confined to the nationalist community - there is much evidence to demonstrate that many living in loyalist areas experience problems with the RUC.²⁰

In order to carry out any of its functions effectively a police service must be representative, accountable and maintain confidence amongst the public. Amongst the many problems faced by the RUC has been their failure to inspire such confidence and trust in large sections of the public. Furthermore, the RUC is unrepresentative and this is unlikely to change significantly if the culture and ethos of the RUC remains the same. If no change occurs it is unlikely that many more Catholics or, more pertinently, more nationalists, will seek to become members of the RUC.

One particular reason why some sections of the community in Northern Ireland are so disaffected is the experience of the RUC and the use of the powers available to its officers. Much of the conflict has been fuelled by a panoply of so-called "emergency powers" which have conferred arbitrary, wide-ranging and increasingly draconian powers to stop, search, arrest and detain on the RUC, and to a lesser extent, the British Army. The situation has been exacerbated by the absence of safeguards (something of which numerous international human rights bodies have been extremely

¹⁵ RUC "Fundamental Review", para 1.1.

¹⁶ 199 full-time RUC officers and 102 members of the RUC reserve have been killed since 1969. (RUC press release, URL <http://www.ruc.police.uk/press/statistics/deaths2.htm>).

¹⁷ See CAJ, Nov 1991 *Submission to the UN Committee Against Torture*, CAJ, Belfast; Helsinki Watch, 1992, *Children in Northern Ireland: Abused by Security Forces and Paramilitaries*, Human Rights Watch, USA; Amnesty International, 1991, *United Kingdom: Allegations of ill-treatment in Northern Ireland*, AI, London; AI, 1994, *Political Killings in Northern Ireland*, AI London; Liberty, 1993; *Broken Covenants: Violations of International Law in Northern Ireland (Report of the Northern Ireland Human Rights Assembly 6-8 April 1992, London)*, NCCI, London.

¹⁸ US Department of State, Jan 1997, *United Kingdom Report on Human Rights Practices for 1996*. Bureau of Democracy, Human Rights and Labor p1.

¹⁹ *ibid*, p18.

²⁰ See McVeigh, *op cit*.

critical²¹) and the questionable record on substantiating complaints. This is a matter which requires substantial legal reform. Unfortunately, the reality for many young people is that the widely drawn stop and search powers are used arbitrarily and to harass.²² If emergency law remains on the statute books then real change will not occur, no matter what kinds of initiatives are made within the police service itself.

(3) SPECIFIC ISSUES

(i) Composition, Recruitment and Training

Composition and Recruitment:

In 1979 the United Nations General Assembly resolved that:

“..... like all agencies of the Criminal Justice system, every law enforcement agency should be representative of and responsive to the community as a whole.”²³

The requirement that a police service be representative is not, therefore, just a matter of best policing practice, nor indeed merely a legitimate expectation in a democratic society, but is also in keeping with international standards.

The RUC itself has recognised that the proportion of serving Catholics and women officers is not representative of the community and that steps must be taken to increase the 7.5% of Catholic officers and 10.5% regular female officers.²⁴

SACHR has considered the RUC's own calculation of the time needed to correct the religious imbalance in the RUC:

‘Assuming a steady recruitment of Roman Catholics at a rate of 40% of new intakes (thus mirroring the approximate proportion of Roman

²¹ See eg, *Ireland v UK* 1978] ELR 250; *Brogan v UK*. 11 EHRR 117 (1989) (European Court of Human Rights 1988); *Murray v UK*. Case 41/1994/488/570 (1996). For a consideration of these and other cases, see Brice Dickson. ‘The European Convention on Human Rights and Northern Ireland’ in *Presence du Droit Public et des Droits de L’Homme: Melanges offerts a Jacques Velu* 1407-1429 (1992).

²² See Human Rights Watch/Helsinki, 1992, *Children in Northern Ireland: Abused by Security Forces and Paramilitaries* Helsinki Watch, New York; Dr Robbie McVeigh, 1994 *It’s Part of Life Here The Security Forces and Harassment in Northern Ireland* CAJ, Belfast; National Council for Civil Liberties, 1993, *Broken Covenants: Violations of International Law in Northern Ireland (Report of the Northern Ireland Human Rights Assembly, 6-8 April 1992, London)*, chs 2-4, 8, Liberty, London.

²³ *UN General Assembly Resolution 34/169* of 17 December 1979.

²⁴ HMIC - Her Majesty’s Inspectorate of Constabulary (1996) *‘Primary Inspection, RUC’* p22-23.

Catholics in Northern Ireland at present) it will still take about 30 years before Roman Catholics form 40% of the RUC (ie 2027).²⁵

A change in the composition of the police in Northern Ireland at that rate is unacceptable. In its Report, *'Employment Equality The Way Forward'* of June 1997, SACHR stated that the proportion of Catholics in the police should be substantially increased:

'The security services should continue to implement outreach measures to encourage Catholics to apply, including steps to increase awareness among Catholic pupils and contact with Catholic community groups. Whether such measures would be effective in substantially increasing the very low proportion of Catholics in the security services in the foreseeable future is debatable because the achievement of a balanced workforce in the security services is inseparable from broader issues of political conflict. In these circumstances it may be necessary for those looking at the future of policing to examine **whether special measures should be permitted under the fair employment legislation to bring about a more representative and acceptable police service.**' (emphasis added)

The Fair Employment Commission has identified two problems in increasing the Catholic proportions in the RUC.²⁶ Firstly, the proportion of Catholic applicants needs to be increased to over 40% if it is to match the proportion of the economically active population. Secondly, even if the level of recruits was increased to an appropriate proportion, unless a great deal of recruitment was being done, change would be very slow.

