SHARING EXPERIENCES FROM NORTHERN IRELAND

THE CHALLENGE OF TRANSFORMING POLICING
The Social Change Initiative (SCI) believes in the power of peer learning and exchange. Located in Belfast (Northern Ireland) it has identified issues and strategies that address the challenges of peacebuilding in a violently contested society. The purpose of these short Peacebuilding Practice Notes is to share insights and experience with activists and peacebuilding practitioners in other divided societies.

The Peacebuilding Practice Notes focus on specific initiatives that helped to provide alternatives to violence and consolidate the peace process in Northern Ireland. It is hoped that the learning can travel and be adapted to circumstances in other countries. While no context is the same, The Social Change Initiative believes that examples of conflict transformation offer the potential for shared learning.

The Peacebuilding Practice Notes are available to download from The Social Change website (www.thesocialchangeinitiative.org). Each Note provides links for further information. This Note describes the importance of reviewing the criminal justice system in the context of conflict transformation. It should be read alongside Peacebuilding Practice Note 3 on the review of policing in Northern Ireland. (https://www.thesocialchangeinitiative.org/wp-content/uploads/2019/01/PPN3.pdf)
Criminal Justice and peace building: learning from Northern Ireland

In divided societies, policing and criminal justice systems can often feed and fuel conflict or, at the very least, can become seriously distorted by extended periods of conflict. Accordingly, it is important in any peace-building effort to create a vision of how society wants its justice system to work in future.

Looking at the experience in Northern Ireland, and its transition to a more peaceful society after decades of violent conflict, there appears to be some learning which could be of use to peace-builders elsewhere.

Undertake a comprehensive review

The necessity for carrying out a thorough review of the criminal justice system was agreed in the course of negotiating Northern Ireland’s peace agreement in 1998. The agreement drew a line under the past but recognised that this was a “truly historic opportunity for a new beginning” (preamble) and accepted that inter alia the criminal justice system needed to be overhauled.

All the parties to the peace accord signed up to the need for a “wide-ranging review of criminal justice …(to) address the structure, management and resourcing of publicly funded elements of the criminal justice system and will bring forward proposals for future criminal justice arrangements” (see appendix for relevant extracts from Good Friday/Belfast peace agreement) The review was to cover arrangements for issues such as: appointments to the judiciary and magistracy; the organisation of prosecution process; improving the system’s responsiveness and accountability and any lay participation; mechanisms for addressing law reform; and appropriate democratic political oversight and safeguards guaranteeing the independence of the criminal justice system.

Comprehensive as the criminal justice review was to be, there were two important exceptions. One (policing) was to be addressed by way of a separate distinct mechanism examining future policing arrangements (subsequently resulting in the Patten report). This exception was widely accepted, given the enormity of the distinct tasks involved, and the way in which both reviews “were conscious of the linkages ….and that our efforts to develop proposals for a fair, rights-based, and effective criminal justice system

---

1 A new beginning: policing in Northern Ireland by the Independent Commission on Policing for Northern Ireland (1999), often called the ‘Patten report’ after its chair, the Rt. Hon. Chris Patten.
which inspired the confidence of the community as a whole could not be divorced from the outcome of (other) reviews” (Criminal Justice Review – CJR - para 1.22).  

The second exception set out in the Agreement - “those aspects of the system relating to emergency legislation” – was more contentious. Commentators claimed that many of the problems with the Northern Ireland criminal justice system stemmed from the operation of ‘permanent’ emergency legislation. Nevertheless the political negotiations had deliberately excluded this element and the Review noted this as a constraint on the work (CJR, para 1.24). The final report noted that “for many, the experience and perceptions of criminal justice were influenced heavily” (para 1.22) by public attitudes to emergency legislation.

The lesson from this experience is that, whatever review mechanisms are established, they should have political, popular and legal credibility, and they should look at criminal justice in its entirety. The starting point for the Criminal Justice Review were principles laid down in the hard-won peace agreement which was “the touchstone against which we measured all the proposals we considered and the recommendations we make” (CJR, para 1.2). The Agreement set down that the eventual system must be operationalised in such a way as to:

- Deliver a fair and impartial system of justice to the community;
- Be responsive to community concerns, and encourage community involvement
- Have the confidence of all parts of the community and
- Deliver justice efficiently and effectively.

