HUMAN RIGHTS IN NORTHERN IRELAND: PROMISES KEPT OR PROMISES BROKEN?

HEARING

BEFORE THE

SUBCOMMITTEE ON
INTERNATIONAL OPERATIONS AND HUMAN RIGHTS

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HUMAN RIGHTS IN NORTHERN IRELAND: PROMISES KEPT OR PROMISES BROKEN?

THURSDAY, MARCH 15, 2001

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INTERNATIONAL
OPERATIONS AND HUMAN RIGHTS,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, DC.

The Subcommittee met, pursuant to call, at 9:37 a.m. in Room 2172, Rayburn House Office Building, Hon. Christopher H. Smith [Chairman of the Subcommittee] presiding.

Mr. SMITH. The Subcommittee will convene. As a point of importance, Ileana Ros-Lehtinen, the Chairwoman of the Committee, will be here shortly. She has had a major accident to her hand a little over a week ago and she had some therapy and some work she had to get done on it this morning, but she will join us a little bit later.

Good morning. Two years ago to this very day, Northern Ireland solicitor Rosemary Nelson was killed by an assassin in a vicious car bomb attack, murdered because she dared to discharge her duties as a lawyer and defend the civil rights of clients arrested under emergency laws and charged with politically motivated offenses.

Six months before her murder, Rosemary testified in this room to this Committee in a chilling foreshadowing of her death. She told us about harassment, intimidation, and threats against her by RUC officers simply because of the politics of her clients. Rosemary testified that she had been "physically assaulted" by a number of RUC officers and that their harassment included, and I quote again, "threats against personal safety," including death threats against her.

Like so many who fight for the rights of others, Rosemary was concerned about the threats, but she refused to yield to the campaign of intimidation. She was here to ask our help in assuring defendants' rights in Northern Ireland and she asked our support in achieving justice in the murder of another human rights lawyer, Patrick Finucane, who was gunned down in front of his family by loyalist paramilitaries after receiving similar death threats.

The parallels between her situation and that of Patrick Finucane was not lost on Rosemary Nelson. She said, and I quote, "Although I have tried to ignore these threats, inevitably I have had to take account of the possible consequences for my family and for my staff."

She added, and I continue to quote her, "No lawyer in Northern Ireland can forget what happened to Patrick Finucane, nor dismiss it from their minds."

Rosemary was convinced the RUC would kill her. We do not know what, if any, role any RUC officer may have played in Rosemary's death, but we do know that they did harass her, they did make death threats, and they did fail to protect her. And we do know that the policing culture in Northern Ireland, a culture of impunity, was indeed a contributing factor.

Three years after Rosemary's untimely death, no one has been charged with her murder or even held accountable for the threats against her life.

Twelve years after Patrick Finucane's murder, the same is also true.

These murders shocked the human rights community in Northern Ireland and around the world. In April 1999, after Rosemary's death, Congress adopted my bill, H.Res. 128, which condemned her murder and called on the British government to launch an independent inquiry into Pat Finucane's murder and an independent investigation, an RUC-free investigation, into Rosemary Nelson's killing. The resolution again urged the British government to institute protections for defense attorneys at risk in Northern Ireland. None of these steps have yet been taken and Northern Ireland lawyers remain at risk.

It is in Rosemary Nelson's memory that we convene today's hearing, to make it perfectly clear to the British government that the demands of the victims' families and of the international community for a through, fair and transparent investigation into the circumstances surrounding Rosemary's and Patrick's murders, including allegations of collusion by British security forces, will not go away until those demands are satisfied.

Similarly, we hope to stress, as Rosemary pointed out in her testimony, and I quote her again, "The issue of policing is very, very fundamental to the aspirations in the Good Friday Agreement and is inextricably linked to justice and equality issues. As it exists, I do not think the RUC can answer the demands posed by the agreement."

"Their ethos has to be changed," she went on, "their entire culture has to be changed."

Today's hearing takes place just 6 months after I convened a hearing in my role as chairman of the Helsinki Commission to examine progress on policing reforms in Northern Ireland. At the time, the British government's police bill was heading toward a debate in the House of Lords. It was the sixth hearing I had convened on human rights violations in Northern Ireland.

A recurring theme throughout those hearings was the Royal Ulster Constabulary's long history of involvement in human rights abuses against the people of Northern Ireland. The only logical conclusion to be reached was that a just and lasting peace could not take hold in Northern Ireland without a root and branch reform of the RUC.

Regrettably, in our review in September of the police bill and the government's implementation plan, the government's proposals failed to fully reflect many of the Patten Commission's 175 recommendations for creating a new beginning to policing in Northern Ireland.

Thankfully, after our hearing, the police bill underwent further amendments in the Parliament. Some were welcome improvements, such as a greater independence for the Office of the Police Ombudsman, but these improvements were not enough to garner the confidence and the support of all the pro-agreement paries. The Police Ombudsman, for example, still cannot investigate police policies and practices.

Similarly, the Policing Board, the new oversight body that was to give the parties and the community a stake in policing, is now subject to the whims of the chief constable and ultimately to the Secretary of State, who can delay, modify and set aside and, in essence, block any inquiries or investigations.

Furthermore, the point person picked by the board to carry out inquiries about possible police abuse must first have the approval of the Secretary of State.

Where is the independence for policing with that set up?

It is no wonder the nationalists have refused to join the policing board. It seems the issue landed right where we feared it would. The Parliament at Westminster has adopted a British government sponsored police bill which Northern Ireland's Nationalist Parties cannot, and I would say should not, accept.

As predicted, Sinn Fein and the SDLP have not encouraged their constituents to join the police service of Northern Ireland and the policing reform issue is now tied so closely to other issues from the Good Friday Agreement, namely paramilitary decommissioning and removal of British troops from Northern Ireland, that the peace process has retreated once again to a crisis situation.

It is this issue that we will investigate today.

In addition to policing, this hearing will also examine the status of the Criminal Justice Review underway in Northern Ireland and the development of the bill of rights for Northern Ireland.

I would like to now yield to my good friend and colleague, Cynthia McKinney, who is the Ranking Member of this Subcommittee.

[The prepared statement of Ms. Ros-Lehtinen follows:]

PREPARED STATEMENT OF THE HONORABLE ILEANA ROS-LEHTINEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA, AND CHAIRWOMAN, SUBCOMMITTEE ON INTERNATIONAL OPERATIONS AND HUMAN RIGHTS

The search for lasting peace and justice in Northern Ireland continues to be a priority for this Subcommittee, the Congress, and the U.S. as a whole. Some would argue that this can only be achieved when the larger political issues have been resolved.

However, I believe that without respect for human rights; without respect for the dignity and integrity of all human beings in Northern Ireland regardless of race, creed, or religion, a resolution of the conflict cannot be achieved. Peace will continue to be an abstract goal—something we all hope for—but will not become a reality until the ongoing human rights abuses and systematic discrimination are effectively eliminated.

The Good Friday Agreement of April 10, 1998 provided the framework and laid the foundation for a future of mutual respect and peace in Northern Ireland. Unfortunately, the full scope and promise of this agreement has yet to be fulfilled.

The Agreement required the establishment of an Equality Commission and that all public bodies or governmental entities promote equality of opportunity. Despite the work conducted thus far, discrimination persists on the basis of religion, politics, race and other grounds.

Despite the commitments made under the rubric of the Good Friday Agreement, more repressive laws have been enacted to continue the systematic violation of civil liberties and legal rights of certain segments of the citizenry in Northern Ireland. As the Lawyers Committee for Human Rights has stated: "the retention of emer-

gency powers seriously undermines the willingness of the state to accommodate all communities and individuals on the basis of inclusive citizenship, non-discrimination and non-partisanship."

Under the Agreement of April 1998, the European Convention on Human Rights was to be made applicable to Northern Ireland and a Human Rights Commission was to be established to develop a Northern Ireland Bill of Rights. Again, the hope for peace encapsulated in these requirements is diminishing with each passing day. Observers contend that the development of a meaningful Bill of Rights has been jeopardized by under funding, by the British Government's continued derogation from the European Convention of Human Rights, and its pattern of ignoring the Human Rights Commissions recommendations.

Justice has still not been served in the brutal murders of human rights defense lawyers Patrick Finucane and Rosemary Nelson. These cases are emblematic of a pattern of intimidation and persecution by members of the Royal Ulster Constabulary—harassment which extends beyond mere threats and become violations of the most sublime of all rights, the right to life. These two murders further underscore the need for significant criminal justice review and police reform.

The failure to implement fully the recommendations of the Patten Commission on police reform, combined with the enactment of the Police Bill are among the critical issues we will address during today's hearing, as they, perhaps more than any other, provide the tools to clear the path toward peace and security in Northern Ireland.

We thank the witnesses who are present here today and who have dedicated themselves to such a noble endeavor as the search for peace and justice in Northern Ireland.

We hope that U.S. Congressional efforts will assist in the process by helping to ensure full compliance and adherence to the reforms and commitments made under the peace agreements.

Ms. MCKINNEY. Thank you, Mr. Chairman.

I can never give you enough praise for the work that you continue to do on behalf of human rights for people around the world.

Today is a very special day of remembrance, as it was 2 years ago to this day, March 15, 1999, that Rosemary Nelson, a leading human rights lawyer in Northern Ireland was killed by a car bomb. Ms. Nelson had been consistently exposing the corruption of the Royal Ulster Constabulary.

A brilliant human rights lawyer, she had been involved directly in a number of key human rights cases. The sympathy notices in the local newspapers the day of her murder in that region clearly indicated the wide range of causes she had taken up.

We must not forget Rosemary's work. Indeed, we must make sure that Rosemary's work continues. We must also see to it that an authoritative international tribunal be put together to investigate this freedom fighter's murder.

I have advocated civil rights in Northern Ireland during all my years in Congress. Nationalists in Northern Ireland have long identified with black American civil rights activists for years. Ties between the two struggles go back over a century, from when escaped black slave Frederick Douglass arrived in Ireland in 19845 to cam-

Protestors at the first filmed civil rights march in Northern Ireland in Derry on October 5, 1968 echoed the demands of black Americans in calling for police reform in chanting "One man, one vote" and in singing "We shall Overcome."

Two weeks after Bloody Sunday in 1972, the Southern Christian Leadership Conference founded by Dr. Martin Luther King dispatched senior officials to Belfast to take part in protest marches and to speak at a Northern Ireland Civil Rights Association meeting.

Bernard Lee, a veteran of the Atlanta sit-ins and a close associate of Dr. King's was part of the group, which also included Juanita Abernathy, wife of Ralph David Abernathy, a key King confidant. Juanita Abernathy told the NICRA conference that the struggle for Irish freedom is the same struggle as that going on in the United States.

The April 1998 Good Friday Peace Agreement took 18 months just to begin to be implemented. Governmental institutions were dissolved after only 74 days and were restarted in June of 2000. The new governmental structures are in constant danger of collapse and some would say sabotage.

When the people of Ireland endorsed the Good Friday Agreement, they did so in the belief that it would be a charter for change and a range of measures including the equality agenda and a new beginning to policing would be delivered.

The policing issue was always a cornerstone issue. The Good Friday Agreement is clear on the mandate for fair and impartial policing. The referendum also endorsed these terms, but sadly these terms of reference were not implemented. As a result, the RUC remains 93 percent Protestant and 90 percent white male, with little community input and no affirmative action.

Indeed, the British newspaper, The Guardian, comments in November of last year at the close of the legislative processing of the British government's Police Act that "The core elements of the Patten Commission's report have been undermined everywhere. The district policing partnership boards that are so vital to the Patten Commission's vision have been diluted. So have its recommendations in the key areas outlined in its terms of reference, composition, recruitment, culture, ethos and symbols. The Patten report has not been cherry picked, it has been gutted."

The Patten Commission report would, if implemented, parallel the historic Civil Rights Act of 1964 and the Voting Rights Act of 1965 in which the United States took important first steps toward ending legal segregation—U.S. styled Apartheid—and second class status for African-Americans.

Now, the question is will Parliament in Northern Ireland change this abomination and grant full civil rights to Irish-Catholics or are they to remain second class citizens in their own land?

The Royal Ulster Constabulary and their tactics of violence have been likened to Bull Connor and George Wallace in Alabama during the civil rights movement. And justice soon overtook even Bull Connor and George Wallace. I am sure that oppression and illegitimacy are to sustainable in Northern Ireland. The Royal Ulster Constabulary should be part of the solution, not part of the problem.

This is a very important issue. I understand the solidarity that the IRA has demonstrated in my own struggle as an African-American to be free, a full citizen in my own land, as they have stood in solidarity with my brothers and sisters on the African continent to be free of colonial rule, something they both sadly know too much about.

I look forward to hearing from the witnesses who have come before us today.

Thank you, Mr. Chairman.

[The prepared statement of Ms. McKinney follows:]

PREPARED STATEMENT OF THE HONORABLE CYNTHIA MCKINNEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

I want to thank Chairwoman Ileana Ros-Lehtinen for recognizing the importance of this crucial period in the history of Northern Ireland. I also want to praise the Vice Chair of this Subcommittee, Chris Smith, for his passion and work to bring true justice to the people of Northern Ireland. .

Today is a very special day of remembrance, as it was two years ago to this day, March 15th, 1999, that Rosemary Nelson, a leading human rights lawyer in Northern Ireland, was killed by a car bomb. Ms. Nelson had been consistently exposing the corruption of the Royal Ulster Constabulary. A brilliant human rights lawyer, she had been involved directly in a number of key human rights cases. The sympathy notices in the local newspapers the day of her murder in that region clearly indicated the wide range of causes she had taken up. We must not forget Rosemary's work. Indeed, we must make sure that Rosemary's work continues. We must also see to it that an authoritative international tribunal be put together to investigate this freedom fighter's murder.

I have advocated civil rights in Northern Ireland during all my years in Congress. Nationalists in Northern Ireland have long identified with black American civil rights activists for years. Ties between the two struggles go back for over a century, from when escaped black slave Frederick Douglass arrived in Ireland in 1845 to campaign for support for the antislavery movement in the US. Douglass addressed a political meeting with Daniel O'Connell at Liberty Hall in Dublin, and rallied support for the abolitionist cause in Tipperary, Wexford, and Belfast.

By the mid-1960s, many young Nationalists in Northern Ireland drew parallels between their struggle and the push for civil rights by blacks in the United States. In many ways the two movements have faced similar challenges-both grappling with the limits of non-violence.

Protestors at the first filmed civil rights march in Northern Ireland, in Derry on Oct. 5, 1968, echoed the demands of black Americans in calling for police reform, in chanting "One Man, One Vote," and in singing "We Shall Overcome." Two weeks after Bloody Sunday in 1972, the Southern Christian Leadership Conference, founded by Dr. Martin Luther King, dispatched senior officials to Belfast to take part in protest marches and to speak at a Northern Ireland Civil Rights Association (NICRA) meeting.

Bernard Lee, a veteran of the Atlanta sit-ins and a close associate of Dr. King's, was part of the group which included Juanita Abernathy, wife of the Rev. Ralph Abernathy, another key King confidante. Juanita Abernathy told the NICRA conference that "the struggle for Irish freedom is the same struggle as that going on in the United States."

The April, 1998 Good Friday Peace Agreement took 18 months just to begin to be implemented. Governmental institutions were dissolved after only 74 days, and were restarted in June of 2000. The new governmental structures are in constant danger of collapse, and, some would say, sabotage. When the people of Ireland endorsed the Good Friday Agreement they did so in the belief that it would be a charter for change and that a range of measures including the equality agenda and a new beginning to policing would be delivered.

The policing issue was always a cornerstone issue. The Good Friday Agreement is very clear on the mandate for fair and impartial policing. The referendum also endorsed these terms. But sadly, these terms of reference were not implemented. As a result, the Royal Ulster Constabulary remains 93% Protestant and 90% white male with little community input, and no affirmative action.

Indeed the British newspaper, The Guardian, comments in November of last year at the close of the legislative processing of the British Government's "Police Act", that "The core elements of the Patten Commission's report have been undermined

everywhere. The district policing partnership boards that are so vital to the Patten Commission's vision have been diluted. So have its recommendations in the key areas outlined in its terms of reference composition, recruitment, culture, ethos and symbols. The Patten report has not been cherry picked—it has been gutted."

