

JUSTICE FOR ALL?

An Analysis of the Human Rights Provisions of the 1998 Northern Ireland Peace Agreement

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INTRODUCTION

Human Rights Watch, the largest U.S.-based international nongovernmental human rights organization, welcomes the presentation of an historic peace accord to the people of Ireland, north and south. We recognize and commend the hard work and sustained commitment of the governments of the United Kingdom and the Republic of Ireland; the participating political parties of Northern Ireland; the chair of the talks, former U.S. Senator George Mitchell; the nongovernmental and voluntary sectors; and all those who have struggled to bring the decades-long conflict in Northern Ireland to a close.

Human Rights Watch is particularly pleased to note that the new agreement reflects an understanding of the relationship between the protection and promotion of universal human rights and the probabilities for a lasting, just, and durable peace. The human rights provisions of the agreement address a number of issues of critical concern to human rights organizations that have been working in Northern Ireland for many years. Some measures, which would have enhanced human rights protections, are absent from the agreement. This paper analyzes the human rights provisions of the new accord and also makes recommendations concerning points in the accord which appear too vague to afford maximum protection. Human Rights Watch has focused its research and advocacy efforts primarily on policing, security, and justice issues and will address these issues in some detail.

Human Rights Watch's comments are made in the framework of three overarching and equally important principles:

- The human rights and political dimensions of the new accord are inextricably linked. Concerted attention to human rights issues is *essential* if the new political arrangements for Northern Ireland are to succeed;
- Implementation of the human rights provisions must be a *parallel process* to that of developing and creating new political institutions. Implementation must be speedy, adequately resourced, involve consultation with domestic and international nongovernmental human rights actors, and not be subordinated to the constitution of new political mechanisms;
- The new accord is not and cannot be the primary expression of human rights standards but can generate thinking and action to bring them into effect. Human rights are *universal and inalienable*. Immediate action can and must be taken now on a number of fronts outside the provisions of the accord to bring the U.K. government into compliance with its currently existing legal obligations.

STRAND THREE: "RIGHTS SAFEGUARDS AND EQUALITY OF OPPORTUNITY"

APPLICATION OF INTERNATIONAL HUMAN RIGHTS STANDARDS IN DOMESTIC LAW

Incorporation of the European Convention on Human Rights by the United Kingdom

Description: The new agreement requires the British government to complete the current process of incorporation into Northern Ireland law of the European Convention on Human Rights (ECHR). Aggrieved parties will be able to take claims under the ECHR directly to the Northern Ireland courts, which will have the power to grant remedies for breaches of the convention. The courts may also strike down legislation promulgated by the newly created Northern Ireland Assembly on grounds of inconsistency with the provisions of the ECHR.

Comment: Human Rights Watch welcomes the incorporation of the ECHR into U.K. law. In the absence of a written constitution or Bill of Rights, domestic application of the basic rights protections guaranteed by the ECHR signals a commitment by the U.K. government to respect and abide by human rights standards that make the European system one of the most advanced in the world. However, incorporation is seriously undermined by the continuing U.K. derogation from Article 6 of the ECHR which guarantees the right of detainees to be brought before a judge within a reasonable time period. The European Court of Human Rights has ruled any detention beyond 4.6 days without presentation before a judge a violation of fair trial standards under the ECHR. As a result of the U.K.'s official derogation from Article 6, a detainee can be held for up to seven days without charge in Northern Ireland. The January 1998 *Human Rights Bill* provides for the incorporation of the ECHR into U.K. law with the derogation intact. Retaining the "right" to hold detainees without charge for up to seven days—in direct contravention of ECHR guarantees—mocks the crucial importance of the convention's fair trial provisions. Under the heading "SECURITY" in the new agreement, the British government promises to make progress toward an early return to normal security arrangements, including the removal of emergency powers in Northern Ireland. The U.K. should discontinue its derogation from the ECHR as a crucial good faith step toward such normalization.