The final report included 294 recommendations.

Engage with the public

“We committed ourselves from the outset to full consultation; we believed that it was important to gather and test the views of as wide a range of opinion in Northern Ireland as possible” (CJR, para 1.10).

Northern Ireland’s Criminal Justice Review engaged in a formal consultation process with the political parties, criminal justice agencies, the legal profession and the major voluntary and community groups working in the criminal justice field by publishing a consultation paper “to set people thinking” (CJR, para 1.13). It sought written comments but also encouraged interested organisations and individuals to seek

---

2 All quotes, except where indicated otherwise, are taken from the final report of the review - “Review of the Criminal Justice System in Northern Ireland”, The Stationery Office Ltd, March 2000, shortened as ‘CJR’.

meetings with them, and members of the Review visited a juvenile justice centre, a
prison and various courthouses. In all, they received over 90 written submissions “all
of which were thoughtful and constructive” (CJR, para 1.14) and held 70 meetings with
interested groups and organisations.

They also sought to engage the wider public - “we also wanted to hear the views of those
who came from the ground level in the statutory, voluntary and community organisations,
practitioners and those working at the periphery of, or interface with, the criminal justice
system.” (CJR, para 1.15). They organised a series of nine seminars across NI to allow
“practitioners from different agencies and professions and community groups to work together
to discuss the issues which we were considering” (CJR, para 1.15) and some 300 people
attended the seminars “and contributed a great deal to the debate” (CJR, para 1.15).

The peace agreement had set out clearly that the future criminal justice system should
be responsive to the community, involve the community, and secure the confidence
of all parts of the community. Given this, the Review Group prioritised sounding out
community views and the first chapter reports extensively on its findings. The chapter
looks at the extent of crime, where crime occurred, and who were the victims of crime,
as well as public views about crime, their worries and the extent to which people had
had any contact with the criminal justice system. Interestingly, most people believed
that they had a poor understanding of the system, and yet the majority (88%) thought
that it was important to understand how the courts work (CJR, para 2.19). Another
finding was – as is likely in other divided or conflict-ridden societies - that there were
significantly different attitudes as between different social groups. In Northern
Ireland, Catholics and Protestants commenting on the fairness of the system overall
divided 61% and 77% respectively; similarly, regarding the fairness of judges, the split
in opinion was 69% and 82% respectively (CJR, para 2.24).

These attitudinal surveys commissioned by the Review Group, together with their
public outreach, allowed them to better understand their mandate. In the final report,
each chapter has a section devoted to “Views expressed during the consultation process”.
In this way, the Review Group was able to tie all its recommendations into comments
and issues raised with it by concerned citizens and “propose practical confidence building
measures for a fresh political climate” (CJR, para 1.11).

**Draw on experiences from elsewhere**

At the outset the Criminal Justice Review commissioned a programme of comparative
research to review the experiences of other jurisdictions on a range of key issues, and
this material was made publicly available at the same time as their final report.
Review Group members, or small teams representing the Group, visited a number of other jurisdictions, “to see at first-hand how other justice systems work, to find out their strengths and weaknesses, and to determine what lessons, if any could be learned for our work” (CJR, para 1.18). They subsequently reported that “these visits proved invaluable in teasing out the experience of other jurisdictions in delivering criminal justice and helped us put flesh on the bones of the material gathered in the course of the research programme. They assisted us in assessing whether approaches adopted elsewhere might be applicable in the particular circumstances of Northern Ireland” (CJR, para 1.18).