In recognition of the importance of a representative police service, the Unionist Government at Stormont took the view that a fixed proportion of jobs in the police should go to Catholics. The first official report of the new Northern Ireland Parliament in March 1922 suggested that the new Ulster Constabulary:

'..... should be one-third Catholic, recruited initially from suitable members of the RIC, with new Catholic recruits completing the fraction if not enough men were available.'²⁷

Although an Advisory Committee was established to advance increased Catholic recruitment, this Committee failed to pursue its task.

²⁵ Northern Ireland Affairs Committee: Third Report: *'Composition, Recruitment and Training of the RUC'*, p viii para 20.

²⁶ Submission by the FEC to the Northern Ireland Affairs Committee on the Composition, Recruitment and Training of the RUC, 26/2/98.

²⁷ Ryder, Chris: *'The RUC 1922-1997 A Force Under Fire'* 1997, Mandarin at p48.

The goal is to achieve a representative police force. The question is how to achieve this goal within an acceptable time-frame. Two elements must be present: firstly, a sufficient number of the under-represented group must apply and secondly, a significant proportion of these applicants must be appointed.

Police services in Canada and in El Salvador operate quota systems to seek to ensure the inclusion of under-represented groups within the police.²⁸ There are those who consider that short-term change in the composition of the police in Northern Ireland can only come about through ensuring that a fixed proportion of jobs go to Catholics. SACHR has considered recommending the establishment of quotas as a transparent way in which to address the specific problem of under-representation in the police in Northern Ireland. However, even were such quotas to be targeted and time limited, they represent an unsophisticated way to deal with what is a very sophisticated problem. Clearly, there is a considerable problem of perception in relation to the use of quotas which may detract from the creation of confidence in those new members of the police who are drawn from the Catholic community.

There is a need to ensure that all officers are clearly seen to have been recruited on the grounds of merit. The balance of the Commission's view, therefore, is to endorse the position of the FEC in recommending a change to fair employment legislation to permit membership of the under-represented group to be a plus factor when selecting candidates on merit. Such an approach is in line with the decision of the United States Supreme Court in the case of **BAKKE** (1978). This case concerned the admissions policy of the University of California which, in order to ensure diversity in the student body, had established a quota system, reserving places at medical school for black students. While the Court rejected the University of California's quota system, it approved the Harvard admissions policy which allowed for race to be a plus factor when selecting on merit.²⁹ While subsequent decisions of the US Supreme Court have not endorsed the Court's finding in **BAKKE** in full, the decision has not been fundamentally overturned. The general position of the US Supreme Court is that, in certain circumstances, race can be taken into account as part of merit. Given the unacceptably low proportion of Catholic police officers in the RUC and the international standards which require that law enforcement agencies be representative of the community as a whole,³⁰ SACHR considers that an amendment to the Fair Employment legislation should be made to permit religion to be a factor in merit when recruiting police officers. In order to achieve a more representative and efficient police force, consideration should also be given to allowing gender and race to be plus factors when recruiting on merit, to include the necessary legislative amendments.

Such an approach will not deliver the necessary change in isolation. Existing outreach measures should be extended and must operate in conjunction with a transformation of the culture of the police and the working environment to encourage applications from the under-represented groups. An important element in attracting applications from a

²⁸ *'Human Rights on Duty'* (1997), O'Rawe and Moore. CAJ, Belfast at p45.

²⁹ The admissions policy of Harvard is attached as appendix (i) to this submission.

³⁰ See p2 above.

more representative range of individuals will be a changed job specification for the future of policing in Northern Ireland.

As members of ethnic minority communities in Northern Ireland make up less than 1% of the population, there is a need for imaginative outreach measures to aid recruitment from these communities. Numerically, however, recruitment from these communities is likely to be low. SACHR considers that this increases the need for the police to conduct anti-racism training and to adopt other mechanisms to reassure members of these groups. There is also a need for the adoption of special measures to ensure the needs of young people and the disabled are addressed, as again, these are groups which tend not to be represented within the police.

SACHR considers that a changed job description could assist in ensuring that police women move into the mainstream of policing rather than their present situation where they are frequently marginalised in certain policing functions. This is important, not only to ensure an increase in the representation of female officers in the mainstream of policing, but also to improve female officers' promotion prospects.

SACHR is aware that, at a time when policing requirements in Northern Ireland will change considerably, substantial recruitment may not be possible without adopting a radical approach. SACHR believes that consideration must be given to what Hazenberg has described as 'an active exit policy' whereby an organisation can make space to include people with the skills and characteristics required. SACHR has no illusions about the level of likely opposition to such a practice nor about the cost implications. However, SACHR endorses Hazenberg's conclusion that it is:

'one of the few possibilities of making fundamental changes in a relatively short term within an organisation but it requires political backing both in taking unpopular decisions and financial support.'³¹

There is an important human dimension to such an approach. It requires an extremely generous system of retirement. Ensuring that a package is made available to include appropriate re-training together with advice and counselling services, will require a substantial resource commitment.