The Patten Commission Report would, if implemented, parallel the historic Civil Rights Act of 1964 and the Voting Rights Act of 1965 in which the United States took important first steps toward ending legal segregation—US-styled apartheid—and second-class status for African-Americans. Now the question is: Will Parliament in Northern Ireland change this abomination and grant full civil rights to Irish Catholics or are they to remain second class citizens in their own land?

When good and decent people live in fear of the very instrument created to protect them, then there is a major violation of freedom for everyone in that nation.

The Royal Ulster Constabulary and their tactics of violence have been likened to Bull Connor and George Wallace in Alabama during the Civil Rights movement. And just as justice soon overtook even Bull Conner and George Wallace, I'm sure that oppression and illegitimacy are not sustainable in Northern Ireland. The Royal Ulster Constabulary should be part of the solution, not part of the problem.

This is a very important issue. I understand the solidarity that the IRA has demonstrated in my own struggle as an African American to be free—a full citizen in my own land—as they have also stood in solidarity with my brothers and sisters on the African Continent to be free of colonial rule—something they both, sadly, know too much about.

I look forward to hearing from the witnesses who have come before us.

Thank You, Madam Chair.

Mr. SMITH. Thank you, I say to my good from friend from Georgia.

The chair recognizes the Chairman of the Full Committee Emeritus, Ben Gilman.

Mr. GILMAN. Thank you, Mr. Chairman. And I want to thank you for arranging this meeting. I commend you and your good Ranking Member for continuing your efforts and it is good to see our good colleague who is with us today and her good comments.

Mr. Chairman, I am pleased that we are conducting these hearings on human rights, very important hearings, one of the central issues in the long and difficult struggle that we have for lasting peace and justice in the north of Ireland. Our continuing congressional involvement in the north has played a constructive role and I commend your continuing leadership with regard to that issue.

The issue of a new beginning through policing reform in Northern Ireland goes to the very heart of the Good Friday Accord and the fundamental change it envisioned on the ground in that long-troubled region. Policing in the north affects everyone, it affects every community, and it is a measure of how a society, in this case, regrettably a severely divided society, governs itself by enforcing the rule of law.

The Patten Commission's policing reforms issued in September 1999 came about as a result of the mandate that Chairman Patten was assigned under the Good Friday Accord to help create a new beginning to develop a police service that protects both communities and earns their support. The Patten reforms were themselves a compromise between calls for disbandonment of the RUC on one side and no change on the other.

The international commission developed 175 police reforms that were essential for change in a 93 percent Protestant police service, the Royal Ulster Constabulary known as the RUC. And today that RUC lacks substantial support in many of the nationalist Catholic communities in the north and in some loyalist areas as well.

If the Good Friday Accord represented anything, it was an agreement upon settlement that the status quo would be no more. Institutions like the RUC and its successor police service are going to have to be changed to serve and protect both the nationalist and unionist communities, not just to be an arm of power and a control of only one, the dominant unionist community in the north.

Resistance to change, protecting the status quo, regrettably continues. The police reforms we had hoped for and supported as a compromise as outlined by the Patten report of September 9, 1999 still face needless opposition and resistance by too many in the north.

The fact that the original implementation bill, as introduced in Westminster by the British government to carry out Patten's 175 proposed reforms was amended nearly 100 times to try to bring it a little closer to the original Patten proposals and that speaks volumes for the process of the resistance to change by many in the British government and unionism.

As a result of this politicization of the policing power, the level of distrust in the nationalist community is heightened even further. There is now strong opposition by many in the political leadership of the nationalist community the proposed police reforms. Needlessly, we again witness deep divisions where there should be unanimity.

Real and meaningful police reform, whether viewed from a unionist or a nationalist perspective, I think goes to very heart of ending violence and criminality in the north by some loyalists and Republicans. Where the police lack local support, violence and criminality flourish, and some forms of "private policing" unfortunately will continue to fill that policing void.

Both sides have to acknowledge that the RUC is lacking substantial support in many of the communities in the north. They should support real reforms in order that the new police service earns the support and cooperation of the entire community in its fight against violence and criminality, including the growing and destructive drug trade in Northern Ireland. And, incidently, we were pleased in a recent conference that we attended in Bolivia, the Interparliamentry Conference on Drugs, that Ireland for the first time was represented and we hope that that is a good sign.

Unionism must face reality and be sincere in its fight against violence and do so by embracing real change to a unionist dominated police service which lacks broad community support.

I was most troubled recently to learn of the case where even one assistant chief constable position, a chief constable position, in the north was denied to two qualified applicants from the Irish police GARDA in the south. The GARDA have an excellent and effective record of community policing and building community support in the fight against violence and crime. One would have hoped that their applications would have been given a fair response and welcomed with open arms in the north.

According to media accounts, many in the GARDA were furious over the rejection by the police authority, despite RUC Chief Flanigan's statement, and I quote, "I would dearly love to have my colleagues in the south working in the he Northern Ireland police force."

Only by signaling change both at the top, such as this assistant chief constable level, and in the lower ranks can nationalists be attracted to the Northern Ireland police service. Surely one new assistant chief constable from the south, while neither the "be all and end all" of change, would not have constituted any assault on the old order.

The Police Authority says the two GARDA applications just were not qualified, even though they were graduates of our own FBI National Academy and one reportedly had two university degrees. In most places around the world, graduation from the FBI's National Academy at Quantico is a good ticket for promotion and upward mobility, everywhere, it seems, but regrettably not so in Northern Ireland.

The Patten report called for the lateral entry of experienced officers from one police service to another to improve and broaden the senior ranks of the RUC. It surely would have helped recruit more young nationalists to have one or two senior rank positions filled from the GARDA in the south. That lateral entry recommendation appears to be yet another casualty from the Patten reform selecting official September 1999.

So in closing, I would ask our Committee staff to look into this GARDA rejection case carefully. We need all the facts so that we can determine if in fact we have a case of outward discrimination and bias. We already bar RUC officers under current Federal law from any U.S. police training until the Patten reforms are fully implemented by the British government and that fact is so certified to the Congress by the president. If we need to do more in light of this recent rejection case, we should be doing so.

But, again, Mr. Chairman, I want to thank you for bringing these matters to the attention of the public, to the attention of the people in Northern Ireland and we hope as we approach St. Patrick's Day that some people out there will be listening to us.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Gilman follows:]

PREPARED STATEMENT OF THE HONORABLE BENJAMIN A. GILMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, I am pleased you have called this important hearing on human rights, which is one of the central issues in the long and difficult struggle for lasting peace and justice in the north of Ireland. Our continuing Congressional interest in the north of Ireland has played a constructive role. I welcome your leadership on the question.

The issue of a new beginning through policing reform in Northern Ireland goes to the very heart of the Good Friday Accord, and the fundamental change it envisioned on the ground in that long-troubled region. Policing affects everyone and every community, and it is a measure of how a society, in this case a severely divided one, governs itself by enforcing the rule of law.

The Patten Commission policing reforms issued in September 1999 flowed from the mandate Chairman Patten was given under the Good Friday Accord, to help create a new beginning and develop a police service that protects both communities, and earns their support.

The Patten reforms were themselves a compromise between calls for disbandment, on one side, and no change on the other. The international commission developed 175 police reforms that were essential for change in the 93 percent Protestant police service, the Royal Ulster Constabulary (RUC). Today, the RUC lacks substantial support in many of the nationalist Catholic communities in Northern Ireland, and in some loyalist areas, as well.

If the Good Friday Accord represented anything, it was an agreed upon settlement that the status quo would be no more. Institutions like the RUC and its successor

police service must be changed to serve and protect both the nationalist and unionist communities, not just be an arm of power and control of only one, the dominant unionist community in the north.

Resistance to change, and protecting the status quo, unfortunately continues. The police reforms we had hoped for and supported as a compromise, as outlined by the Patten report of September 9, 1999, still face needless opposition and resistance by many in the north of Ireland.

The fact that the original implementation bill, as introduced in Westminster by the British government to carry out Patten's 175 reforms, was amended nearly 100 times to bring it closely in line with the original Patten proposals, speaks volumes for the process and the resistance to change by many in the British government and unionism.

As a result of this politicization of the policing issue, the level of distrust in the nationalist community is heightened even further. There is now strong opposition from many in the political leadership of the nationalist community to the proposed police reforms. We again needlessly witness deep divisions, where there ought to have been unanimity.

Real and meaningful policing reform, whether viewed from a unionist or a nationalist perspective, goes to the heart of ending violence and criminality in the north by some loyalists and republicans. Where the police lack local support, violence and criminality flourish, and some forms of "private policing" will unfortunately continue to fill the policing void.

Both sides need to acknowledge that the RUC lacks substantial support in many of the communities in the north. They should support real reforms in order that the new police service earns the support and cooperation of all the community in the fight against violence and criminality, including the growing and destructive drug trade in Northern Ireland. Unionism must face reality and be sincere in its fight against violence, and do so by embracing real change to a unionist-dominated police service which lacks broad community support.

I was most troubled to learn of the recent case where even one Assistant Chief Constable position in the north was denied to two qualified applicants from the Irish police (GARDA) in the south. The GARDA have an excellent and effective record of community policing and building community support in the fight against violence and crime. One would have hoped that their applications would have been given a fair shake and welcomed with open arms in the north. Many in the GARDA, according to media accounts, were furious over the rejection by the Police Authority, despite RUC Chief Flanagan's statement: *"I would dearly love to have my colleagues in the South working in the Northern Ireland police force."*

Only by signaling change both at the top, such as at this Assistant Chief Constable level, and in the lower ranks can nationalists be attracted to the Northern Ireland police service. Surely one new Assistant Chief Constable from the south, while neither the "be all and end all" of change, would not have constituted an assault on the old order.

The Police Authority says the two GARDA applicants just weren't qualified, even though they were graduates of our own FBI National Academy (NA), and one reportedly had two university degrees. In most places around the world, graduation from the FBI's National Academy at Quantico is the ticket for promotion and upward mobility—everywhere, it seems, but Northern Ireland, sadly.

The Patten repot called for the lateral entry of experienced officers from other police services in order to help improve and broaden the senior ranks of the RUC. It surely would have helped recruit more young nationalists to have even one or two senior rank positions filled from the GARDA in the south. That lateral entry recommendation appears to be yet another casualty from the Patten reforms of September 1999.

I have asked Committee staff to investigate this GARDA rejection case carefully. We need all the facts so that we can determine if, in fact, we have a case of outward discrimination and bias here. We already bar RUC officers under current federal law from any U.S. policing training until the Patten reforms are fully implemented by the British government, and that fact is so certified to the Congress by the President. If we need to do more in light of this GARDA rejection case, we ought to be doing so.

Thank you again, and I look forward to hearing today's testimony.

Mr. SMITH. Thank you very much, Chairman Gilman, and thank you for your decades long leadership on behalf of human rights in Northern Ireland and the peace process.

The chair recognizes Mr. Crowley.

Mr. CROWLEY. Thank you, Mr. Chairman. I appreciate your recognition and for allowing me to say a few words, not being a Member of the Subcommittee, but being a Member of the Committee of the whole.

Also, Ms. McKinney, thank you for your work here today.

I want to thank Ben Gilman. He is one of the four ad hoc chairs, as I am, of the Irish Ad Hoc Committee and I do not think anyone in this Congress can tout a record even close to Ben Gilman's on records of Irish affairs, so I want to thank him for all those years of service.

I just want to thank the panel of witnesses that were kind enough to join us here this morning. I know we would like to get to your testimony. You no doubt have special insight into the human rights situation in Northern Ireland and I eagerly await your statements.

The title of this hearing is "Human Rights in Northern Ireland: Promises Kept or Promises Broken?" That is a very intriguing question and it is one that raises some serious concerns in my mind.

I have been following events in Northern Ireland for many, many years and though I am encouraged by the progress that has been made on certain fronts, I believe that the British government has fallen short on many others.

Since we are talking about the state of human rights in Northern Ireland, I will begin by focusing my comments on the greatest violator of human rights in Northern Ireland, the Royal Ulster Constabulary. The State Department report on human rights paints a picture of an RUC that has made some progress with regard to the treatment of Catholics in Northern Ireland. One example used in this report is quite troubling, though.

According to the report, deaths caused by the use of plastic bullets resulted in significantly fewer deaths in 2000 than in 1999. In my opinion, this statistic is still unacceptable until there are zero deaths attributed to rubber plastic bullets. This statistic does not take into account intimidation, beatings and daily harassment at the hands of the RUC.

In an effort to curb flagrant human rights violations, the Patten Commission report was submitted as in independent assessment of what needed to be done to reform policing in Northern Ireland. The vehicle for implementation of this report came in the form of the Northern Ireland Police Bill. Unfortunately, the British government essentially gutted the report, picking and choosing the recommendations that suited them most. This legislation created a police force which is simply the same threat with a new name.

I believe that Irish Foreign Minister Brian Cowen said it best when he said "The true measure of the success of this police force will be realized the day that a young nationalist can walk into a station, fill out an application and participate as an equal." Until that day, human rights violations against the people of Northern Ireland will continue to occur.

The terms of the Good Friday Agreement call for the full and faithful implementation of the recommendations in the Patten Commission report. The British government has not yet met its commitments.

So when asked promises kept or promises broken, the answer is clear to me.

Another issue that I would like to touch on briefly is the status of Rosemary Nelson and the investigation into her death, something I know Mr. Smith has been working tirelessly on, as has Ms. McKinney.

This defense attorney who was brutally murdered by loyalist paramilitaries with possible police collusion was once a guest of theirs here in our Congress. The State Department human rights report states that in April of 2000 to the U.N. Commission on Human Rights, the Special Rapporteur on the Independence of Judges and Lawyers expressed concern over the extent and thoroughness of the investigation into Ms. Nelson's complaints of RUC threats. This also is unacceptable.

My purpose here is not to criticize the British government's conduct with regard to Northern Ireland. It is simply to speak out for the preservation of human rights for the people, for all the people of Northern Ireland. I regret the fact that they are both not mutually exclusive.

I thank the Members of the Subcommittee for affording me again the opportunity to say a few words and I sincerely look forward to the comments of the witnesses here today and I yield back the balance of my time.

Mr. SMITH. Thank you, Mr. Crowley.

Mr. Schiff?

Mr. SCHIFF. Thank you, Mr. Chairman. In the interests of getting right to the witnesses, I will yield my time.

Mr. SMITH. Thank you, Mr. Schiff.

Let me introduce our witnesses. Before doing so, I would just note for the record our appreciation that Martin Finucane, Pat's brother, is here joining us here today, and Peter Madden, Pat Finucane's former colleague, he testified before this Committee about 2½ years ago with Rosemary Nelson, and we welcome him here as well.

The first witness we will hear from today is Michael Posner, Executive Director of the Lawyers Committee for Human Rights, where he is an expert on Northern Ireland issues.

Mr. Posner is an attorney and has been Executive Director of the Lawyers Committee since its inception in 1978 for the purpose of promoting international human rights and the rule of law.

He has published many articles on human rights in several national newspapers and journals and is a regular commentator on Court TV.

We will then hear from Jane Winter, Director of the British Irish Rights Watch. In this capacity, Ms. Winter has authored numerous submissions to the United Nations, the European Committee for the Prevention of Torture, and other international human rights organizations concerning alleged violations of human rights.

Ms. Winter also speaks and teaches on human rights and Northern Ireland, provides expert testimony and has served as an independent observer at more than 50 trials.

Her work has been instrumental in starting a new public awareness and inquiry into the events of Bloody Sunday and has played

a key role in securing an official United Nations mission to investigate attempts to intimidate defense attorneys.

Our next witness will be Martin O'Brien, Director of the Committee on the Administration of Justice, where has coordinated all activities and campaigns for the last 13 years. The Committee is a cross-community group of lawyers, academics and community activists working to secure the highest administration of justice in Northern Ireland by providing legal advice and assistance to people who feel their rights have been violated.

His accomplishments include a campaign to enact a bill of rights for Northern Ireland and he played an important role in including strong human rights provisions in the Good Friday Peace Agreement.

Mr. O'Brien has been involved in the peace movement in Northern Ireland since the age of 12. I wonder what he did when he was 11 or younger. He co-founded the Youth For Peace and the Irish Network for Non-Violent Action, Training and Education and helped establish a rural education center for divisions between the people called the Kilcraney House.