A Bill of Rights and Human Rights Commission for Northern Ireland

Description: The European Convention on Human Rights was opened for signature nearly forty years ago and does not reflect significant developments in human rights protections since then. The new agreement recognizes potential gaps in ECHR protection and provides for the recognition of additional rights that "reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem." While this formulation is specific to the particular circumstances of the Northern Ireland conflict, it allows for the recognition of a broad category of supplemental rights not included in the ECHR, including minority and language rights, among other economic, social, and cultural rights. According to the agreement, these additional rights—in concert with the ECHR—will constitute a Bill of Rights for Northern Ireland. A Northern Ireland Human Rights Commission (NIHRC)—drawing its membership from Northern Ireland—will replace the currently sitting Standing Advisory Commission on Human Rights (SACHR). The commission will consult and advise on defining supplemental rights, "drawing as appropriate on international instruments and experience."

Comment: Human Rights Watch endorses the creation of a written Bill of Rights containing provisions reflecting the highest international standards of human rights protection. However, we are concerned that the proposed process by which a Bill of Rights will be constituted, with limited consultation, is too narrowly conceived to maximize rights protection. By limiting membership on the new NIHRC to members of the Northern Ireland community, the agreement appears to exclude the possibility of drawing directly from international expertise in this area or from the benefit of a broad, participatory process that would take into account contributions from the public, nongovernmental organizations, and academics in a truly democratic "conversation" about human rights.

In many post-conflict situations, international legal and academic experts play a crucial role not only for their expertise at drafting constitutions, legislation, and new legal codes, but for the objectivity with which they pursue these endeavors. Creating a package of rights and monitoring the adequacy and effectiveness of laws and practices for a so-called "divided society" is a delicate exercise that would benefit greatly from the experience and viewpoints of

international experts. The agreement does provide that the NIHRC will “draw on international instruments and experience.” Human Rights Watch is encouraged that international human rights standards will be the basis for a new Bill of Rights but we urge the U.K. government to expand the scope of the drafting exercise in order to tap international expertise—for example from the Council of Europe or the United Nations Centre for Human Rights. Moreover, we encourage the government to invest the NIHRC with the power to spearhead a broad community consultation—similar to that undertaken in South Africa—in order that the rights ultimately defined adequately reflect the experiences and ethos of Northern Ireland’s communities.

The Problem of “Existing Safeguards”

Description: The new agreement states that incorporation of the ECHR, creation of an inclusive Bill of Rights, and the consulting and monitoring role of the new Northern Ireland Human Rights Commission will “build on existing protections in Westminster legislation in respect of the judiciary, the system of justice, and policing.”

Comment: The “existing safeguards” noted above are, in themselves, deeply flawed in both their conception and execution. Human Rights Watch has noted in previous reports that so-called safeguards such as the Police Authority for Northern Ireland (PANI), the Independent Commission on Police Complaints (ICPC), and the Independent Commissioner for the Holding Centres (IHC) have proven to be profoundly weak mechanisms for accountability. Thus, if the new safeguards provided for in the peace accord are to be successful, a thorough review of current accountability mechanisms is essential (see section below on “POLICING AND JUSTICE”).

Commitments by the Government of the Republic of Ireland

Description: The new accord requires the Irish government to strengthen human rights protections currently guaranteed by the Irish constitution and to examine further the question of incorporation of the European Convention on Human Rights into domestic law. These measures must result in “at least an equivalent level of protection of human rights as will pertain in Northern Ireland.” In addition, the Irish government undertakes to establish a human rights commission with a mandate equivalent to that established in Northern Ireland; to ratify the Council of Europe Framework Convention on National Minorities; to implement enhanced employment equality legislation; and to introduce equal status legislation. The two human rights commissions, north and south, will establish a joint committee of representatives from both commissions to consider issues of human rights concern on the island of Ireland.

Comment: Human Rights Watch welcomes the undertaking by the Irish government to enhance human rights protections. We are particularly pleased to note a renewed consideration of incorporation of the ECHR into domestic law as once U.K. incorporation is complete, the Republic of Ireland will be the only European country that has failed to incorporate the ECHR.

Human Rights Watch urges the Irish government to use the opportunity presented by the new accord to assess its own repeated imposition and termination of emergency powers over the last twenty years. Steps toward normalization in security matters must be island-wide, thus Human Rights Watch calls on the Irish government to halt the use of special criminal courts for emergency-related offenses and to bring arrest and detention powers in the Republic into conformity with internationally recognized due process rights.