SACHR considers that there should be increased civilianisation of the police, administratively and possibly also operationally. Those 3,000-4,000 civilians formerly employed by PANI are, under the Police Act (NI) 1998, to become employees of the Chief Constable. This civilian element in the police should be built upon and may provide one possibility for tackling under-representation. Increased civilianisation provides an opportunity to adopt greater flexibility in recruitment criteria, particularly in relation to those who may have past convictions. Where specialist skills are required in areas such as personnel, training and public relations, there is a clear case for civilianisation. SACHR considers, moreover, that senior managers need not necessarily have been serving police officers.

³¹ *Op.cit.* no 4 at p7.

SACHR has considered recommendation number 11 of the Sherrard Working Party on under-representation with regard to conviction criteria. At present, anyone in receipt of more than two cautions or any criminal convictions, even whilst a juvenile, with the exclusion of some driving offences, is automatically deselected. The Working Party concluded that

‘.... there is scope for applying this rule less rigidly in Northern Ireland, given the special circumstances pertaining here.’

SACHR endorses the Working Party’s recommendation that the conviction criteria should be reviewed to take account of the differing circumstances faced in Northern Ireland.

SACHR would urge that consideration also be given to the need to ensure that stringent security vetting does not have an automatically adverse effect on recruitment from the Catholic community.

Training:

Generally, SACHR believes that consideration should be given to a fundamental overhaul of police training in Northern Ireland. As a minimum, SACHR considers that there is a need for much greater involvement of professional civilian trainers operating alongside internal police trainers. Perhaps, as in some provinces in Canada, an external police training college should be established whereby only graduates of the college programme are eligible to apply for the police service. A similar approach is adopted by the Garda Síochána in the Republic of Ireland where training is carried out in the Templemore College. SACHR considers that such a system would be preferable to the current system in Northern Ireland whereby new RUC recruits are sworn in as constables before their initial training period even begins. SACHR would also urge that consideration be given to providing such training programmes for prospective police officers alongside the training given to, for example, fire service operatives and social workers.³²

It is in the area of training that greatest reference is usually made to the importance of human rights to policing. In general, however, the way in which training is delivered to police officers lacks integration of human rights into the mainstream and, as such, makes it less likely that protection of human rights features as a central issue for the average police officer in carrying out their daily duties. Hazenberg states that generally the focus on human rights issues is often limited to law and:

‘Little or no attempt has been made to offer practical advice which would enable the target group to use behavioural and other skills necessary to act in accordance with human rights principles.’³³

³² For information as to how such a programme has operated in practice, contact: Randall Charles Garrison, Instructor, Criminal Justice/Pacific Rim Studies, Camosun College, 3100 Foul Bay Road, Victoria BC V8 P5J2, Canada.

³³ *Op. cit.* no 4 at p 11.

She contends that if practice situations are dealt with from several different perspectives:

‘..... it makes it possible to treat subjects with a strong ethical component, such as human rights, not as an isolated, independent subject but as an integral part of total police operations.’³⁴

While the training of new RUC recruits has, in recent years, included a community awareness programme, SACHR considers that this programme is insufficient to ensure that human rights are dealt with as ‘an integral part of total police operations’.

In his Report on the RUC for 1997/98, Her Majesty’s Inspectorate of Constabulary repeated his view that community awareness training should be reinforced by being fully integrated into other subjects. This is necessary in his view so that it is not seen as peripheral to mainstream policing but a fundamental feature of the organisation’s overall strategy.³⁵ The FEC has pointed out that there is a ‘chicken and egg problem’ with such training in that

‘it can be more effective if there is a reasonable proportion of both communities being trained. As long as Catholics are such a small minority, the benefits of awareness training will be severely limited.’³⁶

The incorporation of the European Convention on Human Rights into United Kingdom law; the 50th Anniversary of the UN Declaration on Human Rights and the introduction of a Northern Ireland Bill of Rights all require that there be an integrated programme of professional human rights training for police officers in Northern Ireland. The establishment of the new Northern Ireland Human Rights Commission at the end of 1998 will provide the police with an expert body to assist its training in the field of human rights and SACHR considers that it could be helpful for a relationship to be established between the police and the new Commission at an early stage. The establishment of a human rights commission in the Republic with ‘equivalent’ powers to that of the new Northern Ireland body with a joint committee made up of representatives of both bodies should provide an opportunity for greater co-operation in the delivery of human rights training to both police forces. This co-operation in training delivery should be mirrored at force level between the RUC and the Garda Síochána. The area of human rights training, in which common international standards are required of the police in both jurisdictions, could provide an appropriate starting point for co-operation in training delivery.³⁷

³⁴ *ibid* at p12.

³⁵ See PANI Annual Report 1997/98 at p23.

³⁶ *Op. cit.* no 11.

³⁷ As regards structured co-operation between the two police services. SACHR would draw attention to the lack of a Police Authority in the Republic of Ireland.