He has testified before the U.N. and the U.S. Congress previously.

Lastly, we will hear from Mr. Gavan Kennedy, who is invited by our Ranking Member, the distinguished gentlelady from George, Ms. McKinney, and serves as the executive director of the Irish-American Information Service, the IAIS, located right here in Washington, DC. The Irish-American Information Service has helped to provide coverage of the peace process in Northern Ireland to the U.S. media and to the Congress since 1991.

The IAIS is dedicated to fostering a better knowledge and understanding in the U.S. of the root causes of the conflict in Northern Ireland. IAIS believes these root causes include inequality, division and injustice.

I would like to note for the record that Sir Ronnie Flanigan, the Chief Constable of the Royal Ulster Constabulary, was invited to testify and we stand either in the Commission on Security and Cooperation in Europe or in this Committee ready to receive him any time that he sees fit to come and give an account and to give his side of the story, which we all wait with bated breath to hear.

Ton Constantine, the Oversight Commissioner, was also invited, but could not make it due to scheduling.

So I want to ask Mr. Posner if you would begin.

STATEMENT OF MICHAEL POSNER, EXECUTIVE DIRECTOR, LAWYERS COMMITTEE FOR HUMAN RIGHTS

Mr. POSNER. Thank you. I want to first say a special thanks to you, Congressman Smith, for your extraordinary leadership on this issue. We count on you as a friend and we need you now more than ever.

I want to also say a special thanks to Congressman Gilman, who served as chair for so long and did such a terrific job in keeping these issues before the Congress.

We see in the work that we do the incredibly important role that this Committee and Congress has played in keeping these issues front and center with the British government in Northern Ireland

and with our own government and everything that we are talking about today is linked to the peace process.

So often people talk in terms of the peace process in abstractions and in reality what it amounts to at the end of the day is resolution of these questions: if we can address issues of policing and address the issues of an equality agenda, address issues relating to the criminal justice system. We will get to the guts of what really matters to people in Northern Ireland and we will have pace with justice.

Our view in this situation, in any situation, is that there can never be a lasting peace without justice, equality and official accountability and that is what this hearing is all about and I commend you again for convening it.

I want to take a few moments, if I can, to say a few words about the policing process and the reform process that has followed the Patten Commission's recommendations in September 1999. I think all of you in your introductory comments mentioned policing and you know so much about it that I am not going to repeat things you have said, but simply to reinforce a couple of important points.

We all knew when the Patten Commission made its recommendations that it was the reflection of a compromise and there were some areas where we were saddened that the Patten Commission did not go further. For example, in questions relating to vetting of police officers who had committed human rights violations in the past. But we understood that it was a compromise that was going to be the basis for going forward.

And what we have seen in the last 2 years is that in the implementation process, first in the Police Act which passes last November, we have a compromise of a compromise. And now we are waiting to see an implementing plan which I fear is going to be a compromise of the compromise of the compromise, and then the hard part, which is the real implementation. And I think it is more than incumbent on all of us now to be tough at each stage to make sure that we do not slip further.

Congressman Crowley mentioned, for example, the issue of plastic bullets. Well, the Police Act takes the view that the Northern Ireland Human Rights Commission has no authority to reflect on official policy with regard to that issue. They should. This is the kind of a practical way in which you make implementation real. And rather than as the State Department does, just look at statistics, we ought to be looking at what are the institutional ways in which reform is taking place.

Even on the symbolic issues, I mentioned in the testimony, and I ask, by the way, that it be made part of the record, I am clearly not reading it——

Mr. SMITH. Without objection, your testimony and any other attachments by all of our witnesses will be made a part of the record.

Mr. POSNER. Thank you.

We mention in the testimony that on the oath of office, a relatively simple thing, the Patten Commission says that every member of the RUC should swear to an oath to discharge the duties of an officer with fairness, integrity, diligence, impartiality, upholding fundamental human rights.

Well, where are we on that now? It appears that the oath of office is going to be applicable only to new officers, not those already serving in the force.

What kind of a signal does that send to people who are contemplating joining the RUC from the Catholic community? What does it say to the world, that existing members of the RUC, 10, 11,000 people, do not feel comfortable signing onto an oath that calls for them to uphold fundamental human rights?

These are the issues where common sense suggests there has to be change.

And, finally, as several of you have commented, the issue of civilian oversight, both in the context of the police board and the ombudsman. The Police Act imposes constraints that we think are unreasonable, both with regard to the Secretary of State and the Chief Constable constraining what ought to be official duties for these important oversight bodies.

The testimony goes into those in some detail, but there are a number of specific areas where we would urge you to keep pushing, as we are, to review and revise and revisit some of those constraints. There needs to be official oversight, public civilian oversight, and it ought to be as broad as possible.

And, finally, on the issue of vetting and recruitment, Congresswoman McKinney mentioned these issues in terms of how you go about recruiting. Recently, the RUC has taken out ads and is beginning what they say is a process of recruiting 240 new members of the force. Our view is that that has to be part of a process, a process where a new institution that looks different and feels different is susceptible to new sorts of people coming into the force. It is simply still viewed by many members of the Catholic community, for example, as the old RUC and why would I join.

That has to be broken, not simply by putting an ad out and saying we are open to anybody applying. You have to change the culture of the institution.

And so I come back to what the Patten Commission said were the two central elements of what needed to happen in Northern Ireland with the RUC. They said you have to form a force based on principles of human rights and accountability. That is still what this is all about and as we look at internal processes for vetting and processes for dealing with abuses that are going on today, as we look at all of the measures that the police are taking to change the way in which they are perceived in the community, we just do not see the things happening that need to happen.

And I call on you all to help us figure out and push hard so that the message is clear to the government of the United Kingdom that this is an issue that is still far from resolved and, in fact, the hardest bits are yet to come.

I want to say a moment about the Oversight Commission or Mr. Constantine. His role is an important role. He has just really begun the process, issued his first report, he is going to be issuing periodic reports, setting benchmarks. I think it is critically important for this Subcommittee to be in close contact with Mr. Constantine and to push him to take a very tough stance with respect to these issues. He has said, and we welcome it, that his job is to see that Patten is implemented.

I think that has to be undertaken in the broadest sense. Patten makes 175 recommendations but at the end of the day it is changing the culture of this institution and Mr. Constantine has an overwhelming task and I think the more he has the kind of positive reinforcement for an aggressive approach from this Subcommittee the stronger his position will be as he takes on some of these tough issues with the RUC and the British government. So I would urge you to be engaged with him in a very active way.

Last, and I will end with this, we continue to be concerned and the testimony reflects this, with the lack of diligent investigation into the murders of Patrick Finucane and Rosemary Nelson. Several of you have spoken already this morning eloquently about those cases.

With respect to the Finucane case which we have followed very closely for more than 10 years, there is continuing evidence that comes out in the last several months, several former members of a secret army unit called the Force Research Unit have come forward. The government is clearly not doing what it could to protect them. This is a case that the plot continues to thicken. There is clearly a need to go beyond the third Stevens inquiry and to create an independent public inquiry in this case.

It is clear that the British government is resistant to it, but it is also clear to us and it has been for some time that both the police and the army are implicated, certainly in covering up what happened, but also knew about this murder before it occurred or people connected to them did.

These are serious charges, but they are charges that have to be put to rest by an independent public inquiry. And your resolutions in this Congress are helpful. We need to do more because the British government is not budging.

With regard to the Nelson case, it is also encouraging to us that last month the Irish government added its voice and authority to calls for an independent public inquiry in that case. This is the time for us all to redouble our efforts.

And, finally, I would say in closing that there is a concern on our part that in some quarters in the British government and in Northern Ireland there is a sense that with the new Administration in the United States that concerns here about human rights are going to be diminishing and I think that cannot be true, it cannot be the case, and it is particularly incumbent on Members of Congress, you all in particular, to make sure that going forward the same level of vigilance and attention is paid to these issues and the same level of pressure is applied so that we get on with the important task of promoting human rights in Northern Ireland.

[The prepared statement of Mr. Posner follows:]

PREPARED STATEMENT OF MICHAEL POSNER, EXECUTIVE DIRECTOR, LAWYERS COMMITTEE FOR HUMAN RIGHTS

I. INTRODUCTION

Chairwoman Ros-Lehtinen and members of the Subcommittee, thank you for convening this hearing on the human rights situation in Northern Ireland three years after the Good Friday Agreement. We are grateful for the Subcommittee's longstanding interest and involvement in human rights issues in Northern Ireland. The Subcommittee has played a vital role in raising these issues in the Congress, with the Administration, and with key officials in the United Kingdom. These efforts

have made a tangible difference, and have helped to support local human rights initiatives there. We are grateful for the opportunity to provide you with an update and our perspective on human rights developments in Northern Ireland.

My name is Michael Posner, and I am the Executive Director of the Lawyers Committee for Human Rights. Since 1978, the Committee has worked to protect and promote fundamental human rights, holding all governments, including our own, accountable to the standards contained in the Universal Declaration of Human Rights and related international human rights instruments. The Lawyers Committee focuses its efforts on how best to protect human rights in a lasting way, by advancing international law and legal institutions, by working to build structural guarantees for human rights in national legal systems, and by assisting and cooperating with lawyers and other human rights advocates who are the frontline defenders of human rights at the local level. Indeed, we are pleased to appear on the panel today with two leading frontline defenders: Martin O'Brien, executive director of the Belfast-based Committee on the Administration of Justice, and Jane Winter, Director of British Irish Rights Watch.

The peace process in Northern Ireland has reached a new stage. Headlines no longer focus on the creation of entirely new bodies and initiatives; instead, they highlight political wrangling and debates over the details of the peace process. Decommissioning, demilitarization, and policing reform are at the center of current attempts to ensure the Good Friday Agreement is implemented fully. During this time of intense political argument, crucial developments threaten to fall below the radar screen. The Subcommittee's wise decision to hold hearings now signals to the UK government that its human rights performance is being closely monitored.

The Lawyers Committee has been working to advance human rights in Northern Ireland since 1990. We began with a focus on the intimidation and murder of defense attorneys in Northern Ireland, following the cases of Patrick Finucane and Rosemary Nelson very carefully. The precarious situation of defense lawyers—and the broader public—in Northern Ireland has always been closely linked to the conduct of the police and security forces. For the last several years, the Lawyers Committee has focused increasingly on the broader issue of police reform, advocating for the creation of strong and effective systems of police accountability and oversight.

II. THE TRANSFORMATION OF POLICING IN NORTHERN IRELAND

The transformation of the Royal Ulster Constabulary (RUC) in Northern Ireland into a rights-respecting police force that serves all members of the community equally was a central component of the Good Friday Agreement of 1998. The Independent Commission on Policing created under the Agreement, known as the Patten Commission after its Chair, Christopher Patten, completed its work in September 1999. The Commission's report included 175 recommendations for the future of policing in Northern Ireland. These recommendations ranged from suggestions about a new name to proposals to create more effective civic oversight bodies. On the whole the Patten Commission successfully integrated human rights into its broad program for reform, although the Lawyers Committee was disappointed that it did not directly address some key issues, including the continued use of emergency powers and intimidation of defense attorneys.

In the time since the Patten Commission Report was published, concrete plans to reform the police force have taken shape in an Implementation Plan issued by the UK government and legislation passed by the UK Parliament in December 2000. The Lawyers Committee has followed these developments closely. Although many of the important aspects of the Patten Commission's recommendations remain intact in the government's plan, there are areas of concern that require immediate improvement.

We describe in detail in our testimony what we believe are the most glaring shortcomings of the government's plan. But we also want to make clear our concern that the UK government has not demonstrated the political commitment required to ensure real change. This lack of commitment has become even more obvious over the past few months; the government readily accepted amendments that the police saw in their own interest—such as improved information technology systems—but resisted those that would have entailed more fundamental change—such as strengthening accountability and human rights protections. We believe the UK government must correct this trend by demonstrating a more robust commitment to reform.

A. Policing Reform: From the Patten Commission to the Police Act

The Police (Northern Ireland) Bill was published on May 15, 2000. In the debates that followed, a number of organizations, including the Lawyers Committee, expressed concern about the bill. Specifically, we were concerned about portions of the bill that weakened the accountability structures proposed by the Patten Commission

and omitted reference to international human rights standards relevant to policing. In June 2000, the Northern Ireland Office published its first Implementation Plan, which responded to each of the 175 recommendations made by the Patten Commission, detailing which had been accepted, which rejected, and which accepted in principle or with modifications. The Plan also explained that numerous recommendations required legislative authority.

Last September, as members of the Subcommittee know, the Lawyers Committee and CAJ testified before the Helsinki Commission. We stressed the importance of ensuring that the accountability structures recommended by the Patten Commission be adopted in their strongest form. We very much welcomed the September 26th House of Representatives resolution calling on the UK government to implement "fully and faithfully" the Patten Commission's recommendations in the Police Bill.

On November 15, the Police Bill had its third and final reading before the UK Parliament's House of Commons. Labour and Liberal Democrat members voted together to reject amendments proposed by Conservative and Unionist members. As a result, proposed amendments that would have retained the RUC's cap badge and weakened recruitment procedures aimed at increasing Catholic representation on the force were rejected. The bill was passed into law on November 21.

During the fall, the UK government announced that it would release a Revised Implementation Plan to accompany the new Police Act. The publication of the revised plan was repeatedly delayed, and as of this hearing, has not been released.

1. Areas of Concern: the Police (Northern Ireland) Act 2000

The Lawyers Committee has a number of concerns about the substance of the Police (Northern Ireland) Act 2000 as it was finally adopted. We believe the UK government has the responsibility to remedy these shortcomings during the implementation process, and we urge members of this Subcommittee to press the British government to make these changes.

Incorporating Human Rights into the Oath and Code of Ethics. The Patten Commission made clear that the purpose of policing is to protect the rights of all. Toward this end, the Commission recommended that all police officers—both new and continuing—should be required to take an oath to uphold human rights. The Commission also recommended that the training curriculum for officers include human rights in all of its modules, and that appraisal of officers' performance include their human rights record. The Commission also called for a substantive Code of Ethics that would integrate human rights standards into police practice.

The Police Act requires new police officers to swear an oath to "discharge the duties of the office of constable, with fairness, integrity, diligence and impartiality, upholding fundamental human rights and according equal respect to all individuals and their traditions and beliefs . . ." Regarding the Code of Ethics, the Act requires the Chief Constable to draft the Code and submit it for revision and approval by the Policing Board. The Board is required to consult with the Police Association, the Secretary of State, the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland, and any other person or body the Board believes has an interest in the matter. The Code must lay down standards of conduct for police officers, and must make officers aware of the rights and obligations arising out of the European Convention on Human Rights.

The Lawyers Committee is troubled by the proposal that only new police officers would be required to swear the new oath to uphold human rights. This was one of the few recommendations made by the Patten Commission which was based on the recognition that some serving RUC officers have engaged in human rights abuses and should be obliged—at least—to commit themselves to a new beginning. Establishing different standards for new and serving officers is deeply unfortunate. Because of this shortcoming, it is especially important that the Code of Ethics, which will bind all police officers, be based squarely on international human rights standards. The Code should not limit its reference to the European Convention on Human Rights, but should integrate and refer to all relevant international standards pertaining to police conduct. Further, while the Police Act requires consultation with the Northern Ireland Human Rights Commission (NIHRC) regarding the Code of Ethics, it does not interpose such a requirement concerning the use of plastic bullets. Instead, the Secretary of State is authorized to issue guidance on the use by police officers of public order equipment after consulting with the Policing Board, the Chief Constable, the Police Ombudsman, and the Police Association. The Lawyers Committee believes that the Human Rights Commission has a crucial role to play in advising the Policing Board on public order policing methods, especially ones that involve potentially lethal instruments, such as plastic bullets. This kind of consultation should be regular practice: the Policing Board should consult the NIHRC on all areas of policing that involve human rights concerns.

Civic Oversight: The Policing Board. The Police Act sets out the authority of the yet-to-be created oversight bodies recommended by the Patten Commission: the Policing Board and the local District Policing Partnerships. The statute outlines procedures and duties of each body.