Sometimes these experiences of other jurisdictions were drawn upon in the general text, but most chapters also have a section devoted specifically to “Experience in other jurisdictions”, where positive and negative parallels are drawn.4

**Place human rights concerns centre stage**

The first substantive chapter in the Criminal Justice Review is devoted to Human Rights and Guiding Principles. In this regard the Review say that they were essentially following the diktat of the 1998 peace agreement “It was the clear intention of those involved in the talks process, and one which we fully endorse, that these aims (for the criminal justice system) should be achieved within an overarching framework of human rights.” (CJR, para 3.2). The chapter explains that human rights are central to the criminal justice system, and what this means for the principles and values that must therefore underpin the future arrangements in Northern Ireland.

The fundamental premise was that “people have basic rights by virtue of their common humanity. The principles of freedom and justice which spring from this are central to debate on crime and justice. In protecting the lives and property of citizens, or depriving offenders of their liberty, the state upholds the rights of victims or potential victims of crime, just as it has to ensure that it respects the basic rights of offenders” (CJR, para 3.2). From this starting point, and building upon views expressed during the consultation process, the Review Group developed a draft of the Guiding Principles and Values which should underpin Northern Ireland’s criminal justice system and recommended that some such document should be included in published material, regularly reviewed against agreed performance indicators, and that human rights issues should be a permanent and integral part of training programmes for all criminal justice actors.

---

4 Visits were undertaken to Belgium, Canada, England and Wales, Germany, the Netherlands, New Zealand, the Republic of Ireland, Scotland, South Africa and the USA. Thanks to interest on the part of the International Commission of Jurists in putting good international human rights practice at the service of the Review, a number of world-renowned eminent jurists were also invited to Belfast to share their thinking in a small private session organised jointly by the Committee on the Administration of Justice and Queens University Belfast.
A key human rights concern for the Review was that the system should have the confidence of the community served and that it should therefore treat people fairly and justly regardless of their background. The Review agreed that equity monitoring had a role in both ensuring fair employment practices across the system and assessing the impact of the criminal justice process on different sections of the community. Accordingly, the Review recommended that a strategy of equity monitoring be introduced “as it affects categories of people, in particular by community background, gender, ethnic origin, sexual orientation and disability, whilst ensuring that this is done in a way that does not compromise judicial independence” (CJR, para 3.38). They made recommendations about ethics, handling conflicts of interest, and the membership of exclusive or secret oath-bound organisations, as well as the importance of defence safeguards and an informed and rights-respecting legal profession. The Review noted that “the minimum standards of human rights have guided us throughout our deliberations and we cannot stress too strongly their applicability to all parts of the criminal justice system in Northern Ireland” (CJR, para 3.6).

Embed recommendations in both reality and principle

Based on agreed principles (see above) and drawing on the learning from Northern Ireland (both specialists and general public), and from other jurisdictions, the Review then looked at each different element of a criminal justice system in turn to make concrete practical proposals.

With reference to prosecutions, the Review explored a range of different scenarios and concluded on the need for the creation of a single independent prosecuting authority on the grounds that: “Public confidence in the future criminal justice system in Northern Ireland is of critical importance. We believe that the independence of key parts of the process from each other, and from influence by government, is central to this. Investigation, prosecution and adjudication are the key components of the process in this context. The clear separation of such functions provides an assurance of objective, dispassionate decision-making and of checks and balances. This is important if the rights of the parties including defendants, victims and witnesses, are to be protected and seen to be protected” (CJR, para 4.127).

In exploring the question of political accountability in regard to prosecutorial decisions, the recommendations were intended to recognise that “some form of political accountability is inevitable and we did not come across any jurisdiction where the prosecutor was able to act entirely without reference to government and/or legislature. The challenge is how to develop a meaningful relationship between prosecution, the executive, and the legislature without compromising the essential independence of the process” (CJR, para 4.157). New structures and more transparent decision making along with regular inspections of the work undertaken, were proposed.
Regarding the *judiciary*, the Review explored appointment procedures, tenure, conditions of service, disciplinary procedures and judicial training. The report speaks of ensuring judicial independence from the executive and “free from any sectoral influence, real or perceived……that is not to say that judges should be distant from the community. Quite the reverse, we attach great importance to their having an understanding of all aspects of the society that is so dependent on them for its well-being” (CJR, para 6.7). So recommendations called for a programme of action to secure the development of a judiciary “reflective of Northern Ireland society, in particular by community background and gender” (CJR, para 6.85) and the creation of a Judicial Appointments Commission, with several lay-members drawn from across the community and consisting of both men and women (see CJR, paras 6.98-6.109).