Training is not only about new recruits. It must continue throughout all levels of the police service to ensure the organisation is committed to service delivery subject to common standards. All professions provide, and indeed require, their members to update their skills through continuing professional education. Moreover, SACHR considers that further opportunities should be provided for serving officers to pursue graduate and postgraduate services and to gain employment experience outside the police service as well as for an increased number of civilians to work within the police service. This could prove useful in softening the barriers between the public and the police.

(ii) Culture, ethos and symbols

Symbols:

Changing symbols alone is not sufficient without substantive change but substantive change without a change in symbols will also fall short of the goal of achieving a police service which is acceptable to all in Northern Ireland.

Name: Section 2(2) of the Police (Northern Ireland) Act provides that the police, traffic wardens and civilian staff working for the Chief Constable shall be known in future as 'Northern Ireland Police Service'. However, the police force itself will continue to be known as the Royal Ulster Constabulary.

The Sherrard Working Party on Under-representation considered the question of the name of the police within the context of the need for a neutral working environment. The Working Party concluded that if:

'.....the RUC is to be viewed as truly neutral by both communities there may be a need to adopt a policy on how the RUC will wish to advance its use of the additional title the Northern Ireland Police Service.'

The Northern Ireland Affairs Committee Report states:

'There is no clear reason to make a special case for the RUC by changing its name, without changing the names of other organisations, which are also either 'Royal' or 'British'. The official symbols associated with the force are not central to the status of the RUC in the eyes of the community.'³⁸

SACHR considers that there are strong and powerful arguments both for retaining the existing name and for changing the name to meet the need for a neutral ethos. In essence, the latter would require that neither the words 'Royal' nor 'Ulster' be included in the day to day title of the police. A neutral name denoting a police for all citizens in Northern Ireland might be the 'Northern Ireland Police Service', the name employed in the Police Act to describe collectively, the police, traffic wardens and civilian staff working for the Chief Constable. Consideration should be given as to

³⁸ *Op. cit* no 10 at para 42.

how to increase the use of the title 'the Northern Ireland Police Service' when describing serving police officers, perhaps with official publications and correspondence including a reference to the body being in receipt of the Royal Charter.

SACHR also considers that serving police officers should not be considered the police force but rather the police service. The Commission would stress, however, that there is little point in changing the name to that of a police service if in essence the composition, culture and ethos remains that of a police force.

SACHR would stress that its position with regard to a change in the name of the RUC is not intended to be dismissive of the service and sacrifice of police officers of that force but rather to address the divisive nature of the name and to contribute to the creation of a neutral working environment.

Flags and other Emblems:

SACHR welcomes the recent acceptance by the Chief Constable of the Northern Ireland Affairs Committee recommendation that the Union Jack not be flown over RUC stations on public holidays, including 12 July. SACHR does not endorse the Committee's view that the union flag is the appropriate flag to be flown over police stations. SACHR would urge that a further review of the practice of flying flags on police stations be conducted. A neutral working environment must be established to encourage members of under-represented groups to apply. Police stations must be made more accessible and less alienating places to all members of the public by removing pictures of members of the Royal family and other symbols which are identified with only the Unionist tradition in Northern Ireland.

The Sherrard Working Party on Under-representation recommended a review of the flags and emblems policy within the RUC considering that:

'... if the RUC is to be viewed as truly neutral by both communities there may be a need to adopt completely new symbols unrelated to either community.'

The importance of improving the appearance and accessibility of police stations to the public was identified by the NIO's *Fundamental Review* as one of the elements required for a partnership approach between the police and the community. The Report also suggested that a neutral working environment should be promoted.³⁹ The police should seek advice from the statutory equality bodies in achieving a neutral working environment.

Oath of Office:

SACHR welcomes the reform of the Oath of Office for constables in the Police (NI) Bill which brings the oath into line with that for police officers in Scotland.

³⁹ See PANI Annual Report 1997/98 at p51.

In future the declaration will be:

'I hereby do solemnly and sincerely and truly declare and affirm that I will faithfully discharge the duties of constable.'

The duties of a constable are defined in the Bill as being:

- to protect life and property
- to preserve order
- to prevent the commission of offences
- where an offence has been committed, to take measures to bring the offender to justice.

SACHR would urge that serious consideration be given to extending a constable's duties along the lines outlined in the next section of this paper by way of further amendment to the Oath of Office.

Membership of Secret Organisations and Groups which Prohibit Membership on Religious Grounds:

Police officers' membership of outside organisations is a subject of substantial public concern and interest, not only in Northern Ireland, but throughout the United Kingdom. As the recent PANI Annual Report confirms:

'In recent times the Association of Chief Police Officers (ACPO) has suggested that police officers should be required to register their membership of outside organisations. The Home Affairs Committee has reached similar conclusions about Freemasonry and the Home Secretary has announced that those joining the criminal justice system will in future be required to register certain interests.'

In Northern Ireland it is often claimed that RUC officers' membership of outside organisations such as the Orange Order, the Apprentice Boys, the Freemasons or the Ancient Order of Hibernians can create concerns regarding the RUC's impartiality or perceived impartiality.

Three main proposals have been made for addressing this question:

- (i) establishing a voluntary register of interests;
- (ii) establishing a compulsory register of interests not to be made public; and
- (iii) placing a bar on membership of such organisations for serving police officers.