At the heart of the Patten Commission's recommendations was the creation of a Northern Ireland-wide Policing Board, charged with overseeing the activities and human rights performance of the new police service. The Police Act states that the function of the Policing Board will be to ensure that the police are "efficient and effective." The Act empowers the Board to hold the Chief Constable to account for the exercise of his or her functions. The Act specifies the composition of the Board, which will be made up of political members drawn from the Northern Ireland Assembly, and independent members appointed by the Secretary of State.

The Board may request that the Chief Constable report on any matter connected to policing, and it may conduct an inquiry into any matter included in a report from the Chief Constable. The Patten Commission viewed these powers as extremely important, but the Board's inquiry and reporting powers are limited in a number of ways by the Police Act. First, the Chief Constable may refer a request for a report or an inquiry to the Secretary of State if the Chief Constable feels the report or inquiry is likely to reveal information that: pertains to an individual and is of a personal and sensitive nature; might prejudice court proceedings; or might prejudice the detection of crime. The Secretary of State may then "modify or set aside" the request for a report or may halt an inquiry by the Board. Second, the Act sets out procedural obstacles to the initiation of an inquiry and the appointment or approval of an individual to carry out an inquiry, by requiring weighted majorities for these acts. Third, the Act requires that individuals appointed by the Board to carry out inquiries must be approved by the Secretary of State.

The Lawyers Committee is pleased that the UK government accepted the idea of a strong and effective Policing Board, which would hold the Chief Constable to account, but we are concerned with the way the statute defines the relationship between the Board and the Secretary of State. We believe the grounds for a referral of an inquiry or report request to the Secretary of State are too far-reaching. We believe these limits on the Board's authority to request a report or conduct an investigation are overly broad, and are likely to unduly constrain the accountability function of the Policing Board. We also are concerned that the Act requires weighted majorities for the initiation of an inquiry and approval of an individual to head or undertake an inquiry—a requirement not placed on other decisions taken by the Board. Finally, we believe the requirement that the Board seek approval by the Secretary of State for the individual it has chosen to head an inquiry compromises the Board's independence.

Civic Oversight: District Policing Partnerships. The Patten Commission recommended the creation of local District Policing Partnership Boards, and the government accepted this idea, slightly modifying the name. The Police Act requires each District Council in Northern Ireland to create a District Policing Partnership (DPP). The DPPs will scrutinize police performance in their district and act as a general forum for discussion and consultation concerning policing. Like the Policing Board, the local DPPs will be made up of political and independent members. No person who has been convicted of any offense and has been given a sentence of imprisonment—whether suspended or not—may serve as an independent member of a DPP.

The Lawyers Committee is pleased that the UK government accepted the need for District Policing Partnerships. We are concerned, however, that the choice of members for the DPPs may not reflect the entire community in some areas. The legislation indicates that local councils must select political members to reflect the balance of parties in the council. Regarding independent members, however, there is no requirement to ensure that all parts of the community are represented. The Secretary of State should ensure this requirement is included in the Code of Practice the Secretary is directed to issue for the DPPs.

A New Name and a New Image. The Patten Commission recognized the importance of names and symbols in Northern Ireland, a society torn by division and conflict. The commission therefore recommended that the name "Royal Ulster Constabulary" be replaced with the 'Northern Ireland Police Service" as the new name, and called for the design of a badge and symbols that are entirely free from any association with either the British or the Irish state.

The Police Act officially states that "[t]he body of constables known as the Royal Ulster Constabulary shall continue in being as the Police Service of Northern Ireland (incorporating the Royal Ulster Constabulary)." The "operational" name will be the Police Service of Northern Ireland. The Act empowers the Secretary of State to

promulgate regulations prescribing the design of an emblem and a flag for the police after consulting with the Policing Board, the Chief Constable, and the Police Association.

The Lawyers Committee is concerned that the importance of impartiality for all parts of the community could be lost in the coming debate over the new name and symbols. The new emblem and flag should be neutral, and acceptable to all parts of the community. In addition, the need for a fresh start should be borne in mind by all involved in the transformation process.

Recruitment Procedures, Goals, and Addressing Past Violations. The RUC is overwhelmingly white, male, and Protestant. Roughly 40% of the Northern Irish population is Catholic and approximately 88% of RUC officers are Protestant, 8% are Catholic, and 4% are of other faiths. Only 12% are women. The Patten Commission recognized that recruitment of Catholics, women, and ethnic minorities must be central goals for the new force, and stated that gay men and lesbians should be welcome as members of the police as well. The Police Act reflects the government's acceptance of the need to recruit Catholics, and indicates that the under-representation of women is a problem.

Regarding the recruitment of Catholics, the statute specifies that those candidates who are deemed qualified should be placed into a pool, from which recruits—in a 50/50 ratio of Catholic and non-Catholic—will be drawn. The Act requires the Board to develop an "Action Plan" for monitoring the number of women in the police service, support staff, and the Board, and for increasing the numbers if women are under-represented. The Board may also request the Chief Constable to create a plan for the monitoring and increasing of the number of women in the police. The Act is silent on working class police officers, ethnic minorities, nationalists, republicans, and the inclusion of gay men and lesbians.

In recent weeks, advertisements for police recruits have appeared in the print media and on television. The Chief Constable has stated that he plans to hire 240 recruits using the 50/50 Catholic/Protestant ratio. The Lawyers Committee is concerned that the recruitment drive, coming as it does before the main oversight mechanisms for the service have been formed, could fail to attract recruits from the very communities that are most underrepresented and most affected by abusive policing tactics.

The Lawyers Committee was disappointed that the Act did not provide for a vetting process of continuing officers to ensure that those who have committed human rights abuses may not continue to serve. Further, the legislation's provisions concerning "notifiable memberships" are weak. Officers holding such memberships, defined as memberships that "might reasonably be regarded as affecting the officer's ability to discharge his duties effectively and impartially," are required to notify the Chief Constable, who will keep the information confidential.

The Patten Commission recommended that all officers be required to swear a new oath to uphold human rights; this oath would take precedence over any other oaths or qualifications taken by officers who belong to secret societies or sectarian groups. Instead, the Police Act requires only new officers to swear the oath. By simply requiring notification of memberships in a vaguely defined set of circumstances, the Act fails to recognize that membership in organizations that foster discrimination based on race or religion or that explicitly reject social and political integration is incompatible with impartial police service. Finally, it appears from the Police Act that that the records of notifiable memberships will be kept individualized, making statistical analysis of memberships and trends impossible.

Training. The Patten Commission recommended that training be provided for new and continuing officers concerning accountability, human rights, and community relations. In recent months, the UK government has stated that it is carrying out plans to train serving officers in human rights. The Lawyers Committee believes that training in all relevant human rights standards is crucial to the future of the police service in Northern Ireland. We urge the UK government to ensure that all training modules include relevant international standards and do not limit their reference to domestic legislation dealing with human rights.

Police Ombudsman. On October 11, 1999, Nuala O'Loan was appointed as Police Ombudsman Designate for Northern Ireland. More than a year later, on November 3, 2000, her office opened its doors. Required under the Police (Northern Ireland) Act 1998, the office of the Police Ombudsman replaced the now phased-out Independent Commission for Police Complaints. Ms. O'Loan has a staff of over 100 and manages an annual budget of 5.7 million pounds.

Early proposals for the Police (Northern Ireland) Act 2000 included provisions that would have limited the Ombudsman's powers. Some would have prevented her

from naming the names of police officers involved in complaints, or from providing details that would have allowed the identity of the individuals involved to be ascertained. Other proposals would have constrained her ability to gain access to crucial information, limiting her to "reasonable" requests only. These drastic measures were wisely rejected.

In the end, the 2000 Act deals only with very specific areas of the Ombudsman's mandate. The Act defines the Ombudsman's role in mediating "non-serious" cases—cases that do not appear to involve criminal actions by police officers. The Ombudsman is also given the authority and responsibility to compile and supply the Policing Board with statistical information concerning complaints against the police.

The Lawyers Committee is disappointed that the Patten Commission's recommendation to authorize the Ombudsman to broadly investigate police policies and practices was not incorporated into the Police Act. We will continue to monitor the progress of the Ombudsmans office in the coming months, examining the resolution and outcome of complaints.

2. Looking Ahead: The Oversight Commissioner

The Patten Commission recommended that "an eminent person, from a country other than the United Kingdom or Ireland" should be appointed to oversee the transformation of policing in Northern Ireland. On May 31, 2000, Thomas Constantine, former Director of the US Drug Enforcement Administration and former Chief of Police for New York State, was appointed as the Oversight Commissioner. Mr. Constantine was appointed for an initial term of three years. The Commissioner's terms of reference include monitoring all aspects of the policing transformation by conducting progress review meetings every four months with Ministers, the Chief Constable, and all those involved in the process. Following these meetings, the Commissioner is tasked with writing a report detailing successes, delays, and failures; these periodic reports are to be submitted to the UK Parliament and published.

Since his appointment, the Commissioner has announced that three chief advisers will work alongside him. These individuals are: Professor David Bayley of the State University of New York/Albany, an expert on human rights and police training; Robert Lunney, a former President of the Association of Canadian Police Chiefs; and Charles Reynolds, a former American police officer and police adviser.

In November, Oversight Commissioner Constantine produced his first report. It begins with the statement that "[t]he proposed revisions for the policing services in Northern Ireland are the most complex and dramatic changes ever attempted in modern history." To assess this wide-ranging reform process, the Oversight Commissioner explains that his team will inventory all of the changes proposed by the Patten Commission and create performance indicators for each of the 175 recommendations. Next, the team will collect baseline data against which progress can be measured. With the cooperation of RUC officials, the team will then assess the extent to which the recommendations have been implemented. This assessment will include close examination of documents from implementing agencies, interviews with those putting the changes into effect, and on-sight visits as needed. Once these assessments have been made, the Oversight Commissioner will share his findings with a blue ribbon panel he has organized with the cooperation of the International Association of Chiefs of Police. This panel will advise the Commissioner on his assessments. The Commissioner plans to report three times per year on the outcome of these evaluations.

The Lawyers Committee is pleased that Commissioner Constantine has expressed his commitment to take a serious, in-depth approach to his role in the transformation of policing in Northern Ireland. He has stressed that human rights is at the core of the Patten Commission's vision, and he correctly plans to measure the progress of change against the commission's 175 recommendations. We look forward to public reports on these assessments, which will go a long way toward demonstrating whether the needed changes are being implemented or not.

The Lawyers Committee is concerned, however, that the Commissioner's initial report does not indicate whether the Commissioner plans to consult with the communities directly affected by abusive policing as part of his periodic evaluations. We believe that change should be measured not only by examining the internal documents and assessments produced by the police, but also by discovering whether the policing that takes place on the street has changed. We commend the Commissioner for his outreach inside the RUC and his on-the-ground visits to police stations in many parts of Northern Ireland. It is essential that the Commissioner get a sense of what it is like to be a police officer on the beat. But it is also crucially important that he understand and have close contacts with community leaders in areas where police-community relations have been particularly strained. The reasons behind the

need to transform the RUC are rooted in the daily experiences of those who have suffered abusive practices. The Commissioner must learn from community groups and understand what has and has not changed at the local level from their perspective.

In short, the Lawyers Committee believes that the Oversight Commissioner can play a crucial role in moving the reform process forward by publicly reporting on the extent to which the ongoing changes meet—or fail to meet—the blueprint set out in the Patten Commission Report. We look forward to the Commissioner's next report, where he will have the opportunity to describe the successes and failures of the past several months of the change process. It is crucially important that the Commissioner provide the public with the facts and assessments they need to understand the changes that are occurring. And of course, those within the police must know that their behavior is being closely monitored by an objective, professional evaluator.

We urge the Subcommittee to closely monitor the Oversight Commissioner's work and findings and that members of the Subcommittee and other concerned Members of Congress meet with the Commissioner to directly discuss these issues.

III. UPDATE ON FINUCANE AND NELSON CASES

A. Patrick Finucane

The Lawyers Committee continues to advocate for the creation of an independent inquiry into the murder of Belfast lawyer Patrick Finucane, who was shot to death in front of his family on February 12, 1989. Since we last testified on the case—before the Helsinki Commission in September—there have been a number of developments that underscore the urgent need for an independent inquiry.

As many of you are aware, Metropolitan Police Commissioner Sir John Stevens heads the current—third—investigation into the murder of Patrick Finucane. Commissioner Stevens directed the first two Finucane investigations, and was called back this time to investigate allegations concerning state collusion with loyalist paramilitaries. This recall followed the delivery to the UK government by British Irish Rights Watch of a confidential report alleging that Finucane's murder formed part of a wider pattern of state-sponsored killings. Since he directs the London area police department, Commissioner Stevens has handed over day-to-day operations of the investigation to Deputy Assistant Commissioner Hugh Orde (also with the Metropolitan Police Department in London).

As we told the Helsinki Commission in September, reports surfaced last spring that the Director of Public Prosecutions would prosecute William Stobie for the murder of Patrick Finucane. Stobie has admitted—as early as 1990—that he supplied the weapons used in the murder, but he claims that he was an informer for the RUC Special Branch at the time of the murder. He also alleges that he supplied enough information to his Special Branch handlers before the murder to enable them to prevent the crime. In August, the charges against Stobie were commuted from murder to aiding and abetting. The same month, press reports indicated that a batch of sensitive army intelligence files had been seized which might assist the investigation significantly.

In October, the Sunday People newspaper successfully challenged injunctions imposed on the paper by the UK government seeking to prevent the publication of allegations that a secret army unit, the Force Research Unit (FRU), was involved in the murder of Patrick Finucane and others. On November 30, charges that had been brought against an ex-FRU member-turned-whistleblower were dropped. The individual, identified by the pseudonym Martin Ingram, had been charged under the Official Secrets Act for making public his allegations, and was kept under bail for almost a year. During this time, the Stevens investigation was seeking Ingram's cooperation, seeing him as a crucial witness who could assist in exposing possible collusion in loyalist murders. Following death threats and other "dirty tricks" aimed at Ingram by individuals who said they were acting to protect the FRU, the witness pulled his cooperation, saying he was not given adequate protection by the government and he feared for his life. Unconfirmed newspaper reports published during the week of February 26 stated that Martin Ingram had decided once again to cooperate with the Stevens team.

On February 13, The Sunday Herald reported that the name of one of the undercover army agents who was involved in handling double agent Brian Nelson was revealed on the internet, via a US-based website devoted to releasing intelligence information. This agent, a former member of the Force Research Unit (FRU), is alleged to have passed information to loyalist paramilitaries via Nelson, who then used the information in murder operations, including the killing of Patrick Finucane. The paper was prevented by the Ministry of Defence from revealing the

officer's name, but it has since been reported in other press accounts. Only five days later, The Sunday Times reported that the Stevens team was considering recommending charges against three serving or former FRU soldiers—presumably including the named agent—who were involved in handling Nelson.

The Lawyers Committee is gravely concerned about the manner in which the third Stevens investigation is being handled. First, it appears that the government has not provided adequate protection to (and even sought to prosecute) the former FRU operative Martin Ingram, whose testimony could be central to uncovering the full extent of collusion between the army, police, and paramilitaries. Second, leaks in the press concerning plans by the investigation team to arrest or question FRU operatives have given the individuals concerned unwarranted advance warning that may have allowed them time to destroy documents. Third, the UK government continues to deny that a public inquiry is immediately required to examine the mounting evidence of collusion. Information obtained by British Irish Rights Watch and made available to the UK government suggests that the murder of Patrick Finucane was part of a much larger pattern of collusion between the FRU and paramilitaries that led to the deaths of possibly dozens of individuals. We therefore continue to call on the UK government to establish an independent inquiry to investigate the evidence behind these allegations, as part of a broader inquiry into the murder of Patrick Finucane. We would greatly welcome assistance from Members of Congress in our attempts to convince the UK government to set up an independent inquiry.

B. Rosemary Nelson

Today marks the second anniversary of the death of Lurgan solicitor Rosemary Nelson, who was killed as a result of injuries she sustained when a bomb exploded under her car on March 15, 1999. Although a dissident paramilitary group claimed responsibility for the murder, the truth about the murder has not been fully uncovered. In the months leading up to her death, Ms. Nelson was harassed and threatened by RUC officers, and received written death threats as well. The RUC and the government were alerted to these threats by human rights organizations and by the United Nations Special Rapporteur on the Independence of Judges and Lawyers, but failed to take any action for her protection. No one has been charged with the murder of Rosemary Nelson. One of the main suspects, who was arrested but not charged, was a serving soldier at the time of Ms. Nelson's murder.