ECONOMIC, SOCIAL AND CULTURAL ISSUES: PROMOTING SOCIAL INCLUSION

Employment Equality

Description: In a section devoted primarily to the pursuit of broad policies aimed at sustained economic growth, the new accord commits the U.K. government to make “rapid progress” with measures designed to address inequalities in employment. The government promises to extend and strengthen anti-discrimination legislation, to review the national security aspects of the present fair employment legislation, to create a more focused *Targeting Social Need* initiative, and to develop measures aimed at combating unemployment, including measures to eliminate the two-to-one differential in unemployment rates between Catholics and Protestants.

Comment: Human Rights Watch recognizes that the violation of an economic, social or cultural right is often the consequence of a substantial violation of a civil and political right. Measures to address pressing issues of employment equality respond to the historic legacy of discrimination against the Catholic minority in education, housing, and employment in Northern Ireland. To that end, Human Rights Watch welcomes steps to strengthen and expand anti-discrimination legislation and to combat the vast disparity in unemployment rates primarily between Catholic and Protestant men of employable age. We also encourage the review of the national security aspects of the Fair Employment (Northern Ireland) Act 1989. Provisions of the 1989 law permit employers—armed with a certificate issued by a government minister—to deny employment to persons suspected of associating with illegal organizations or groups. National security exceptions provided in employment legislation are notoriously open to abuse—particularly in societies divided by ethnic and religious conflict—and are often invoked to discriminate against persons on the basis of their political views or membership in a particular ethnic, religious, or social group. Measures taken in good faith to reduce the gap in economic opportunity between Catholics and Protestants will surely assist in the long-term success of the peace accord.

Language Rights

Description: The preservation and promotion of the Irish language is addressed in a section of the new accord that recognizes “the importance of respect, understanding and tolerance in relation to linguistic diversity” across the islands of Britain and Ireland. To that end, the British government “where appropriate and where people so desire it” commits, among other things, to take action to promote the Irish language, to answer the demand for the written and spoken use of the Irish language in public and private life, to remove restrictions on the use of the language, to secure by statute a place for Irish language instruction in schools, and to encourage the development of television and radio programming in the Irish language.

Comment: Action by states to promote minority languages comports with rights protections guaranteed by numerous international instruments including the U.N. Declaration on the Rights of Persons Belonging to National, Ethnic, Religious, and Linguistic Minorities (Article 4), the International Covenant on Economic, Social and Cultural Rights (Article 13), the International Covenant on Civil and Political Rights (Article 27), the Council of Europe Framework Convention for the Protection of National Minorities (Article 14), and the European Charter for Regional and Minority Languages. Human Rights Watch welcomes measures that seek to guarantee maximum protection of internationally recognized minority rights.

SECURITY: MOVING TOWARD NORMALIZATION

Dismantling the Emergency Regime?

Description: All future changes in security arrangements in Northern Ireland are predicated upon “the development of a peaceful environment” on the basis of the new agreement. Thus, “consistent with the level of threat,” the U.K. government undertakes the return to normal security arrangements by making progress toward reducing the numbers of British soldiers deployed in Northern Ireland to regular peace time levels, removing security installations, repealing emergency powers in Northern Ireland, and additional measures that comport with peace time security arrangements.

Comment: Human Rights Watch has repeatedly called for the repeal of emergency laws and an end to the emergency regime in Northern Ireland. Thus, we welcome moves toward a normalization of the security situation in Northern Ireland. However, we are concerned that the proposals for dismantling Northern Ireland’s emergency regime are half-measures in light of the government’s plans to replace the currently constituted collection of emergency laws with one piece of anti-terrorism legislation. The agreement calls for the repeal of emergency powers in Northern Ireland, suggesting that the Emergency Provisions (Northern Ireland) Act (EPA) will be repealed but that the Prevention of Terrorism Act (PTA), which covers all of the United Kingdom and affords the security forces greater powers than the EPA, will remain intact. The secretary of state for Northern Ireland has assured Human Rights Watch that, eventually, a single anti-terrorism bill will replace currently existing emergency legislation. This promise raises

the fear that provisions of the EPA and PTA will merely be collapsed into one statute and presented as a non-emergency domestic anti-terrorism law. Human Rights Watch encourages the government to assess carefully current emergency laws and to exclude provisions that violate internationally recognized human rights guarantees from any new legislation aimed at combating political violence.