The Police Authority for Northern Ireland has supported the establishment of a compulsory register of interests to 'strengthen in the public mind the independence and impartiality of the police.'⁴⁰

The Northern Ireland Affairs Committee has recently recommended that new recruits to the RUC should not be members of organisations who generally prohibit membership on religious grounds. The Committee considered that this would be 'incompatible with a public service organisation especially the RUC'⁴¹. New recruits to the RUC should not be permitted to be members of such organisations. However, the Committee recommends that officers who already belong to such organisations should register their membership privately.

In response, the Chief Constable stated that he would prefer if his officers were not members of such organisations and that he believed there should be a register of interests. He said that the recommendation that new recruits be banned from membership would require legislation which would have to be very carefully considered in relation to the European Convention on Human Rights.⁴²

Four of the Northern Ireland Affairs Committee members objected to the Committee's recommendation that new recruits be barred from membership of such organisations. They argued that the proposal would be contrary to fair employment law and to the Northern Ireland Constitution Act 1973, specifically, that the bar would constitute indirect discrimination against Protestant applicants.

It is recognised by Regulation 6 of the Royal Ulster Constabulary Regulations (NI) 1996 that police officers, in order to maintain their reputation for even-handedness, must accept certain restrictions on their private lives. Regulation 6 of the 1996 Regulations provides that the restrictions on private life contained in Schedule 2 apply to all officers. Schedule 2, paragraph 1 provides:

'A member [of the RUC] shall at all times abstain from any activity which is likely to interfere with the impartial discharge of his duties, or which is likely to give rise to the impression amongst members of the public that it may so interfere; and in particular a member shall not take any active part in politics.'⁴³

The January 1996 decision by Carswell L J in the **Judicial Review Application by John William Alexander Stewart**⁴⁴ considered the question of activities by a serving

⁴⁰ *ibid* at p54.

⁴¹ *Op cit* no 10 at para 51.

⁴² See 'Union Flag: Not to Fly Over RUC Stations on Twelfth' *Irish Times*, 28 July 1998.

⁴³ This schedule is subject to interpretation at force level. Limited guidance as to interpretation is given to officers in the RUC Code at S.4, appendix 4C and at S.9.

⁴⁴ *Car F 1939: In the High Court of Justice in Northern Ireland Queen's Bench Division (Crown Side) In the Matter of Applications by John William Alexander Stewart for Judicial Review.*

police officer in connection with the Orange Order and the Apprentice Boys of Derry Association. The Case was presented by the RUC on the basis that there was nothing in the regulations⁴⁵ to prevent the applicant from being a member of the Apprentice Boys, but rather, it was his activities which offended against the prohibition. The question as to whether or not a sustainable distinction could be drawn between membership per se and participation in activities was raised on several occasions during the case. While Carswell L J stated that he would require further evidence and argument before expressing a view as to whether membership per se would constitute a breach of the regulation he stated:

'The validity of the distinction was vigorously attacked in several hearings and counsel for the applicants sought to draw the conclusion that since there can be no real distinction between membership and activities, the tribunals could not properly penalise the activities while accepting the propriety of membership. The logic of that argument has considerable strength, especially in the contention that it is the public's knowledge of the officer's membership that creates the impression, so that an officer who parades is in the same position as one who is not so active but is known to be a member of the organisation Although lines may be difficult to draw, a sustainable distinction may on that reasoning be made between an officer's membership of organisations, even if known to the public, and active and publicly prominent support, which may be said to show a stronger degree of commitment to them. But if this distinction cannot be sustained, it may be that the premise and not the conclusion is incorrect, and that the concession about membership was wrongly made.'⁴⁶

SACHR considers that the compromise proposed by the Northern Ireland Affairs Committee is an illogical one. If, as SACHR believes, membership of certain organisations is incompatible with membership of the police service in Northern Ireland, then that should apply both to new recruits and to serving officers. Concerns may be raised in respect of the human rights of police officers such as freedom of religion, freedom of expression and freedom of association (Arts 9-11 ECHR). All 3 of these rights are subject to limitations necessary in a democratic society on a variety of grounds. From a civil liberties perspective, any limitations to these rights must be specifically justified. SACHR considers, however, given how crucial it is for there to be confidence in an impartial police service in order to build peace in Northern Ireland, that limitations on these rights could be considered justifiable in accordance with the margin of appreciation accorded to states under the ECHR. SACHR does not lightly depart from such established principles of human rights as freedom of association. SACHR accepts the need for a limitation to these rights, specifically within the context of the pressing need for the police in Northern Ireland to be perceived to be impartial, and also for operational reasons,

⁴⁵ The Regulations in force at the time were the 1984 Regulations which in the relevant wording were identical to the 1996 Regulations.

⁴⁶ *ibid* at p15.

given the potential conflict of interest for serving officers who are members of such organisations.

It has also been suggested by some that such a bar would constitute indirect discrimination against Protestants. The test for indirect discrimination is two-fold:

- (i) is there an adverse impact?
As more Protestants than Catholics are likely to be members of such organisations there is likely to be an adverse impact on Protestants
- (ii) is this adverse impact justifiable?
SACHR considers for the reasons outlined above that such an adverse impact would, strictly within the context of policing in Northern Ireland, be considered justifiable.