A year ago, on March 14, 2000, the Lawyers Committee, along with British Irish Rights Watch and the Committee on the Administration of Justice, highlighted the Nelson case in testimony before the Helsinki Commission. The next day, the one year anniversary of Ms. Nelson's murder, a petition demanding an independent inquiry and containing 100,000 signatures was delivered to UK Prime Minister Tony Blair. In May 2000, the Independent Commission on Police Complaints (ICPC) decided not to recommend disciplinary action against the RUC officers accused of harassing Ms. Nelson. The ICPC said that the burden of proof—beyond a reasonable doubt—was too high for it to recommend discipline on the existing record. In October, representatives of the Lawyers Committee, BIRW, and CAJ met with Deputy Chief Constable of Norfolk Colin Port, who heads the investigation into the murder of Ms. Nelson. The organizations again reiterated their concern—first voiced at the time of the murder—regarding RUC involvement in the investigation.

In November, CAJ filed a complaint against the Chief Constable, Sir Ronnie Flanagan, with the Police Ombudsman in relation to threats against Ms. Nelson. The complaint alleges that the Chief Constable failed to adequately investigate and address written threats against Ms. Nelson, which were forwarded to the Minister of Security by CAJ many months before her death. Neither CAJ nor Ms. Nelson were informed of any investigation into the documents in the months preceding her murder. Only days after she was killed, however, the RUC asked CAJ for the original copies of the threatening documents, demonstrating that no forensic examination had been conducted on the documents before her death. CAJ seeks an accounting of the circumstances that led to the failure of the RUC to investigate the serious threats against Ms. Nelson.

In late February, the Irish Taoiseach Bertie Ahern met with members of Ms. Nelson's family and British Irish Rights Watch Director Jane Winter. Following the meeting, the Prime Minister announced that the Irish government is now backing the call for an independent inquiry into the murder. The Lawyers Committee continues to believe that only an independent inquiry will suffice in this case, and we urge Members of Congress to do all they can to see that the UK government heeds this call.

IV. CONCLUSION

Three years after the Good Friday Agreement was signed, the British government

still refuses to establish independent inquiries into the murders of Patrick Finucane and Rosemary Nelson. Without such inquiries, the fight to end impunity in Northern Ireland cannot progress. Similarly, plans to create a new, rights-respecting police force in Northern Ireland were watered down and have now stalled. Leadership from this Subcommittee can have a real impact on both fronts.

After hearings chaired by Rep. Chris Smith last September before the Helsinki Commission, the House of Representatives passed a resolution "call[ing] upon the British Government to fully and faithfully implement the recommendations contained in the September 9, 1999, Patten Commission report on policing." We want to thank Rep. Smith for taking this initiative. We return to that text today and find that its call has yet to be heeded: the British government still has not "fully and faithfully" implemented the Patten recommendations. We therefore urge members of this Subcommittee to introduce a new resolution in this session of Congress calling on the British government to act quickly to remedy the shortcomings of the Police Act and the Implementation Plan. Specifically, it should urge the government to:

- Incorporate international human rights standards into all new training modules, the new Code of Ethics, and the officer's oath—which should be taken by all officers—not only new ones;
- Ensure the new emblem and flag are neutral and acceptable to all members of the community;
- Scale back the power of the Secretary of State in relation to the Policing Board, ensuring the Board has the authority to require needed reports and inquiries; and
- Ensure the Oversight Commissioner is given adequate resources to engage in wide-ranging consultations, especially with those communities where police-community relations have been especially strained.

Finally, I want to thank members of this Subcommittee for your ongoing vigilant attention to the Finucane and Nelson cases. Further action on those cases is urgently needed. In the past few months, there have been increased public calls for independent inquiries into both of these cases. The Lawyers Committee urges the Subcommittee to renew its call on the British government to establish independent public inquiries into both of these murders. Such a call will remind the British government that the circumstances surrounding these murders must be fully investigated through open, transparent, and independent inquiries.

The success of the peace process should be measured by the degree to which the human rights situation has improved in Northern Ireland. Those working for human rights in Northern Ireland will continue to look to this Subcommittee for reinforcement in pressing the British government to uphold the human rights guarantees included in the Good Friday Agreement.

Thank you.

Mr. SMITH. Thank you very much, Mr. Posner, and thank you for your written testimony that you have put together for us and I would encourage all Members to read the entirety of each of the submissions because they are very, very exact.

You make the point about the oversight commissioner, I think it is an excellent point, with Mr. Constantine, that while he is meeting with RUC officers, it is critically important that he understand what it is like to be policed in Northern Ireland. I mean, this is chockfull of important information and I do thank you and your oral presentation was excellent so I do thank you for that as well.

Ms. Winter?

STATEMENT OF JANE WINTER, DIRECTOR, BRITISH IRISH RIGHTS WATCH, LONDON, ENGLAND

Ms. WINTER. Thank you, Mr. Chair. We welcome the opportunity to address the Subcommittee concerning the reform of the criminal justice system in Northern Ireland. We thank Chairman Smith in particular, but also Mr. Gilman and all the Members of this honorable Committee for their interest in this important element and the

human rights commitments contained in the Good Friday Agreement.

It has not received as much attention as policing perhaps, but it is equally crucial. The Good Friday Agreement defined the aims of the criminal justice system in Northern Ireland as being to deliver a fair and impartial system of justice to the community, to be responsive to the community's concerns and encourage community involvement where appropriate, have the confidence of all parts of the community, and deliver justice efficiently and effectively.

We believe that the inclusion of these aims in the agreement and a setting up of a review of the criminal justice system demonstrated a recognition that there are many problems with the criminal justice system in Northern Ireland.

Unfortunately, policing and emergency laws were excluded from the remit of the Criminal Justice Review, although many of the problems with the current system stem directly from the very serious malaise in policing and from the severe distortions that have been placed upon it by emergency legislation.

Unlike the Patten Commission, the Criminal Justice Review Team was not made up exclusively of independent experts, but included civil servants. The team placed rather more emphasis on compromise than on radical reform, although some of the reforms ultimately proposed are indeed radical.

We were surprised to find that much of the thoughtful commentary included in the report did not appear to translate into concrete recommendations.

Also, many of the recommendations carry with them the suggestion that they should not be implemented until the Northern Ireland assembly takes on responsibility for justice affairs.

In our view, the implementation of such important reforms should not be made contingent upon devolution arrangements. There is a danger that justice issues, like policing, will become so highly politicized that they will become pawns in the political process, to be bargained away.

The review team have put human rights at the heart of the criminal justice system. This emphasis is very welcome. Northern Ireland has never really enjoyed a culture of respect for human rights and it is our contention that only if it is able to do so and develop such a culture will it ever be able to find true peace and stability.

We were pleased that the review team were prepared to tackle some contentious issues such as membership of exclusive or secret organizations, protection of defense lawyers, and the drawing of inferences from suspect silence under police questioning or their refusal to testify in their own defense. However, their recommendations in these difficult areas were somewhat weak.

For example, they recommend that criminal justice agencies should not allow its employees to belong to organizations that are, and I quote, "clearly committed to acting contrary to the law or the interests of the criminal justice system."

We would have preferred to see a straightforward declaration that membership in organizations as the Orange Order, which blatantly discriminates against Catholics, is incompatible with the principle of impartiality within the system of criminal justice.

Similarly, we were glad that the review team recognized the fact that some defense lawyers in Northern Ireland endure threats and harassment because of the work that they do, but their recommendations do not go far enough. As we have heard, two lawyers in Northern Ireland, Patrick Finucane and Rosemary Nelson, have been murdered, Rosemary only 2 years ago to this day and may she rest in peace.

In our view, lawyers in Northern Ireland will never be able to operate in safety unless the underlying causes of hostility toward their work are examined by public inquiries and eradicated.

On the right of silence, the review team instead of recommending the repeal of these laws contented themselves with recommending further research into their impact. These laws undermine the privilege against self-incrimination, reverse the burden of proof and violate the right to a fair trial. The review team should have condemned them.

There have been many cases in Northern Ireland that have raised serious concerns about the role of the prosecution and, in particular, the role of the Director of Public Prosecutions, the DPP. We also have concerns about the role currently played in some prosecutions by the IUC.

We strongly believe that the prosecution process should be completely separate from the investigation of crime. If it is not, there is an ever present danger that the investigation will become directed toward ensuring that someone is prosecuted, rather than toward arriving at the truth.

In view of the severe problems with policing in Northern Ireland, this separation of the inquisitorial investigation from the adversarial prosecution is all the more vital.

We therefore welcome the Criminal Justice Review Team's recommendation for the setting up of a single independent prosecuting authority or public prosecution service for Northern Ireland which will be more transparent and more representative than the current DPP's office.

Crucial reforms are the proposals that the prosecutor should take responsibility for cases at an early stage, should determine the nature of any criminal charge, and should be able to withdraw charges. These measures will provide essential protections against abuse of process.

We also welcome the proposals that reasons should be given for decisions whenever possible.

The system of criminal justice in Northern Ireland will be further strengthened by the introduction of an inspectorate to examine the prosecutor's work and a complaint system.

The report is weaker, though, in some of its other recommendations. For example, the team proposed that the prosecutor should decide what evidence should be disclosed to the defense. In our view, the laws on advance disclosure of the defendant's defense and on prosecution control over disclosure to the defense must be repealed. They are a recipe for miscarriages of justice and have tilted the balance far too heavily in favor of the prosecution.

The emergency laws and the no-jury Diplock courts in Northern Ireland have too long drained the criminal justice system of the respect it requires in a democracy and has undermined the rule of

law itself. The same judges who sit in the Diplock courts also sit in the ordinary courts.

In our submission to the Criminal Justice Review Team, we criticize those judges for their failure to uphold the rights of suspects' access to legal advice. We also criticize the judiciary for its reluctance to substitute its own decisions for those of police officers in cases of disputed parades and for the tendency of some judges to make adverse comments about defendants when acquitting them.

We therefore welcome the review team's proposals to strengthen the independence of the judiciary, the emphasis they place on merit and ability as selection criteria and the need for the judiciary to be reflective of the wider community.

Generally speaking, we approve of the recommendation for establishing a judicial appointments commission, but we see no need for the First Minister and his or her deputy to have the final say on appointments, nor for their involvement in appointing the Lord Chief Justice and the Lords of Appeal.

Similarly, we reject the proposal that senior judges and the heads of the legal professions should continue to be consulted about appointments. We would prefer the appointment of the judiciary to be a fully independent process.

The report is very weak on equality of opportunity. The current judiciary is unrepresentative of the community it serves and even of the legal profession from which it is recruited, both in terms of gender, balance and of religion. The judiciary is overwhelmingly male and protestant and to the best of our knowledge includes not one member of any ethnic minority.

We do not agree that the tests of merit and ability conflict with the need to ensure equal opportunities and we believe that the judicial appointments should be made subject to equal opportunities law. In this context, we strongly endorse the recommendation for a neutral oath of office.

The report's recommendations on judicial training seem rather tentative. In our view, training in human rights and the study of how and why miscarriages of justice occur should be mandatory for all judges.

We welcome the review team's support for trial by jury. However, we regret that they did not call for the abolition of the no-jury Diplock courts. We believe that the restoration of trial by jury would send a powerful message to the people of Northern Ireland that normality can take hold in the criminal justice system and, by inference, in other spheres.

We welcome a number of the report's proposals for better facilities and greater accessibility to courts in Northern Ireland. However, we regret that the review team had not opted to propose a completely neutral court environment which would make everyone feel equally at ease.

The practice and procedure of inquests in Northern Ireland falls far short of the standards laid down by the United Nations. There are many serious defects in the system that make it impossible to establish the truth about disputed killings, especially those involving the security forces. Many families experience years of frustration and delay and, in some cases, there has never been an inquest.

We therefore welcome the review team's recommendation that there should be an independent review of the law and practice on inquests in Northern Ireland.

In conclusion, Mr. Chair, there is much to be welcomed in the report of the Criminal Justice Review but there are also many areas where its proposals could have been much stronger. However, the burning issue now is the implementation of change.

The government has said that legislation to enact the reforms and an implementation plan will be published in April this year. However, they have not said which proposals they accept or reject or what changes they plan to make following the consultation exercise that followed the report.

With the political process currently almost at a standstill and with every possibility that violence will once again fill the political vacuum, especially during the summer parade season, every opportunity to make progress on other fronts should be grasped. The very length and complexity of the Criminal Justice Review Report shows how badly reform is needed in the criminal justice system in Northern Ireland.

In our view, that reform cannot be seen in isolation from reform of policing, the abolition of emergency laws, the restoration of the right to silence and measures to enable lawyers to go about their work free from threats. It is only by creating a society where mutual respect for human rights and the rule of law are the norm that there can be any hope of a just and enduring peace in Northern Ireland.

We hope that this honorable Committee will continue the tradition that it has established in relation to other issues such as policing and will watch the implementation of the criminal justice review program as closely as it has the policing program and will do everything it can to make sure that the promises are kept and not broken.

Thank you, Mr. Chair.

[The prepared statement of Ms. Winter follows:]

PREPARED STATEMENT OF JANE WINTER, DIRECTOR, BRITISH IRISH RIGHTS WATCH, LONDON, ENGLAND

1. INTRODUCTION

British Irish RIGHTS WATCH is an independent non-governmental organisation and registered charity that monitors the human rights dimension of the conflict and the peace process in Northern Ireland. Our services are available to anyone whose human rights have been affected by the conflict, regardless of religious, political or community affiliations, and we take no position on the eventual constitutional outcome of the peace process.

We welcome this opportunity to address the Subcommittee on International Operations and Human Rights concerning the reform of the criminal justice system in Northern Ireland. We thank the members of this honourable Subcommittee for their interest in the progress made in this important element of the human rights commitments contained in the Good Friday Agreement.

The Agreement defined the aims of the criminal justice system in Northern Ireland as being to:

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

We believe that the inclusion of this set of aims in the Agreement demonstrated a recognition that there are many problems within the criminal justice system. In our submission to the Criminal Justice Review Team, we were critical of the roles, selection and training of the judiciary and the office of the Director or Public Prosecutions. We also highlighted the need for the whole of the criminal justice system to be equally accessible to all sections of society in Northern Ireland, to be impartial and independent, and to be accountable to the public it serves.

Unfortunately, in our view, the issues of policing and emergency laws were excluded from the remit of the Criminal Justice Review, doubtless because separate reviews were also established on those topics. However, many of the problems with the current system stem directly from the very serious malaise in policing in Northern Ireland [1] and from the severe distortions that have been placed upon it by emergency legislation [2].

Unlike the Independent Review of Policing for Northern Ireland (the Patten Commission), the Criminal Justice Review Team was not made up exclusively of independent experts, but included civil servants and was administered by Northern Ireland Office staff [3]. The Team placed rather more emphasis on compromise than on radical reform—although some of the reforms ultimately proposed are indeed radical. There was also a lengthy gap between the writing of the report and its publication, while civil servants ran the proposals past their political masters, a procedure that tends to result in watering down. Although much of the analysis the Team has included in its lengthy and detailed report is useful, it should be remembered that only its recommendations can be implemented. We were surprised to find that much of the thoughtful commentary included in the report did not appear to translate into concrete recommendations.

Many of their recommendations carry with them the suggestion that they should not be implemented until the Northern Ireland Assembly takes on responsibility for justice affairs. In our view, the implementation of such important reforms should not be made contingent upon the devolution arrangements. There is a danger that justice issues, like policing, will become so highly politicised that they will become pawns in the political process, to be bargained away.

2. HUMAN RIGHTS AND GUIDING PRINCIPLES

Like the Report of the Independent Commission for Policing in Northern Ireland (usually know as the Patten Commission [4]), the Criminal Justice Review Team have put human rights at the heart of the criminal justice system [5]. Unlike the Patten Commission, the Review Team have addressed the human rights dimension of each issue they have considered. This emphasis on human rights is very welcome. Northern Ireland has never really enjoyed a culture of respect for human rights, and it is our contention that only if it is able to develop such a culture will it ever be able to find true peace and stability.