Regarding the *courts*, some recommendations highlighted problems to be addressed by others (e.g. a recommendation for an independent review into the law and practice of inquests), and others focused on efficiency whilst promoting confidence in the system overall. Specific recommendations addressed the need for more public education, the creation of court user-groups, improvements in the court environment, simplification of dress worn and language used, and security measures. The Review noted the Agreement’s acknowledgement of the “sensitivity of the use of symbols and emblems for public purposes and the need to ensure that they are used in a manner that promotes mutual respect” (CJR, para 8.61) and its recommendations aimed at an eventual criminal justice system which would promote an inclusive ethos.

Additional chapters address questions of *restorative and reparative justice, juvenile justice, and community safety* in an attempt to draw on evolving good practice elsewhere. Restorative justice\(^5\) for example “is a recent development in most countries, but its application in NI is at a particularly early stage (which) has become an issue of public debate in recent years” (CJR, para 9.14). Community safety was also described as a concept “still in its infancy in Northern Ireland” (CJR, para 11.11), in part because of the previous criminal justice focus on conflict-related crime. They all set out some general principles, whilst also ensuring that the recommendations were practical and would address genuine problems in the then current arrangements.

Their recommendations also build upon each other in this holistic review of the system; so, for example, on *sentencing*, the Review suggests that “it adequately accommodate restorative interventions” (CJR, para 12.52). The Review did not always accept more radical criticisms of the sentencing system, and failed to recommend the ending of indeterminate sentences, but did propose stronger mechanisms for oversight. On *probation*, the Review noted (CJR, para 12.102) “this is a suitable point

to stress our belief that the Probation Service has an important and developing role to play, for example in the development of offending behaviour programmes in the community, new arrangements for dealing with youth offending and new arrangements for community safety”. When considering the needs of victims and witnesses and the future of law reform, the Review emphasised the need for effective coordination and sharing of information across the range of criminal justice organisations involved.

In a discussion of the composition of the prison staff the Review noted “it is noteworthy that there is a significant imbalance in community representation amongst prison service staff by way of religious affiliation” (CJR, para 12.93). Here, however, their suggestions for change (better cultural awareness training, and a change to the uniform) were much less radical than had been proposed by the parallel commission looking into policing in Northern Ireland.

In this regard, and in earlier examples regarding the need for an inclusive ethos, and the wider question of how and what powers to devolve to local politicians and policy makers, it is clear that it would have been difficult for any Review to make recommendations that were unanimously welcomed. However, the fact that every chapter gave a human rights construct, an analysis of consultation responses, and comparative examples from other parts of the world, allowed the Review to set out both general principles and practical proposals. This approach enriched subsequent debates between the general public, elected politicians, and specialist agencies: people might argue for more - or less - radical options, but they were encouraged to do so within the parameters and good practice proposals provided by the Review.

Balancing the past and the future

Northern Ireland’s peace agreement chose to look forward rather than look backwards. The preamble reads: “The tragedies of the past have left a deep and profoundly regrettable legacy of suffering. We must never forget those who have died or been injured, and their families. But we can best honour them through a fresh start, in which we firmly dedicate ourselves to the achievement of reconciliation, tolerance, and mutual trust, and to the protection and vindication of the human rights of all.” Given this context, the Review Group also determined to look forward rather than back, but “we did listen carefully to genuinely and strongly held views, from differing perspectives, about past events. It was important for us to understand these points of view if we were to develop recommendations for arrangements most likely to inspire the confidence of all parts of the community in the future” (CJR, para 1.20).