While SACHR does not consider that such a bar would constitute indirect discrimination, the Commission considers that there could be merit in amending the law to ensure that any ambiguity is resolved.

As Topping has explained:

'Whilst membership of the (Orange) (sic) Order is not (and as far as can be traced) never has been contrary to RUC regulations or any prohibition within the force, nevertheless, and even in the absence of a prohibition as such, it has been received wisdom that officers should not be members of the Orange Order.'⁴⁷

He points to 'obvious signposts which should make officers wary of membership of certain kinds of organisations'. These 'signposts' include the RUC manual which has the following to say in relation to 'Private Life':

'A police officer shall, in his private life, behave in a manner which does not bring discredit to either the force or himself. As well as having statutory restrictions placed on his private life, a police officer's character and conduct whilst off duty must always be exemplary, thus maintaining a position of respect in the community in which he lives and serves.'⁴⁸

The opening page of the RUC Charter which lists 'Our Values', includes 'impartiality' in this list. The 1996 White Paper on Policing in Northern Ireland 'Foundations for Policing'⁴⁹ stressed the importance of a neutral stance by police officers. It stated that:

⁴⁷ Topping, Ivan 'Public Perceptions and Private Lives - Lessons in Policing', NILQ vol 48 no 2 Summer 1997, 168 at 175.

⁴⁸ RUC Manual, chapter 1 (Professional Policing Ethics'), xii.

⁴⁹ *Foundations for Policing* (cm 3249, 1996).

'All police officers, acting under the direction and control of the Chief Constable, should be explicitly required by legislation to carry out their duties and uphold the law impartially, without favour or affection, malice or ill-will without regard to status, gender, race, culture and tradition, religious beliefs, political beliefs or aspirations, and with an understanding of differing views.'⁵⁰

SACHR considers that there may be important symbolic and practical merit in requiring police officers to make an affirmation which includes a commitment to uphold the principle of impartiality. As Topping has argued, this would reflect the content of the RUC manual and the RUC Charter. Such an extended oath would, in SACHR's view, be an appropriate complement to the Oath of Office of Members of the new Northern Ireland Assembly.

(iii) Structure and Management

SACHR considers that the question of some form of regionalisation of the police service in Northern Ireland should be kept under review. This is particularly so should the expected common geography for public bodies come about. In the past, centralisation was employed in the wake of the misuse of power within Northern Ireland at a local level. In a new political climate there may be compelling arguments for some form of regionalisation of the police in Northern Ireland. SACHR recognises in this regard that the question of two-tiered policing is part of the debate. SACHR rejects such a structure for the following reasons: expense; the possibility of segregated, polarised policing of co-religionists and doubt as to the extent to which the second community tier would move into the first tier thereby affecting its composition and ethos.

(iv) Partnerships with the Community and

(v) Accountability to the Law and to the Community

Formal partnerships between the community and the RUC are provided by way of the Police Authority for Northern Ireland and the Community Police Liaison Committees.

PANI:

The Police Authority for Northern Ireland has been subject to considerable criticism for its lack of representation of the Nationalist population and for its emphasis on rebutting criticism of the RUC rather than on representing the views of the community to the RUC. Mike Brogden's principal recommendation in respect of PANI is that its Members:

'must be tutored to understand that the one-way street of police accountability - explaining the police to the public - must take two-way

⁵⁰ *ibid* at para 3.3.

traffic, requiring the police to take account of community requirements, including minority views.⁵¹

The Northern Ireland Select Committee has stated that:

'Very careful consideration needs to be given to the future of the Police Authority. Its reputation for effectiveness has been limited and any change in its role and composition will need to convince sceptics that it is at last being given real powers and will represent a broad range of opinion in Northern Ireland. As long as the RUC has a considerable security function, this will create serious difficulties.⁵²

SACHR considers that there can be no substitute for a representative police authority. SACHR therefore recommends that PANI should come to an end and that a new representative police authority be established. It is SACHR's view that provision must be made for the inclusion of elected representatives on the new body. SACHR considers that a minority of the total membership of the new body should be directly elected, perhaps alongside Local Council or European Parliamentary elections. In this regard, SACHR would urge that consideration be given to ensuring that any new body include representatives of all those players who will have a role in the Civic Forum attached to the new Northern Ireland Assembly.

Community Police Liaison Committees:

SACHR considers that localised community police liaison committees should provide an important vehicle for communication at the local level about a community's policing needs and about the concerns of the community with regard to policing. However, it is SACHR's view that the existing system is not serving the needs of the community and that fundamental change is required.

SACHR has a many concerns, about the composition of these committees, the lack of transparency in their workings and about how constructive the relationship actually is between the various committees and the local police. It appears to SACHR that the difficulties across a range of policing issues in Northern Ireland are crystallised in the operation of the CPLC's.

While only 37% of respondents to a PANI survey of October 1997 were aware of the existence of CPLC's, 91% thought them a good idea and 89% thought that all local communities should have such a body.⁵³

⁵¹ Brogden, M, *'Two-tiered Policing - a Middle Way for Northern Ireland?'* A discussion paper from Democratic Dialogue, March 1998 at line 703.

⁵² *ibid* at para 112.