Moreover, Human Rights Watch calls on the U.K. government to repeal those domestic laws that, although not officially categorized as "emergency legislation," similarly undermine due process guarantees. For example, the right to silence, a cornerstone of the common law system, requires that no person be forced to incriminate her or himself. The Criminal Evidence (Northern Ireland) Order 1988 allows adverse inferences to be drawn from a suspect's silence, effectively annulling the prohibition against self-incrimination. Human Rights Watch renews its call for the U.K. government to restore the right to silence.

POLICING AND JUSTICE: A POLICE SERVICE FOR ALL?

An International Commission on Policing for Northern Ireland

Description: The new accord calls for the establishment of an independent commission on policing whose remit will be to ensure that future policing structures and arrangements result in a policing service that is "professional, effective and efficient, fair and impartial, free from partisan political control; accountable, both under the law for its actions and to the community it serves; representative of the society it polices, and operates within a coherent and co-operative criminal justice system, which conforms with human rights norms." Areas of review for the commission's agenda include composition, recruitment, training, culture, ethos, symbols, community relations, professionalism, accountability, and any other aspects of the criminal justice system relevant to its work on policing. The commission will include expert and international representation and is tasked with consulting widely with nongovernmental organizations and others. The commission will submit a final report by the summer of 1999.

Comment: Human Rights Watch is pleased that careful attention has been given to the future of policing in Northern Ireland. While popular representations of the conflict focus on the "warring tribes of Ulster," human rights violations perpetrated by officers of the Royal Ulster Constabulary (RUC), which often exacerbate communal tensions, are routinely excused as justified due to the persistence of political violence. Human Rights Watch has reported on and monitored police misconduct and the complicity of the criminal justice system in such misconduct since 1992. Areas of concern have included the excessive use of life-threatening force, including the use of plastic bullets in public order situations; physical and psychological abuse of detainees in holding centers; intimidation and harassment of defense lawyers; allegations of collusion between the security forces and loyalist paramilitaries; routine harassment of those targeted as belonging to certain political/social/religious groups; and negligence in failing to police particular areas or to respond to crimes involving certain political/social/religious groups. In addition, Human Rights Watch has recommended a thorough review of the RUC's composition, training, and supervisory and disciplinary mechanisms, with a view toward the introduction of human rights education, training in civil disobedience policing, and enhanced mechanisms for accountability, including the establishment of an independent mechanism for investigating complaints against the police for misconduct. Thus, we welcome the establishment of an independent commission tasked with the reform of the RUC. International representation on the commission and encouragement toward broad consultation with nongovernmental organizations will further ensure that the highest professional and human rights standards are reflected in the commission's final report.

Urgent Policing Concerns

Human Rights Watch has a number of *immediate concerns*, however, which cannot and should not be required to await the final report of the commission's work. As noted in the introduction to this assessment, the peace accord cannot be the sole forum for thinking and action on human rights concerns in Northern Ireland. There are a number of human rights issues outside the four corners of the agreement that must be addressed immediately. The issues

enumerated below do not require the agreement of the governments or the political parties for action to be taken; they involve currently existing international legal obligations by which the government of the United Kingdom is bound:

