8 October 2012

Dear Minister,

**Department of Justice (DoJ) Consultation on ‘Reducing Offending: Towards a Safer Society’**

The Northern Ireland Human Rights Commission pursuant to Section 69(3) of the Northern Ireland Act 1998 advises the Executive of measures which ought to be taken to protect human rights. In accordance with this function I am writing to you with comments on the Department of Justice consultation document, ‘Reducing Offending: Towards A Safer Society.’

The NIHRC welcomes your department’s commitment in the consultation document setting out how Government can work more effectively to reduce offending and also recognising that reducing offending is not the sole responsibility of the DoJ. Given that this ‘Strategic Framework’ will “sit above and ensure the co-ordination” of existing strategies and plans within the DoJ, and connect to similar approaches being taken across Government, it is all the more important that it reflects the NI Executive’s domestic, regional and international human rights obligations.

The relevant international treaties in this context include, the European Convention on Human Rights, (ECHR), the International
Covenant on Civil and Political Rights, (ICCPR), the United Nations Convention on the Rights of the Child, (CRC), the United Nations Convention of the Elimination of Discrimination Against Women (CEDAW), and the United Nations Convention on the Rights of Persons with Disabilities, (CRPD). The DoJ, via the devolved administration, is subject to the obligations contained within these international treaties by virtue of the United Kingdom’s ratification. The Commission, therefore, advises that the proposals are scrutinised for full compliance with relevant International human rights standards.

In addition to these treaties, various soft law instruments exist that should guide the DoJ approach to reducing offending. These include the UN Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules), the UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UN Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) and the Council of Europe Recommendation No. R (92)16 on the European Rules on Community Sanctions and Measures.

Although it may not be feasible to set out all applicable human rights standards within the framework document, it should be clear from the outset that it is grounded within a human rights based approach. For example, Section 3 sets out the core principles of the approach to reducing offending (p. 6), yet the DoJ human rights commitments are not mentioned. This is despite the fact that many of the core principles derive from international human rights instruments. Therefore, for example, the ‘focus on prevention and diversion’ is found in Article 40 (3) (b) of the CRC as well as the soft law standards relating to non-custodial measures (The Tokyo Rules; CoE Recommendation No. R (92)16); and the principle of being ‘evidence based and effective’ is derived from several human rights instruments including the Beijing Rules, the Tokyo Rules, the Riyadh Guidelines, and CoE Recommendation No. R(92)16. It is the Commission’s view that the strategic framework should have a fundamental aim of ensuring the human rights of all those affected, including individual offenders and victims, as well as addressing the concern of society for public safety and crime prevention.¹

It is not clear at present that the structure and content of the strategic framework is supported by international human rights standards. To give two examples: under strategic framework 2 ‘Prevention and Diversion,’ early interventions for children to tackle risk factors associated with offending are prioritised. However, ¹ See in particular the fundamental aims of the Tokyo Rules.
there is no indication that such interventions will be proportionate and centre on the human rights of the child in accordance with the CRC; additionally, under ‘Prevention and Diversion’ the document refers to the importance of responding to mental health needs. Yet there is no reference to the CRPD, which is especially relevant for persons with disability in the criminal justice setting. For example, Article 13 requires appropriate training for those working in the administration of justice, including police and prison staff and Article 14, that persons with disabilities deprived of liberty are, on an equal basis with others, entitled to human rights guarantees and treated in compliance with the objectives and principles of the CRPD, including by provision of reasonable accommodation.

Turning to the outcomes proposed against which the DoJ will monitor progress, the Commission recommends that these are aligned with the NI Executive’s human rights obligations that relate to reducing offending. Although not an exhaustive list, such outcomes would include:

- the development and roll out of non-custodial measures that contribute directly to a reduction in the unnecessary use of imprisonment;\(^2\)
- a reduction in the number of children remanded to custody;\(^3\)
- the development of a comprehensive system of measures that divert children away from the formal criminal justice system resulting in a definite and final closure of the case;\(^4\)
- a reduction in the incidence of imprisonment for women convicted of minor offences\(^5\) and, in particular, given recent statistics showing an increase in imprisonment for non-payment of fines,\(^6\) a reduction in the use of imprisonment for fine default;

\(^2\) Rule 2.3 of the Tokyo Rules.
• the development of measures to increase and enhance educational, rehabilitative and resettlement programmes for women prisoners.\textsuperscript{7}

These outcomes, if achieved, would address some of the concerns identified within the proposed strategic framework such as the difficulty in planning constructive engagement to promote desistance from crime due to high proportions of remand and short-term prisoners (p.15).

Finally, the Commission advises that if provision is to be made to include the community (Q.8), it should be premised upon the relevant human rights standards. In this respect the Tokyo Rules and the CoE Recommendation No. R (92) 6 provides important guidance. Therein, community participation is recognised as a means to improve ties between offenders and the community and as a mechanism to increase public understanding in relation to the application of non-custodial measures. However, procedural requirements are also laid down. These include, for example, measures around the recruitment and training of volunteers (Rule 19.1 Tokyo Rules), and procedures according to which tasks, responsibilities, limits of competence, and accountability are set out (Rule 50 CoE Recommendation).

As with all advice, the Commission is available to provide you with further detail on these matters as the DoJ continues to develop its strategic framework.

Yours sincerely

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\textsuperscript{7} As above, n. 4, at p. 6.