⁵³ See: *'Reflecting All Shades of Opinion'*, Report of PANI, February 1998 (results of a survey of over 1,200 respondents conducted in Oct 1997).

In SACHR's view, where such a high proportion of respondents thought that all local communities should have such a body and yet, less than half of those in favour knew of their existence, these bodies are not operating effectively.

SACHR considers that the existing CPLC's vary in effectiveness from district to district. The committees have worked more effectively where there has been a commitment to the consultation process by local police stations. However, there is no CPLC which provides a model of best practice.

Brogden states that:

'Civilian structures such as Police Liaison Committees can only function properly, and be accorded legitimacy, if they are representative of diverse communities'⁵⁴

O'Rawe and Moore highlight the limited powers of the CPLC's:

'The Committees have no powers and, as their title suggests, are intended to be consultative. The consultation process is voluntary on the part of the police and, while some committees report that useful discussions are held, the committees have no power to demand answers from the police. Security policing is not part of their remit, and the focus tends to be on relatively mundane local issues.'⁵⁵

It is clear that, as presently constituted, CPLC's are not representative of the community in Northern Ireland, nor do they provide a vehicle for the community at large to raise concerns directly with the police, the majority of which do, indeed, arise from 'relatively mundane local issues'.

A new approach must be taken to ensure that the effectiveness of such processes are no longer solely dependent upon the level of enthusiasm of the officers in the local police station. A more formalised set of arrangements must be put in place to govern:

- (a) the composition of such committees;
- (b) the transparency of their decision-making and discussions with the police; and
- (c) the nature of their relationship with the police and with PANI.

Lay Visitors

It is SACHR's long-standing position that Holding Centres should cease to operate and that all interviews should be conducted in designated police stations under PACE. In advance of such a step, however, SACHR agrees with PANI and the Lay Visitor Panel, that the extension of the Lay Visitor scheme to the 3 Holding Centres in

⁵⁴ Op. cit. no 32 at line 709.

⁵⁵ Op. cit. no 13 at p148.

Northern Ireland would be an important measure. SACHR considers that the possibility of unannounced visits to those detained under the Emergency legislation by members of the Lay Visitor Panel could potentially serve either to allay, or to highlight, some of the public's fears regarding conditions of detention in the Holding Centres. For such an initiative to serve in this way, the work of the Lay Visitors would have to be transparent and information made readily available to the public as to their findings.

Financial Accountability:

Brogden points out that:

'The evidence from other western countries - from Canada to Norway - is that the new mode of accounting for the police is to replace political forms of accountability (which have largely failed) with financial controls.'⁵⁶

This runs counter to the recent change for Northern Ireland in the Police (NI) Bill whereby control of police finances is to be transferred from PANI to the Chief Constable. In the consultation period which preceded the Bill, SACHR made its concerns known regarding the proposed changes to financial accountability.

'SACHR is, moreover, concerned that if budgetary responsibility were transferred from PANI to the Chief Constable, this would severely diminish the potential influence of the Authority. If such changes were to take place, SACHR is concerned about where the existing statutory authority for securing the maintenance of an efficient and effective police force would rest and how those exercising that authority would be brought to account.'⁵⁷

SACHR retains these concerns regarding financial accountability and, more generally, regarding the lack of clarity in the relationship between PANI, the Chief Constable and the Secretary of State. One of the clearest examples of this lack of clarity arises in the area of operational plans. PANI can require the Chief Constable to produce operational plans but it is unclear what the sanction would be, if any, on the Chief Constable should he fail to produce the plans or produce plans which PANI considers to be unsuitable. This is a concern which appears to have been shared by the Northern Ireland Affairs Committee which stated that:

'There needs to be absolute clarity about the extent to which the Chief Constable will be accountable to the Police Authority.'⁵⁸

⁵⁶ Op. cit. no 32 at line 699.

⁵⁷ Twenty-first Annual Report of the Standing Advisory Commission on Human Rights, 1995-96, p38 at para 14.

⁵⁸ Op. cit no 10 at Para 111.

In general, SACHR believes that in spite of the recent legislation making changes to the tripartite relationship and financial accountability, that the Independent Commission on Policing should examine these issues, which clearly fall within its remit.

Political Accountability:

SACHR considers that the fundamental changes in the way in which Northern Ireland is to be governed will, undoubtedly, have implications for the political accountability of the police. While policing will remain a reserved matter,⁵⁹ and therefore under the Secretary of State for Northern Ireland, the Northern Ireland Assembly will, undoubtedly, also take an interest in issues of policing which are so crucial to building a lasting peace in Northern Ireland. SACHR considers that it may be helpful for the Independent Commission on Policing to consider what role, if any, the Northern Ireland Assembly and local politicians should play in relation to political accountability of the police. SACHR has recommended above that any new police authority include elected political representatives. Should that not occur, the Independent Commission should consider the nature of the role which can be discharged by local politicians.

Legal Accountability:

Legal accountability for the police is governed not only by national law but also by international human rights law.⁶⁰ International standards should not only guide the content of national law but should also be specifically referred to in national legislation as required by Article 2 of the *UN Code of Conduct for Law Enforcement Officials*. Of fundamental importance in this regard is the manner in which human rights training is delivered to police officers (see section above on Training). As Francesc Guillen of the Police Academy in Catalonia has said:

‘You can have police officers who can say the whole contents of the Convention of Rome about freedom and liberties but they do not know what to do, for instance, about a violent group that is attacking people. In that case, they have to know how to apply human rights in the operational field.’⁶¹

⁵⁹ See: Reserved Matters, Schedule 3, clause 10, Northern Ireland Bill, 31/7/98.