We were pleased to see that the Review Team were prepared to tackle some contentious issues, such as membership by those working in the criminal justice system of exclusive or secret organisations [6], protection for defence lawyers [7], and the drawing of inferences from suspects' silence under police questioning or their refusal to testify in their own defence [8].

However, their recommendations in these difficult areas are somewhat weak. For example, the Review Team recommends that criminal justice agencies should not allow its employees to belong to organisations that are "clearly committed to acting

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[1] *Submission to the Independent Commission on Policing for Northern Ireland* British Irish RIGHTS WATCH, September 1998

[2] See, for example, successive editions of *United Kingdom Human Rights Concerns*, Amnesty International; successive reports by British Irish RIGHTS WATCH, 1992–1999; *Human Rights and Legal Defense in Northern Ireland: The Intimidation of Defense Lawyers, the Murder of Patrick Finucane*, Lawyers Committee for Human Rights, New York, February 1993; *Political Killings in Northern Ireland*, 1994, Amnesty International; *At the Crossroads: Human Rights and the Northern Ireland Peace Process, Ending the Emergency, Judges and Laywers*, Lawyers Committee for Human Rights, New York, December 1996; *To Serve Without Favour: Policing, Human Rights, and Accountability in Northern Ireland*, 1997, Human Rights Watch/Helsinki, New York; and *Criminal Justice And Human Rights In Northern Ireland and the Republic of Ireland*, 1999, Association of the Bar of New York, New York

[3] For the membership of the Review Team, see *Review of the Criminal Justice System in Northern Ireland* [hereinafter, Review Report], HMSO, March 2000, paragraph 1.5, p. 2

[4] After its chairman, Chris Patten

[5] Review Report, paragraph 3.1, p. 25

[6] Review Report, paragraphs 3.42 to 3.47, pp. 39–41

[7] Ibid, paragraphs 3.48–3.60, pp. 41–44

[8] Ibid, paragraphs 3.61–3.64, pp. 41–44

contrary to the law or the interests of the criminal justice system"[9]. Some might think that membership of the Orange Order, which blatantly discriminates against Catholics and bans them from membership, would clearly be contrary to the interests of the system of criminal justice. However, there would doubtless be others who would argue that there is nothing actually illegal about the Orange Order, and that its views on Catholicism are irrelevant to the interests of the criminal justice system. It depends who is making the judgement, and in Northern Ireland, safeguards that depend on such factors have been notoriously weak. We would have preferred to see a straightforward declaration that membership of such organisations is incompatible with the principle of impartiality within the system of criminal justice.

Similarly, although we were glad that the Review Team recognised the fact that some defence lawyers in Northern Ireland act under threats, including death threats, and harassment because of they work they do[10], their decision only to recommend effective investigation of such threats and training for police officers and others on the importance of the work of defence lawyers[11], while welcome, does not go far enough in addressing the problem. Two lawyers in Northern Ireland, Patrick Finucane and Rosemary Nelson, have been murdered, the latter only two years ago, and human rights groups and others, including the United Nations' Special Rapporteur on the independence of judges and lawyers, have called for independent inquiries into their deaths because of suspicion of official collusion. In our view, lawyers in Northern Ireland will never be able to operate in safety unless the underlying causes of hostility towards their work are examined and eradicated.

On the right of silence, the Review Team, instead of recommending the repeal of these laws, contented themselves with recommending further research into their impact[12]. The fact that judges and juries can use a suspect's refusal to answer police questions and defendants' failure to testify in their own defence in order to draw inferences against them at trial is, in our opinion, one of the most damaging aspects of the criminal justice system and has already led to several miscarriages of justice. These laws undermine the privilege against self-incrimination, reverse the burden of proof, and violate the right to a fair trial. The Review Team should have condemned them.

3. THE PROSECUTION

There have been many cases in Northern Ireland that have raised serious concerns about the role of the prosecution, and in particular the role of the Director of Public Prosecutions (DPP). These include:

- dubious decisions to prosecute
- dubious decisions not to prosecute
- failure to prosecute members of the security forces
- use of dubious witnesses
- deals on sentencing
- failure to give reasons for decisions, and
- delays.

Dubious Decisions to Prosecute

For example, in July 1994 republican Colin Duffy was convicted of the murder of a former soldier[13], John Lyness. His conviction hinged on identification evidence from a witness whom the RUC refused to identify, calling him only Witness C. It transpired that Witness C was a well-known loyalist, Lindsay Robb. Within weeks of the conviction, Lindsay Robb was arrested in Scotland an charges of attempting to procure arms for the loyalist group, the UVF. It would appear that his arrest was the culmination of a lengthy police surveillance operation, which calls into question the decision to use him as a prosecution witness and, particularly, to seek to withhold his identity. Colin Duffy appealed his conviction. The prosecution informed the Court of Appeal that they no longer intended to rely on Witness C's evidence, and Colin Duffy was acquitted after serving some three years in jail. Lindsay Robb was never prosecuted for perjury. Despite this history, in 1997 Colin Duffy was arrested

[9] Ibid, paragraph 3.47, p. 41

[10] See *Report on the mission of the Special Rapporteur on the Independence of Judges and Lawyers to the United Kingdom of Great Britain and Northern Ireland*, United Nations, E/CN.4/1998/39/Add.4

[11] Review Report, paragraph 3.53, p. 42

[12] Ibid, paragraph 3.63, p. 46

[13] John Lyness, murdered on 24.6.1993

and charged with the murder of two RUC (police) officers[14]. The evidence against him was extremely dubious, and eventually the DPP decided not to continue with the prosecution, but only after Colin Duffy had spent another three months in prison for a crime he did not commit.

Another case, that of Billy Gorman, was referred back to the Court of Appeal by the Criminal Cases Review Commission. Billy Gorman was convicted in 1980 of the murder of RUC constable Thomas McLinton in 1974 and spent 14 years in jail before being released on licence. He was 14 years old at the time of the murder, and was not arrested until six years afterwards. He says that he was ill-treated in custody and that this led him to make a false confession. At the end of his trial, his barrister took the highly unusual step of asking him, after he had been convicted, to return to the witness box, where he again affirmed his innocence. After his conviction, Billy Gorman fought a long, hard battle with the RUC to obtain his original interview notes so that they could be subjected to ESDA testing[15]. When the RUC finally released the notes, tests showed that they had been altered. In October 1999 the Court of Appeal quashed his conviction, and that of a co-defendant.

Dubious Decisions Not to Prosecute

For instance, in 1989 a solicitor, Patrick Finucane, was murdered in Belfast. Considerable evidence has since come to light to suggest that a British military intelligence agent, Brian Nelson, was actively involved in his murder, supplying those who shot him with a photograph and information about his movements, but he has never been prosecuted[16].

In 1994, republican David Adams was arrested by the RUC. He sustained several injuries during the arrest, but instead of being taken to hospital he was taken to Castlereagh[17], where his leg was deliberately broken and police officers again delayed in taking him to hospital. In 1998 Mr Justice Kerr awarded David Adams £30,000 (c. $50,000) damages, after finding that his injuries were caused by assaults by RUC officers and that RUC officers had given inconsistent, irreconcilable, and untruthful evidence to the court. The DPP nevertheless decided not to prosecute any RUC officer.

Failure to Prosecute Members of the Security Forces

From 1969 until the end of 1994, over 3,000 people died in Northern Ireland as a result of the conflict. These victims included 349 people killed by on-duty members of the security forces, representing over 10% of the total deaths. These deaths gave rise to prosecutions in 23 cases of 34 people, only eight of whom were convicted, and only five of these convictions survived appeal. In 190 of the cases, or more than half, the victims were civilians with no history of paramilitary involvement. In a substantial proportion of all the deaths, including some of acknowledged paramilitaries, the circumstances are in dispute, and the figure of 23 cases giving rise to prosecutions is considered by all independent observers to be remarkably low.

Use of Dubious Witnesses

In March 1998, loyalist David Keyes was murdered inside the Maze prison while on remand for the murder of two friends[18] in a sectarian attack on a bar. He had been tortured before he died. On 31st March 2000, the trial against two men accused of his murder collapsed after the key prosecution witness refused to continue testifying, the judge having warned him against perjury. The witness, who was also an inmate of the prison at the time of the murder, had apparently been offered police protection in return for his testimony.

Loyalists David Magee and Philip Murray were convicted with a number of others of the sectarian murder of a young woman[19]. They were convicted on the evidence of a sole witness, who had by her own admission made a false statement to the police before making one that incriminated them. Her evidence in any case was wholly circumstantial. There was no forensic or eyewitness evidence to link either man with the murder. On appeal in 1996 their sentence was commuted after the court decided that they were merely accessories to the crime.

Deals on Sentencing

In 1992, the British army agent Brian Nelson was convicted on numerous charges, including five counts of conspiracy to murder. Normally, such a conviction

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[14] Constable Graham and reserve Constable Johnston, murdered in Lurgan on 16th June 1997
[15] A process that allows imprints on documents to be read
[16] The murder of Patrick Finucane is currently the subject of a further police investigation
[17] A holding centre in Belfast for those arrested under emergency laws, since closed
[18] Philip Allen and Damien Trainor, murdered in March 1998
[19] Anne-Marie Smyth, murdered in February 1992

would result in five life sentences. Brian Nelson was sentenced to only ten years. We cannot be certain that the DPP was involved in this deal, but it is clear that a deal was done. It is also clear that, although Brian Nelson would have been a key witness in the trials of a number of other loyalists, he was never produced and they faced less serious charges than might have been expected.

Failure to Give Reasons for Decisions

The DPP is under no duty to give reasons for his decisions, some of which are controversial. For instance, he has decided not to prosecute any of the RUC officers who allegedly stayed in their vehicle while loyalist thugs kicked Robert Hamill to death in Portadown in 1997. He also dropped prosecutions against a number of men implicated in the attack.

Delays

Once a person has been charged, a file is passed by the police to the DPP's office. There are often unacceptable delays before the DPP receives enough information to decide whether to bring a prosecution. For instance, in June 1999 loyalist Billy Stobie was arrested for the murder of Patrick Finucane. He freely admits that he supplied the weapons used in the murder. However, he also says that he was a police informer at the time of the murder. Although he says that he did not know the intended victim, he gave the RUC sufficient information to put the perpetrators under surveillance and prevent the murder. It has transpired that he was arrested in 1990 and questioned by the RUC about the murder, and that he told them all of this information then. The Director of Public Prosecutions decided not to prosecute him. There has been no material change in circumstances since then, yet now he has been arrested, ten years after the event. It seems very likely that he will have a strong defence on grounds of abuse of process, but the DPP is nonetheless proceeding with the prosecution.

We also have concerns about the role currently played in some prosecutions by the RUC. British Irish rights watch believes very strongly that the prosecution process should be completely separate from the investigation of alleged crimes. If it is not, there is the ever-present danger that the investigation will become directed towards ensuring that someone is prosecuted, rather than towards arriving at the truth. In view of the severe problems with policing in Northern Ireland, this separation of the inquisitorial investigation from the adversarial prosecution is all the more vital.

In light of all these concerns, we welcome the Criminal Justice Review Team's recommendation for the setting up of a single independent prosecuting authority [20], the Public Prosecution Service for Northern Ireland, which will be more transparent and more representative than the current DPP's office [21]. We also agree with them that this independent prosecutor should not supervise police investigations, because of the principle of separation explained above. We also welcome the team's proposals for additional safeguards:

- that the independent prosecutor should be able to refer crimes s/he uncovers to the police [22]
- and to refer cases to the Police Ombudsman, who supervises complaints against the police [23]
- that the independent prosecutor be placed under a duty to ensure that allegations of police malpractice are investigated [24]
- that the prosecutor be able to provide advice on request to the police on prosecutorial issues [25].

They also suggest that those involved in providing such advice should not necessarily be involved in making the decision whether to prosecute [26]. We would have preferred to see a complete separation of the two functions.

Crucial reforms are the proposals that the prosecutor should take responsibility for cases at an early stage, should determine the nature of any criminal charge, and should be able to withdraw charges [27]. These measures will provide essential protections against abuse of process. We also agree that, until it is decided that a prosecu-

[20] Report, paragraph 4.127, p. 84
[21] Ibid, paragraphs 4.173–183, pp. 97–100
[22] Ibid, paragraph 4.131, p. 85
[23] Ibid, paragraph 4.132, p. 86
[24] Ibid, paragraph 4.133, p. 86
[25] Ibid, paragraph 4.135, p. 86
[26] Ibid, paragraph 4.137, p. 87
[27] Ibid, paragraphs 4.138–9, pp. 87–88

tion is going ahead, the name of the person concerned should be withheld[28], because of the right to the presumption of innocence. We are less sure about the withholding of information about the fact that an un-named person has been arrested, because victims are entitled to know about the progress of cases.

We also welcome the proposals that reasons should be given for decisions wherever possible[29]. The recommendations that the independent prosecutor must publish an annual report, a code of practice and a code of ethics[30] will provide measures against which to assess the prosecutor's decisions and conduct. The system of criminal justice in Northern Ireland will be further strengthened by the introduction of an inspectorate to examine the prosecutor's work[31] and a complaints system[32], although we would have preferred a completely independent complaints system. We also support the proposal to replace the current arrangements with a locally-appointed Attorney-General with a limited term of office and other safeguards[33].

The report is weaker in some of its other recommendations. For example, the team propose that the prosecutor should advise the police on the evidence required to secure a conviction and decide what evidence should be disclosed to the defence[34]. In our view, the law on disclosure of the defendant's defence and those which essentially give the prosecution control over disclosure to the defence must be repealed. They are a recipe for miscarriages of justice, and have tilted the balance far too heavily in favour of the prosecution. The Review Team does recommend a review of the present disclosure provisions[35], but it does not enter into any detailed criticism of them.

4. THE JUDICIARY

In our submission to the Criminal Justice Review, we explained that British Irish rights watch has observed many trials in the no-jury Diplock courts set up under Northern Ireland's emergency laws. The Diplock courts have brought judges into the arena by making them triers of fact and law. The rules allowing judges to draw inferences from a defendant's silence, which apply in all courts, have recruited judges to the prosecution's side. The same judges who sit in the Diplock courts also sit in the ordinary courts. In our submission, we set out a detailed description of judicial review cases concerning access to legal advice for those arrested under emergency laws, which show that a number of judges, all of whom sat in the Diplock Courts, when sitting in the ordinary civil courts

- were ready to ignore precedents set in the English courts,
- consistently preferred the evidence of RUC officers to that of solicitors,
- condoned the giving of undertakings by solicitors which potentially infringed the lawyer/client relationship
- readily accepted RUC conjecture that solicitors might be kidnapped by paramilitaries and forced to divulge information, despite the fact that this has never happened in the history of the conflict, and
- failed to have any regard whatsoever to relevant international human rights standards.

The judiciary has also failed to vindicate lawyers' rights by refusing to uphold legal challenges to their exclusion by the RUC from interrogations of clients arrested under the emergency laws. We also criticised the judiciary for its reluctance to substitute its own decisions for those of police officers in cases of disputed parades, and for the tendency of some judges to make adverse comments about defendants when acquitting them.

We therefore welcome the Review Team's proposals to strengthen the independence of the judiciary[36], the emphasis they place on merit and ability as selection criteria[37], and the need for the judiciary to be reflective of the wider community[38]. We also agree that the judiciary should be drawn from both arms of the legal profes-

[28] Ibid, paragraph 4.139, p. 88
[29] Ibid, paragraph 4.167, p. 95
[30] Ibid, paragraph 4.14169, p. 96
[31] Ibid, paragraphs 4.170–171, pp. 96–97
[32] Ibid, paragraph 4.172, p. 97
[33] Ibid, paragraph 4.160, p. 93
[34] Ibid, paragraph 4.141, p. 88
[35] Ibid, paragraph 4.143, p. 89
[36] Ibid, paragraph 6.82, p. 129
[37] Ibid, paragraph 6.84, p. 130
[38] Ibid, paragraph 6.85, p. 130

sion[39] and that greater weight should be given to length of experience than to the lawyers' type of practice[40].