- ***Marching Season in Northern Ireland:*** For the past two years, Human Rights Watch has reported on and sent researchers to monitor marches and parades in Northern Ireland. We have met with Adam Ingram, minister of state for Northern Ireland; the Parades Commission; and RUC Chief Constable Ronnie Flanagan regarding our deep concerns about the manner in which parades and marches are policed in Northern Ireland. Human Rights Watch has criticized the RUC for the excessive use of force against protesters, the use of plastic bullets during march-related disturbances, and the use of offensive sectarian language by RUC officers in their dealings with nationalists. Abusive conduct by the RUC will undermine any attempt by the government or the Parades Commission to ensure that the rights of both communities are recognized and protected. Human Rights Watch urges the government of the United Kingdom to require the police to facilitate the exercise of the rights of both communities and not to engage in activities that exacerbate tensions and violate rights. The government must send a strong message that abusive police conduct will not be tolerated, and officers responsible for such conduct will be held accountable. Human Rights Watch renews its call for a ban on the use of plastic bullets, a decision that can be taken immediately by the Northern Ireland Secretary of State in consultation with government ministers and relevant authorities of the RUC.
- ***Report of the U.N. Special Rapporteur on the Independence of Judges and Lawyers Regarding the United Kingdom and Northern Ireland:*** On April 1, 1998, United Nations Special Rapporteur on the Independence of Judges and Lawyers Dato' Param Cumaraswamy, a highly respected Malaysian jurist, submitted his report on the U.K./Northern Ireland to the United Nations Human Rights Commission at Geneva. Mr. Cumaraswamy investigated allegations that police officers in Northern Ireland routinely issued death threats against and intimidated defense lawyers. The special rapporteur found that the RUC has engaged "in activities which constitute intimidation, harassment, [and] hindrance" of defense lawyers in the course of their professional duties. Mr. Cumaraswamy's recommendations include the establishment of an independent judicial inquiry into the 1989 murder of prominent Catholic defense lawyer Patrick Finucane; recognition of the right of full access to counsel; restoration of the right to remain silent; reinstatement of the right to trial by jury; and rigorous human rights training for Northern Ireland's police force and judiciary. Human Rights Watch calls on the government of the United Kingdom to take affirmative steps now to halt the RUC's practice of intimidating and harassing defense lawyers by implementing all of the special rapporteur's recommendations. We urge the U.K. government to establish an independent inquiry into the murder of Patrick Finucane to illustrate its commitment to accountability for those responsible for past human rights violations.
- ***Continuing Allegations of Police Abuse and Negligence:*** Human Rights Watch remains concerned about continued physical and psychological abuse of detainees and alleged routine harassment by RUC officers of people in the communities where they live. We are appalled that such abuse appears to occur with impunity. People in Northern Ireland's communities cannot wait for the report of an independent commission on policing for routine harassment and abuse by RUC officers to stop. Furthermore, halting abusive police conduct that is in contravention of the U.K.'s currently existing obligations under international law should not be contingent upon acceptance of the peace accord. The following cases make clear the need for immediate action:

The Case of David Adams: On February 2, 1998, the High Court in Northern Ireland awarded David Adams £30,000, including exemplary damages, after finding that RUC officers had lied to the court about their involvement in a series of brutal assaults upon him following Mr. Adams' arrest in February 1994. Among Mr. Adams' injuries were two broken ribs, a punctured lung, a serious head wound, and a broken leg—the result of a succession of RUC investigators taking running kicks at him during his detention in Castlereagh Holding Centre (which numerous human rights organizations, including several United Nations human rights bodies, have recommended be closed as a "matter of urgency"). Human Rights Watch urges the U.K. government to ensure that those responsible for the torture of David Adams are held criminally liable for their actions.

The Case of Colin Duffy: Human Rights Watch remains deeply concerned by persistent allegations of the harassment of Lurgan man Colin Duffy by the police. Mr. Duffy has been prosecuted six times since 1989, and on each occasion the charges have either been dropped or he has been acquitted at trial or on appeal. Mr. Duffy has spent approximately five years in custody awaiting various trials. Mr. Duffy continues to be stopped and searched by the police. Human Rights Watch urges the government of the United Kingdom to take measures to halt this campaign of harassment against Colin Duffy and to make clear to RUC officers that special powers granted to them under emergency or anti-terrorism legislation cannot be used to justify abusive human rights practices.

The Case of Robert Hamill: On April 27, 1997, Robert Hamill was attacked by a loyalist mob of about thirty people in Portadown. Mr. Hamill died in the hospital on May 8, 1997, from injuries sustained in the attack. The RUC has acknowledged that a police land rover with at least four armed officers in it was stationed approximately twenty feet from the spot where the beating took place. Despite cries for assistance by two women with Robert Hamill, the RUC officers never left the land rover to offer assistance. Charges against five of the six men accused of beating Robert Hamill to death have been dropped. An Independent Commission for Police Complaints (ICPC) investigation into police conduct with respect to the incident has been completed and the file submitted to the Director of Public Prosecutions (DPP). Human Rights Watch is deeply concerned that the possibility of a prosecution for a public beating involving such a large number of people now seems unlikely. We are also appalled at what appears to have been an egregious dereliction of duty on the part of the police. Human Rights Watch urges the U.K. government to take immediate steps to ensure that RUC officers police all Northern Ireland's communities in a fair and impartial manner and that those officers who decline to do so be held accountable for acts of negligence and/or recklessness.