⁶⁰ See the: *UN Code of Conduct for Law Enforcement Officials*; *UN Basic Principles on Use of Force*; *UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*; the *OSCE Moscow Declaration*; the *Council of Europe Parliamentary Assembly Resolution 690*.

⁶¹ Quoted in O’Rawe and Moore ‘*Human Rights on duty*’ CAJ, 1997 at p69.

Key Issues:

(i) Complaints:

SACHR welcomed the recommendations of the Hayes Independent Review of Police Complaints which met many of SACHR's concerns regarding the existing police complaints system in Northern Ireland.⁶² SACHR expects that the necessary financial and human resources will be made available to the Office of the Police Ombudsman to ensure that it can efficiently and effectively discharge the important role assigned to it. SACHR believes that the new office should have a strong investigative role and that consideration must be given as to the appropriate skills which will be required by the staff of the office.

(ii) Emergency Legislation:

SACHR's long-standing concerns regarding the extent to which the emergency law regime breaches international human rights law is well documented. In general, SACHR's concern is that over time recourse to emergency-type powers becomes normalised. International human rights norms make it clear that recourse to exceptional provisions must not only be strictly time limited but must cease when the emergency is over. SACHR responded to the Lloyd Inquiry into Legislation Against Terrorism and indicated its concern about the Inquiry's principal premise, namely, that

'when lasting peace is established in Northern Ireland, there will continue to be a need for permanent anti-terrorist legislation.'⁶³

SACHR considers that the adverse impact of emergency legislation on police/community relations has been significant and that the continuing derogations from international human rights law in respect of such legislation are unacceptable. SACHR was disappointed that a review of the use of emergency legislation was specifically excluded from the Review of Criminal Justice.⁶⁴

SACHR would urge the Independent Commission on Policing to specifically consider the role of emergency legislation in respect of policing in Northern Ireland, particularly in light of the Government White Paper on the Future of Emergency Legislation which we understand is to be published for consultation in Autumn 1998 and the recent passage by emergency session in Parliament, of the draconian new anti-terrorist measures in the Criminal Justice (Terrorism and Conspiracy) Act.

⁶² See SACHR Twentieth Annual Report 1994-95, pp37-40 and Twenty-second Annual Report 1996-97, pp42-44.

⁶³ See 22nd Annual Report of SACHR 1996-97 at pp27-30.

⁶⁴ See: The Multi-Party Agreement, Annex B, Review of the Criminal Justice System, Terms of Reference, p24.

(iii) Use of Plastic Bullets:

In the past, SACHR has taken the view that, in certain limited circumstances, recourse may be had by the security forces to plastic baton rounds, where such PBR's are discharged strictly in accordance with the relevant guidelines. SACHR has now reconsidered its position and is not persuaded use of PBR's can be justified given the lethal nature of PBR's and the inadequacy of the guidelines for their use. It is SACHR's view that it would appear to be impossible to ensure that PBR's are not misused.

In 1995 the UN Committee Against Torture and the UN Committee on the Rights of the Child both mentioned the deployment of plastic bullets in Northern Ireland as amongst a number of their concerns. In a report of 1997 the Civil Liberties Committee of the European Parliament recommended that the European Parliament be asked to reaffirm its earlier demand to ban the use of plastic bullets. This call for a ban on the use of plastic bullets was also made at the 1998 US Congressional debates on the human rights situation in Northern Ireland.

SACHR does not consider that it is its role to suggest alternatives to PBR's. While SACHR hopes that we are now moving to a situation where there will not be a need for intermediate weapons, it believes that the RUC and the Home Office should consider and publicise alternatives to PBR's in order to open up a debate. The canvassing of such alternatives should include both technical information and the human rights implications of their use.

(iv) Weapons:

SACHR also believes that steps should be taken to demilitarise the police in Northern Ireland. The presumption should be in favour of an unarmed police service with arms only to be carried in certain circumstances which must be specifically justified. An initial step in this direction would be the removal of automatic long-arm weapons. Where it is considered necessary for the police to carry arms, such arms should be confined to revolvers.

CONCLUSION

SACHR has considered all the recent proposals for change and reform of the RUC against one simple touchstone:

'..... if the changes being considered would offer anything new to the police constable on the ground and therefore affect the public's experience of policing in Northern Ireland.'⁶⁵

While SACHR stressed in its Introduction above, the importance of the political will existing to initiate change, this political will must go hand-in-hand with implementation

⁶⁵ See *Twenty-first Annual Report of SACHR 1995-96*, p38 at para 17.

to ensure that change filters through to the relationship between the public and the police officer.

Incremental change is not enough. Each aspect of policing is interdependent - it is for this reason that a radical and holistic approach to change is required. SACHR would, in conclusion, stress what it sees as the positive aspects of such change - SACHR's vision is for a widely representative police service, working closely with the public and which provides a potentially attractive career for all citizens.