We are, though, very concerned about the role envisaged for the First Minister and Deputy First Minister of the Northern Ireland Assembly, who would become responsible for the judicial appointments process[41]. The apparent safeguard, that no vote, resolution or Act of the Assembly on judicial matters should be valid unless it has cross-community support[42], would put such matters at the mercy of the political process. That said, generally speaking we approve of the recommendations for establishing a Judicial Appointments Commission[43], but see no need for the First Minister and his or her deputy to have the final say in appointments[44], nor for their involvement in appointing the Lord Chief Justice and the Lords of Appeal[45]. Similarly, we reject the proposal that senior judges and the heads of the legal professions should continue to be consulted about appointments[46]. We would prefer the appointment of the judiciary to be a fully independent process.

It is perhaps because of these provisions that the Report is very weak on equality of opportunity[47]. The current judiciary is unrepresentative of the community it serves and even of the legal profession from which it is recruited, both in terms of its gender balance and its religious affiliations. The judiciary is overwhelmingly male and Protestant, and to the best of our knowledge includes not one member of any ethnic minority. We do not agree that the tests of merit and ability conflict with the need to ensure equal opportunities[48], and believe that judicial appointments should be made subject to equal opportunities laws. We are surprised at the Review Team's failure to comment adversely on the lack of female judges, although we agree that the religious and ethnic background of judges should be monitored[49]. In our submission to the Review, we made the following suggestions for broadening out the judiciary:

- expanding the judiciary by the promotion of senior counsel in order to improve the gender and religious balance within the judiciary
- recruiting new judges from among legally-qualified academics and solicitors with a background in human rights law
- removing the bar on solicitors becoming High Court judges
- arranging a circuit or exchange scheme with judges in the other jurisdictions within the United Kingdom in order to expose existing Diplock judges to greater experience of trial by jury and to bring some fresh approaches to criminal trials in Northern Ireland. It may be necessary for two or more judges to sit together in such an experiment
- establishing a constitutional court to hear cases of judicial review, cases brought under the Bill of Rights and the Human Rights Act, and cases brought by the Commission on Human Rights. There should be no automatic appointment of existing judges to such a court, but appointments should be made by a judicial appointments board.

We strongly endorse the recommendation for a neutral oath of office[50].

With the exception of the recommendation that induction training should be mandatory[51], the Report's recommendations on judicial training seem rather tentative. In our view, training in human rights, anti-discrimination law, relevant forensic matters, criminology, and other relevant disciplines should be compulsory, with an annual quota of, say, five days' training. Seminars should also be held for judges involving lawyers, NGOs, or other suitably qualified people, to study why and how miscarriages of justice occur. Every judge in Northern Ireland should be provided with a copy of Amnesty International's *Fair Trials Manual*.

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[39] Ibid, paragraph 6.89, p. 131—the legal profession in Northern Ireland is made up of solicitors, who prepare cases, and barristers, who are advocates
[40] Ibid, paragraph 6.90, p. 131
[41] Ibid, paragraph 6.96, p. 133
[42] Ibid, paragraph 6.97, p. 133
[43] Ibid, paragraphs 6.98–104, pp. 134–136, and paragraph 6.111, p. 138
[44] Ibid, paragraph 6.106, pp. 136–137
[45] Ibid, paragraph 6.109, p. 137
[46] Ibid, paragraph 6.116, p. 139
[47] Ibid, paragraphs 6.113–115, p. 139, and paragraph 6.119, p. 141
[48] Ibid, paragraph 6.87, p. 130 and paragraph 120, p. 141
[49] Ibid, paragraph 6.120, p. 141
[50] Ibid, paragraph 6.128, p. 143
[51] Ibid, paragraph 6.134, p. 144

5. TRIAL BY JURY

We welcome the Review Team's support for trial by jury[52]. However, we regret that they did not call for the abolition of the no-jury Diplock courts.

The Review Team's recommendation that jury trials should be reviewed in relation to intimidation and certain classes of cases, such as serious fraud[53], potentially pave the way for weakening rather than strengthening trial by jury. We believe that the restoration of trial by jury would send a powerful message to the people of Northern Ireland that normality can take hold in the criminal justice system, and by inference in other spheres. It would also show that the government trusts and expects people in Northern Ireland to behave responsibly towards one another, in this arena as in any other. The emergency laws and the Diplock courts in Northern Ireland have for too long drained the criminal justice system of the respect it requires in a democracy, thus undermining the rule of law itself.

6. THE COURTS

We welcome a number of the Report's proposals for better facilities[54] in and greater accessibility of courts in Northern Ireland, including:

- simplification in dress and the abandonment of the wearing of wigs[55],
- use of easily understood language[56], and
- availability of interpreters[57].

However, we regret that the Review Team have not opted to propose a completely neutral court environment. They have tried to square the circle by recommending the retention of the royal coat of arms on the exterior of court buildings and the flying of the Union flag[58], but removing the declaration, "God Save the Queen!" upon the entry of judges into courts[59]. Given the importance attached to such symbols in Northern Ireland, we would prefer to see a neutral logo adopted, to be displayed on buildings, flags, uniforms, documentation etc, which would give the Northern Ireland courts a neutral identity and make everyone feel equally at ease.

7. INQUESTS

The practice and procedure in inquests in Northern Ireland falls far short of the standards laid down by the United Nations[60]. Coroners have very wide discretion concerning the conduct of inquests, and can decide whether or not to hold an inquest and whether or not to summon a jury[61] . Inquests have a very limited remit. They can only determine the identity of the deceased and how, when and where s/he died[62], and may not attribute responsibility for a death[63]. There are no parties to an inquest, only interested persons, and the relatives of the deceased cannot insist on giving evidence at the inquest[64], nor insist on any other witness being called, nor can they cross-examine witnesses, but only ask them questions within the narrow remit of the inquest[65]. Juries cannot come to a verdict, such as 'unlawful killing' (available in England), but can only make findings[66]. Legal aid is not normally available, so the majority of families have no legal representation[67]. Anyone suspected of causing a death, or who may be charged with an offence relating to the death, cannot be compelled to attend the inquest[68]. Furthermore, those responsible for causing a death may submit unsworn statements as to their version

[52] Ibid, paragraph 7.3, p. 149
[53] Ibid, paragraph 7.66, p. 167
[54] Ibid, paragraph 8.49, p. 180
[55] Ibid, paragraph 8.52, p. 181
[56] Ibid, paragraph 8.53, p. 182
[57] Ibid, paragraph 8.55, p. 182.
[58] Ibid, paragraph 8.62, p. 184—the Union flag is United Kingdom's national flag
[59] Ibid, paragraph 8.63, p. 184
[60] Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions
[61] Coroners Act, s.13
[62] Coroners (Practice and Procedure) Rules (Northern Ireland) 1963, rule 22, as amended
[63] Ibid, Rule 16
[64] Rule 8(1)
[65] Rule 7(1)
[66] Coroners Act (Northern Ireland) 1959, s.31 (1) and Rule 15 and the Third Schedule to the Rules, Form 22, as amended
[67] Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, Schedule 1, Part 1, Paragraph 5, never brought into force
[68] Rule 9(2), upheld by the House of Lords in *McKerr* v. *Armagh Coroner* (1990) 1 ALL ER 865

of events, while refusing to attend or submit to cross-examination[69]. The family of the deceased are not entitled to a copy of the post mortem report[70]. Until recently, families were only allowed to see witness statements once they were put in evidence at the inquest, making it very difficult adequately to prepare for the inquest[71]. Although evidence is given on oath at inquests, they are not bound by the strict rules of evidence, and hearsay evidence is admissible[72]. Public Interest Immunity Certificates have been used to prevent the disclosure of information in the possession of the authorities, usually on grounds of national security. Many families experience years of frustration and delay, and in some cases, such as the death of Robert Hamill, there has never been an inquest.

In view of all these concerns, we welcome the Review Team's recommendation that there should be an independent review into the law and practice of inquests in Northern Ireland[73].

8. CONCLUSION

There is much to be welcomed in the report of the Criminal Justice Review, but also many areas where its proposals could have been much stronger. However, the burning issue now is the implementation of change. The government has said[74] that legislation to enact the reforms and an implementation plan will be published in April 2001. However, they have not said which proposals they accept or reject, or what changes they plan to make following a consultation exercise on the report.

There are those in Northern Ireland who are opposed to any change, whether in the system of criminal justice or in any other sphere. However, the overwhelming support for the Good Friday Agreement among the people of Northern Ireland shows that those people are in the minority. With the political process currently almost at a standstill, and with every possibility that violence will once again fill the political vacuum, especially during the summer parade season, every opportunity to make progress on other fronts should be grasped. The very length and complexity of the Criminal Justice Review report shows how badly reform is needed in the criminal justice system in Northern Ireland.

In our view, that reform cannot be seen in isolation from reform of policing, the abolition of emergency laws, the restoration of the right of silence, and measures to enable lawyers to go about their work free from threats. It is with regret that we conclude that there is no single person or body that is prepared to take such an overview. The people of Northern Ireland deserve better. A fair and equal criminal justice system is fundamental to a peaceful and democratic society. Human rights reforms should not be allowed to become political footballs. It is only by creating a society where mutual respect for human rights and the rule of law are the norm that there can be any hope of a just and enduring peace in Northern Ireland.

Mr. SMITH. Ms. Winter, thank you very much for your very eloquent testimony and we do appreciate it and the insights that you do provide to the Committee and to the Congress.

Mr. O'Brien?

STATEMENT OF MARTIN O'BRIEN, DIRECTOR, COMMITTEE ON THE ADMINISTRATION OF JUSTICE, BELFAST, IRELAND

Mr. O'BRIEN. Mr. Smith, we are extremely grateful for the invitation to testify today and for your and other Members' longstanding interest and support on these issues.

These hearings have been convened to consider the implementation of the human rights agenda promised in the Good Friday Agreement and as a number of Members have already referred to this morning, these hearings also take place on the anniversary of Rosemary Nelson's death and this, I think, is an important reminder to all of us of the human cost which is paid when there is inadequate protection of human rights.

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[69] *In re Devine 4 Breslin's Application* (1991) HoL

[70] Although their doctor can request an abstract of the report, Rule 27 (3)

[71] This practice is beginning to change, although technically the law has not

[72] Rule 8 (1), *R* v. *Devine, ex parte Walton* (1930) 2 KB 29, 36

[73] Report, paragraph 8.36, p. 176

[74] Northern Ireland Information Service press release, 26th October 2000

Rosemary, when she testified before Congress, told you of the threats she was receiving from members of the RUC. We believe that if a leading human rights lawyer had been subjected to death threats at the hands of the police in any other developed democracy and was then subsequently murdered, there would be an immediate public inquiry. That, of course, has not happened in Rosemary's case and I would begin by asking this Subcommittee to again specifically urge the United Kingdom government to establish such a public inquiry.

I would also request that the Committee ask the new United States Administration to encourage the United Kingdom government to take this important step and, as Michael Posner has already said, this would add its voice to the already growing number of groups and most recently the Irish government's call for such an inquiry.

Rosemary's death was in many ways an attack on the peace process, but more specifically on the notion that progress could be made through peaceful means and recourse to the courts and the rule of law. This notion is, of course, central to the Good Friday Agreement which promised many changes to the human rights situation in Northern Ireland.

The record of implementation of the human rights promises contained in the agreement has, as my colleagues have already made clear, been patchy.

If I may, I would like just to add one further comment to those already made by Mike Posner on the vexed problem of policing.

The CAJ believes that the appointment of an oversight commissioner is potentially a very exciting mechanism for overseeing effective change. To assist in the work of the commissioner, we have developed a series of benchmarks based on the Patten report to measure policing change. Those benchmarks have been submitted to the oversight commissioner to assist him in his work. I would like to have this document read into the record.

But now I would like to turn more directly to the main topic of my intervention. As many of you will know, the agreement established a Human Rights Commission and obliged the commission to consult on the content of a bill of rights for Northern Ireland.

C.A.J. has presented a submission to the commission's consultation exercise and I request that this, too, be read into the record.

Our submission argues that the bill of rights will be central to creating a new human rights culture and framework which will ensure that the rights of all are comprehensively protected. A requirement of the Good Friday Agreement is that the bill of rights must reflect the particular circumstances of Northern Ireland.

One of the particular circumstances of Northern Ireland is that it is a society where people have experienced an abuse of their basic human rights over a long period of time. It is a society of great inequalities and divisions. In this context, we believe there is an overwhelming case for the articulation of a broad based bill of rights for Northern Ireland capable of addressing these concerns.

The starting point for this debate must be the needs of individuals and communities in Northern Ireland. The commission's advice cannot be constrained by reference to what the government or political parties are likely to accept.

The agreement clearly envisaged the bill of rights as a building block in the process of resolving conflict in Northern Ireland. Recognizing a common set of rights in a document that all can commit to, at least in part, is thus an important element in building a new society. The more the rights specified are seen to appeal across the communities the more likely it will be that rights can be seen as something that bind the communities together, rather than divide them.

One of the particular issues we highlighted in our submission to the Human Rights Commission was our concern about the ability of the current Northern Ireland judiciary to interpret and apply any new bill of rights. While there are undoubtedly those within the ranks of the judiciary who are committed to the protection of human rights, the senior judiciary have often shown themselves to be indifferent, if not hostile, to international human rights standards.

This hostility has been particularly reflected in some recent judgments and comments by the Lord Chief Justice for Northern Ireland, Sir Robert Carswell. The result of these has been to seriously undermine the work of the Human Rights Commission and human rights more generally.

Arising out of our concerns in this regard, CAJ has recently written to the Lord Chancellor to complain about the Lord Chief Justice. A response is still awaited.

Concerns about attitudes in the current judiciary add to CAJ's belief that a new human rights court should act as guardian of the bill of rights. New judges sitting on a new court entrusted as the guardians of the bill of rights cannot help but take those rights seriously and endeavor to ensure that they are respected.

A new court that functions as an appellate court will also influence current members of Northern Ireland judiciary. They would know that their decisions relating to the bill of rights would be subject to review.

Appointments to the new court could also have great symbolic significance. The current judicial arrangements do not command the respect of all sections of society in Northern Ireland. A new court that is broadly representative of the community would be a powerful symbol that the bill of rights truly belongs to everyone in Northern Ireland.

This new human rights court, charged with driving home the fundamental nature of the bill of rights, must be composed of individuals with proven knowledge and experience of human rights and a commitment to their effective protection in Northern Ireland.

In the context of the bill of rights debate and the recent review of the criminal justice system which Jane Winter has referred to, it would be helpful if Congress could indicated to the United Kingdom government its support for a new bill of rights, a human rights court and an independent and transparent system for the appointment of judges in Northern Ireland.

We believe the new court will be a key symbol of the process of change and the increased protection of rights which were promised in the agreement.

There are, of course, many people who are opposed to such change. Increasingly, in recent months, we have seen a series of ar-

ticles, parliamentary questions and public statements which have sought to undermine the work of CAJ and the new human rights protections promised in the Good Friday Agreement.

While, of course, effective human rights groups must expect a level of criticism from those whose interests coincide with the state, the extent of recent criticism cannot go unanswered because its ultimate goal is to undermine the human rights protections promised to all of us in the Good Friday Agreement.

There has even been criticism of the fact that some members of the Northern Ireland Human Rights Commission are also members of the Committee on the Administration of Justice. There are currently nine member of the Human Rights Commission. They were appointed by government and in order to carry out the task entrusted to them clearly had to have a track record in human rights activism. Three are members of CAJ. We think that figure is far too low, not too high.

The real target of those attacking organizations such as CAJ and the Human Rights Commission is the new human rights dispensation contained in the Good Friday Agreement. It is vital, therefore, that the United States Government gives clear and public support to the new human rights dispensation and to the Human Rights Commission and also to the Equality Commission, institutions established under the agreement and tasked with implementing the human rights and equality agenda.

Turning now more specifically to the question of discrimination and equality, this is one area where there is some good news to report. As a result of the agreement, over 120 public bodies in Northern Ireland have had to mainstream considerations of equality into every aspect of policymaking. This represents a fundamental reorientation of the public service to ensure that everyone is treated fairly and is involved in the process of governance. Decisionmaking should in future be much more transparent, be more impartial and should take into account those most in need.

U.S. intervention around establishing ethical principles for investment in Northern Ireland was a key lever in ensuring that the U.K. government introduced increasingly strong anti-discrimination legislation. This interest in our employment practices and investment strategy and in government policies and in anti-discrimination and greater equality must be maintained by the United States.