For some topics, the balance between past experience and future aspirations was relatively easy to strike. In making recommendations about future structures, or law
reform, or the collection and best use of statistical and other research, there were few historical concerns to negotiate. However, in most of the other issues discussed in the report, the Review was informed by a range of very different views about how the criminal justice system had performed throughout the years of conflict. As the report notes: “Some thought that (the criminal justice system) had served Northern Ireland very well, in the face of the considerable challenges posed by the security situation; and we heard some suggestions that, if the system was working, change should not be introduced for the sake of it. Others, however, felt very differently and expressed strong views about what they believed to be bias against particular parts of the community and a failure adequately to safeguard human rights” (CJR, para 1.19).

The Review did not attempt to determine which of these viewpoints was correct, but rather argued for all of the proposed changes on the basis of internationally-agreed human rights principles, and good practice elsewhere. It is clear, at the very least in retrospect, that using these parameters as their framework gave greater legitimacy to the findings of the Review Group and left them less open to politically partisan critiques.

Other observers may feel that engaging in a major overhaul of the criminal justice system without any basic agreement on the problems to be addressed is problematic. In the Northern Ireland case, the blame (if blame it is) lies directly in the decision of political negotiators in the peace talks to focus solely on the future rather than the past. Given that, it is difficult to see how any Review established pursuant to the peace agreement (and with very well-defined terms of reference) could have suggested a different balance being struck between dealing with the past and building for the future.

For those elsewhere interested in creating an effective criminal justice system in the wake of a long period of conflict, there is no easy answer to this dilemma of how best to balance past and future concerns. Change can only be brought about by shaking off the horrors and distortions of the past and investing in a more hopeful future; yet no future programme of change can work well if it is not carefully developed in an awareness of, and in response to, problems that arose in the past.

Some useful reading: all available on www.cain.ulster.ac.uk

- Review of the Criminal Justice System in Northern Ireland - the report of the Criminal Justice System Review, 30 March 2000. See also the eighteen research reports produced for the Criminal Justice Review Group. (For human rights submissions to, and critique of, the Review, see also website of NI human rights group, Committee on the Administration of Justice, www.caj.org.uk).
• The Agreement: Agreement reached in the multi-party negotiations (10 April 1998) - often known as the Belfast or Good Friday Agreement (see appendix for extracts relating to criminal justice).

• Fordham Law Review – “Analysis of the Northern Ireland Peace Agreement” Volume 22, April 1999, Number 4, with essays from politicians and academics looking at different aspects of the accord.
APPENDIX: EXTRACTS FROM GOOD FRIDAY/Belfast Northern Ireland PEACE AGREEMENT, April 1998

POLICING AND JUSTICE

4. The participants believe that the aims of the criminal justice system are to:

   • deliver a fair and impartial system of justice to the community;
   • be responsive to the community’s concerns, and encouraging community involvement where appropriate;
   • have the confidence of all parts of the community; and
   • deliver justice efficiently and effectively.

5. There will be a parallel wide-ranging review of criminal justice (other than policing and those aspects of the system relating to the emergency legislation) to be carried out by the British Government through a mechanism with an independent element, in consultation with the political parties and others. The review will commence as soon as possible, will include wide consultation, and a report will be made to the Secretary of State no later than Autumn 1999.

.................................

ANNEX B REVIEW OF THE CRIMINAL JUSTICE SYSTEM

Taking account of the aims of the criminal justice system as set out in the Agreement, the review will address the structure, management and resourcing of publicly funded elements of the criminal justice system and will bring forward proposals for future criminal justice arrangements (other than policing and those aspects of the system relating to emergency legislation, which the Government is considering separately) covering such issues as:

   • the arrangements for making appointments to the judiciary and magistracy, and safeguards for protecting their independence;
   • the arrangements for the organisation and supervision of the prosecution process, and for safeguarding its independence;
   • measures to improve the responsiveness and accountability of, and any lay participation in the criminal justice system;
   • mechanisms for addressing law reform;
• the scope for structured co-operation between the criminal justice agencies on both parts of the island; and

• the structure and organisation of criminal justice functions that might be devolved to an Assembly, including the possibility of establishing a Department of Justice, while safeguarding the essential independence of many of the key functions in this area.

The Government proposes to commence the review as soon as possible, consulting with the political parties and others, including non-governmental expert organisations. The review will be completed by Autumn 1999.