The above cases illustrate the spectrum of abuse that has characterized policing in Northern Ireland throughout the course of "the Troubles." From credible allegations of unprovoked physical assault by law enforcement officers to reckless disregard for the safety of citizens of Northern Ireland, RUC officers have repeatedly and overtly defied their obligation to uphold the rule of law. We urge the government of the United Kingdom not to hold these urgent policing issues in thrall to future agreement on the peace accord but to take steps now to bring the RUC into conformity with the U.K.'s currently existing international legal obligations.

Review of the Criminal Justice System

Description: The new agreement calls for a review of the criminal justice system by an independent, though government-appointed, body. 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)." Those proposals will address, among other things, appointments to the judiciary, procedures for prosecutions, safeguards for the independence of all aspects of the criminal justice system, accountability for lay persons in the system, and mechanisms for addressing law reform. The accord provides for consultation by the review body with political parties and domestic nongovernmental organizations.

Comment: The accord is not as explicit in its description of the review of the criminal justice system as it is for the international commission on policing (see above). However, the language indicates that this body will follow in a long line of internal "independent review bodies" established by the U.K. government in the past, particularly as this body will not include international representation. Human Rights Watch welcomes an evaluation, with an eye toward reform, of the criminal justice system in Northern Ireland. However, the consideration of general criminal justice issues in isolation from the issues of policing and emergency legislation (especially as it appears that the core of the emergency laws are destined to live on in the proposed anti-terrorism bill) is an artificial division which threatens to undermine the utility of the information gathered through such a review. The special nature of policing in Northern Ireland requires a holistic approach to the law enforcement/justice system. For example, serious questions have arisen in the past about possible security force interference with decisions of the Director of Public Prosecutions (DPP) to

order prosecutions. Also, serious allegations have arisen in many miscarriage of justice cases about the veracity of police statements in the course of trial. It appears obvious that any review of the criminal justice system must take into account the ethos and conduct of the police force and the special powers RUC officers have enjoyed under emergency legislation. Moreover, the benefits derived from international representation on the new policing commission can also be reaped by an independent review body. Human Rights Watch urges the government to invite international experts to participate in the review of the criminal justice system.

The new accord is disturbingly vague concerning judicial reform, the prosecution process and the legacy in Northern Ireland and Britain of miscarriages of justice with respect to defendants charged with political offenses. Human Rights Watch urges the U.K. government to define carefully and execute a full and impartial review of the role of the judiciary and prosecutor's office in the administration of justice in Northern Ireland with an eye toward creating judicial and prosecution arms of the system that are free from political influence.

CONCLUSION

The inclusion of "human rights provisions" in the new peace accord reflects an awareness by all parties to the agreement that human rights protection and promotion will be integral to any lasting solution to the conflict in Northern Ireland. Human Rights Watch welcomes the efforts of the governments and political parties to make the connection between systematic human rights violations and the persistence of political conflict. Thus, we have undertaken in this assessment of the accord to criticize constructively the human rights dimension of the agreement with an eye toward shaping future action on fundamental rights issues.

Discussions surrounding the new accord, however, offer just one forum where human rights concerns can be addressed. The fact that human rights guarantees are integrated into this historic peace accord is a signal that respect for human rights is now accepted as a precondition to a peaceful resolution of the conflict; but all progress on human rights must not be made to depend on the agreement's acceptance. The U.K.'s obligation to promote and protect human rights exists as a binding legal responsibility whether the accord is accepted by the majority of people on the island of Ireland or not. Thus, it is on many fronts—the new accord included—that the U.K. government can and must begin to protect those fundamental rights that form the basis for a democratic state based on the rule of law and respect for individual freedoms.

ACKNOWLEDGMENTS

This assessment was written by Julia A. Hall, counsel in the Europe and Central Asia Division. It was edited by Michael McClintock, deputy program director. Alex Frangos, associate in the Europe and Central Asia Division, provided invaluable production assistance. Many thanks, as always, to our NGO partners the Committee on the Administration of Justice in Belfast and British-Irish Rights Watch in London for conversation and advice on how best to draw attention to pressing human rights concerns throughout the recent negotiating process and in its aftermath.

Human Rights Watch Europe and Central Asia Division

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