This Committee may, for example, want to request information from the United Kingdom government on the work of the newly created reviews into appointments to the senior civil service where there is a significant lack of women and Catholics and the review into the government's public procurement policy, which could very effectively target the endemic inequalities in our society.

Moreover, there are a number of key public bodies that have not yet been required to comply with the new duties to promote equality of opportunity. The gaps in this protection include very important bodies such as the British Broadcasting Corporation, the Director of Public Prosecutions, and the Ministry of Defense. These organizations must be brought within the ambit of the equality legislation without further delay.

Our concern as a human rights organization is to see the human rights promises contained in the agreement implemented. This will help in bringing U.K. policy and practice in Northern Ireland into line with international standards. However, movement on these issues will also, of course, assist in progressing the political process in Northern Ireland, especially when it appears that such progress has been limited in the recent past.

There is a danger that people will begin to question the value of the agreement if it does not deliver real change to their daily lives. The human rights agenda has the potential to deliver that change, but in order to do so, the British government needs to implement that change speedily and fully.

As a friend, the United States Administration can bring a lot of constructive influence to bear and as so often in the past we look to you to do so.

Thank you very much.

[The prepared statement of Mr. O'Brien follows:]

PREPARED STATEMENT OF MARTIN O'BRIEN, DIRECTOR, COMMITTEE ON THE ADMINISTRATION OF JUSTICE, BELFAST, IRELAND

Chairwoman Ross-Lehtinen and other members of the Committee, we are extremely grateful for the invitation to testify today. These hearings have of course been convened to consider the progress or lack of progress in implementing the human rights agenda promised in the Good Friday Agreement. However, we should all remember the human cost which is paid when there is inadequate protection of human rights.

Two years ago today, Rosemary Nelson, a vigorous and courageous defender of human rights was murdered in Northern Ireland. Many members of this Subcommittee, in particular Congressman Smith, will of course have personal recollections of Rosemary because she testified before you in September 1998, some six months before her death. She told you of the threats she was receiving from members of the RUC. We believe if a leading human rights lawyer had been subjected to death threats at the hands of the police in any other developed democracy and was then subsequently murdered, there would be an immediate public inquiry.

That of course has not happened in Rosemary's case. I would begin by asking this Subcommittee to again specifically urge the United Kingdom government to establish such a public inquiry. I would also request that the Committee ask the new United States administration to encourage the United Kingdom government to take this important step. For our part in CAJ, we will continue to work to ensure that the death of Rosemary, an executive committee member of our organisation, is properly and fully investigated.

Rosemary's death was in many ways an attack on the peace process but also more specifically on the notion that progress could be made through peaceful means and recourse to the courts and the rule of law. This notion is of course central to the Good Friday Agreement which promised many changes to the human rights situation in Northern Ireland. The record of implementation of the human rights promises contained in the Agreement has, as my colleagues have already made clear, been patchy.

If I may, I would like just to add one further comment to those already made by Mike Posner of the Lawyers Committee on Human Rights on the vexed problem of policing. The CAJ believes that the appointment of an Oversight Commissioner is an innovative and potentially very exciting mechanism for overseeing effective change. To assist in the work of the Commissioner, the CAJ has studied the Patten report, government's draft policing implementation plan, and some fascinating material prepared by the inter-governmental body, the Council of Europe. Arising out of this work we have developed a series of benchmarks to measure policing change. Those benchmarks have been submitted to the Oversight Commissioner as issues he will presumably want to address in the course of his regular public reports. Given Congress's interest in monitoring how and if the vision of the Patten report gets translated into real change on the ground, I would like to have this document read into the record.

But now I would like to turn more directly to the main topic of my intervention. As many of you will know, the agreement established a Human Rights Commission

and obliged the Commission to consult on the content of a Bill of Rights for Northern Ireland. That consultation is now underway. There has long been a consensus on the need for a Bill of Rights. All the political parties, and many other organisations, have consistently expressed support for the idea. CAJ has presented a submission to the Commission's consultation exercise, and I request that this be read into the record.

Our submission argues that the Bill of Rights will be central to creating a new human rights culture and framework which will ensure that the rights of all are comprehensively protected. It is essential that a Bill of Rights is enacted which is a model of best international practice and one that everyone can be proud of. It is equally important that the Bill of Rights reflect the "particular circumstances of Northern Ireland" as required by the Good Friday Agreement.

One of the "particular circumstances" of Northern Ireland is that it is a society where people have experienced an abuse of their basic human rights over a long period of time. It is a society of great inequalities and divisions. In this context we believe there is an overwhelming case for the articulation of a broad-based Bill of Rights for Northern Ireland capable of addressing these concerns. Accordingly our submission to the Commission argues for provisions which would tackle social and economic inequalities as well as problems in the civil and political arena.

The starting point for this debate must be the needs of individuals and communities in Northern Ireland. The Commission's advice cannot be constrained by reference to what the government or political parties are likely to accept. In our view, the Commission's role in this regard is to articulate the best possible Bill of Rights for Northern Ireland and to develop a constituency of support for such a Bill of Rights.

The Agreement clearly envisaged the Bill of Rights as a building block in the process of resolving conflict in Northern Ireland. In our view, the Bill of Rights should be an attempt to identify the basic values that we are all committed to. This is particularly important in the context of a radically divided society like Northern Ireland. Recognising a common set of rights in a document that all can commit to, at least in part, is thus an important element in building a new society. For this reason, it is important that the rights identified should not be too narrow in their focus. The narrower the range identified, the less likely it is that individuals will identify with the bulk of rights on the list. In particular, the more the rights specified are seen to appeal across the communities, the more likely it will be that rights can be seen as something that binds the communities together rather than divides them. There is now extensive international experience of this function of a Bill of Rights.

Too often, in the past, rights have been thought to generate antagonism and division. We miss something valuable, however, if we do not take advantage of the opportunity for rights to encourage trust and co-operation between groups that have previously been enemies. By setting out a common vision, a shared set of ideals in a Bill of Rights, we enable ownership of an important element of the Agreement across communities.

One of the particular issues we highlighted in our submission to the Human Rights Commission was our concern about the ability of the current Northern Ireland judiciary to interpret and apply any new Bill of Rights. While there are undoubtedly those within the ranks of the judiciary in Northern Ireland who are committed to the protection of human rights, the senior judiciary have often shown themselves to be indifferent if not hostile to international human rights standards. This hostility has been particularly reflected in some recent judgements and comments of the Lord Chief Justice for Northern Ireland, Sir Robert Carswell. The result of these has been to seriously undermine the work of the Human Rights Commission and human rights generally. Arising out of our concerns in this regard CAJ has recently written to the Lord Chancellor to complain about the Lord Chief Justice. A response is still awaited.

Concerns about attitudes in the current judiciary add to CAJ's belief that a new Human Rights Court should act as guardian of the Bill of Rights. Creating a separate court to enforce the Bill of Rights would have a tremendous psychological impact. New judges sitting on a new court, entrusted as the guardians of the Bill of Rights, cannot help but take those rights seriously and endeavour to ensure that they are respected. A new court that functions as an appellate court will also influence current members of the Northern Ireland judiciary. They would know that their decisions relating to the Bill of Rights would be subject to review. Indeed, the Constitutional Court in South Africa has had precisely this effect. Judges who presided during the apartheid era are now effectively enforcing the new human rights standards.

Appointments to the new court could also have great symbolic significance. The current judicial arrangements do not command the respect of all sections of society in Northern Ireland. A new court that is broadly representative of the community would be a powerful symbol that the Bill of Rights truly belongs to everyone in Northern Ireland. This new Human Rights Court, charged with driving home the fundamental nature of the Bill of Rights, must be composed of individuals with proven knowledge and experience of human rights and a commitment to their effective protection in Northern Ireland.

In the context of the Bill of Rights debate and the recent review of the Criminal Justice system it would be helpful if Congress could indicate to the United Kingdom government its support for the creation of a new human rights court and the establishment of an independent and transparent system for the appointment of judges in Northern Ireland.

We believe the new Court will by a key symbol of the process of change and the increased protection of rights which were promised in the Agreement. There are of course many people who are opposed to such change. Increasingly in recent months we have seen a series of articles, parliamentary questions and public statements which have sought to smear the work of CAJ and the new human rights protections promised in the Good Friday Agreement. While of course effective human rights groups must expect a level of criticism from those whose interests coincide with the state, the extent of recent criticism cannot go unanswered because its ultimate goal is to undermine the human rights protections promised to all of us in the Good Friday Agreement.

There has even been criticism of the fact that some members of the NI Human Rights Commission are also members of CAJ. There are currently nine members of the Human Rights Commission. They were appointed by government and in order to carry out the task entrusted to them, clearly had to have a track record in human rights activism. Three are members of CAJ. We think that figure is far too low, not too high!

The real target of those attacking organisations such as CAJ and the Human Rights Commission is the new human rights dispensation contained in the Good Friday Agreement. It is vital therefore that the United States Government gives clear and public support to the new human rights dispensation and to institutions such as the Human Rights Commission and also to the Equality Commission—institutions established under the Agreement and tasked with implementing the human rights and equality agenda.

Turning now more specifically to the question of discrimination and equality this is one area where there is some good news to report. As a result of the Agreement over 120 public bodies have had to examine how they could better promote equality of opportunity for all within society. These public bodies are required to mainstream considerations of equality into every aspect of policy making. What is underway is not "simply" the pursuit of greater equality, but a fundamental re-orientation of the public service to ensure that everyone is treated fairly and is involved in the process of governance. Decision making should in future be much more transparent, be more impartial, and should take into account those in most need. We have no doubts about either the importance, or the scale of the work, but if we are to secure change on the ground it is vital.

While the new legislation clearly provides the opportunity for significant advances, one cannot underestimate the legacy of disadvantage and discrimination which needs to be tackled. We still have a situation where Catholic men are twice as likely to be unemployed as Protestant men, where 62% of unemployed Catholic men, and 34% of Protestant unemployed men, have been out of work for more than five years. Nor are the inequalities restricted to the catholic/protestant or nationalist/unionist divide: one in six people in Northern Ireland have a disability, racist and sectarian attacks seem to be on the rise, and infant mortality amongst Travellers is unacceptably high. Change on the ground is essential if everyone in Northern Ireland is to feel that they have a stake in the new arrangements.

From the perspective of the US, we need a lot of help. US intervention around establishing ethical principles for investment in Northern Ireland was a key lever in ensuring that the UK government introduced increasingly strong anti-discrimination legislation. This interest in our employment practices, in investment strategy, and in government policies aimed at anti-discrimination and greater equality must be maintained. This Committee may for example want to request information from the government on the work of the newly-created reviews into appointments to the senior Civil Service (where there is a significant lack of women and Catholics) and the review into the government's public procurement policy which could very effectively target the endemic inequalities in our society. Moreover, there are a number of key public bodies that have not yet been required to comply with the new duties

to promote equality of opportunity. The gaps in this protection include very important bodies such as the BBC, the Director of Public Prosecutions and the Ministry of Defence. These organisations must be brought within the ambit of the equality legislation without further delay.

Our concern, as a human rights organisation, is to see the human rights promises contained in the Agreement implemented. This will help in bringing UK policy and practice in Northern Ireland into line with international standards. However, movement on these issues will also of course assist in progressing the political process in Northern Ireland especially when it appears that such progress has been limited in the recent past. There is a danger that people will begin to question the value of the Agreement if it does not deliver real change to their daily lives. The human rights agenda has the potential to deliver that change but in order to do so, the British government needs to implement that change, speedily and fully. As a friend the US Administration can bring a lot of constructive influence to bear and as so often in the past we look to you to do so.

Mr. SMITH. Mr. O'Brien, thank you very much for your testimony. This Subcommittee has benefitted richly from your insights since we began our focus several congresses ago on Northern Irish human rights abuses, particularly in the policing area.

Let me express my gratitude on behalf of all of us that you have provided us the insights and the fact that you do not take sides, you care about human rights for all, on both sides of the divide, I think enhances your credibility, as it does Jane's and Michael Posner's.

And, Mr. Kennedy, we look forward to hearing your testimony.

STATEMENT OF GAVAN KENNEDY, EXECUTIVE DIRECTOR, IRISH AMERICAN INFORMATION SERVICE

Mr. KENNEDY. Thank you, Congressman Smith. I would like to thank you and Members of this Committee for holding this hearing and allowing me the opportunity to testify before you this morning.

The Good Friday Agreement focused on creating a future for Northern Ireland featuring the protection of human rights for all, equality, reform of policing and the judicial system, decommissioning of paramilitary weapons and demilitarization by the British army.

This May, 3 years will have passed since the people of Ireland overwhelmingly endorsed the Good Friday Agreement in referenda, north and south. Not since the election of 1918 has there been such a mandate for an agreed future on that island.

But while devolved government returned to the north, there remain three major interlocking aspects of the agreement that have yet to be fully implemented. They are reform of policing, decommissioning of paramilitary weapons and demilitarization by the British army.

The Royal Ulster Constabulary has traditionally been viewed by the nationalist community as being the private army of a unionist-dominated state. Republicans point to human rights abuses which are numerous and well documented, incidents of collusion between the RUC and loyalist death squads and the 92 percent Protestant makeup of the force as reasons to disband the RUC entirely.

On the other hand, unionists viewed the RUC as having been the bulwark between anarchy and order during 25 years of conflict in the north and argued strenuously for its retention.

Indeed, the issue of police reform proved so intractable in negotiations leading up to the signing of the agreement that it was

agreed by the participants that an independent international commission would be established to address this issue.

Former Hong Kong Governor Chris Patten, who now serves as Britain's European Union Commissioner, was nominated to chair the body whose task was to make recommendations for future policing arrangements in Northern Ireland. The Patten Commission presented its wide-ranging report in accordance with its remit in September 1999. His report served as the compromise between radically opposing views on the future of the RUC.

In the negotiations leading up to the Good Friday Agreement, all participants agreed that the resolution of the paramilitary weapons issue was an indispensable part of the process of negotiation. An independent International Commission on Decommissioning chaired by General John de Chastelain was established to monitor, review and verify progress on decommissioning of paramilitary arms.

In the section of the Good Friday Agreement entitled "Security," the British government committed itself to the objective as early a return as possible to normal security arrangements in Northern Ireland consistent with the level of threat and with a published overall strategy dealing with the reduction of the numbers and role of the armed forces deployed in Northern Ireland to levels compatible with a normal peaceful society; the removal of security installations; the removal of emergency powers in Northern Ireland; and other measures appropriate to and compatible with a normal peaceful society.

On December 2, 1999, power was devolved from Westminster to the new Northern Ireland Assembly. The multi-party power-sharing executive finally sat at Stormont for its inaugural meeting, 19 months after the Good Friday Agreement was signed.

The reason for the 1½ year delay was that First Minister David Trimble, who is also leader of the Ulster Unionist Party, had refused to set up power-sharing government with Sinn Fein until the IRA had begun the process of decommissioning its arsenal of weapons.

However, devolution was short lived. Eight weeks after power was transferred to the Northern Ireland Assembly, First Minister Trimble, under pressure from hard line elements within his own party, threatened to bring down the power-sharing assembly.

In order to prevent Mr. Trimble's resignation, the Northern Ireland Secretary at that time, Peter Mandelson, suspended the democratic institutions set up under the agreement. Mr. Mandelson did so even though General de Chastelain had issued a positive report on the prospect of decommissioning prior to Mr. Mandelson signing the suspension order.

De Chastelain's report ended by saying the commission believed that this commitment held out the real prospect of an agreement that would enable the decommissioning body to fulfil the substance of its mandate.

Following its meeting with the IRA's interlocutor, the decommissioning body said it was particularly significant that the IRA would consider how to put arms and explosives beyond use in the context of the full implementation of the Good Friday Agreement and the removal of the causes of conflict.

Thus, despite the decommissioning body's positive report and against the protestations of the Irish government and nationalist parties in the north, Northern Ireland Secretary Peter Mandelson proceeded to unilaterally suspend devolution in the north and power was returned to Westminster. Devolution had failed.

Speaking in the Irish Parliament 1 week later, Irish Premier Bertie Ahearn said unilateral suspension was not something the Irish government supported because it was in breach of the British-Irish agreement.

Following the failure of devolution, the issue of police reform came to the forefront. Among many reforms to policing recommended by the Patten Commission was the recommendation that the name and symbols of the RUC be changed.

On March 25, 2000, however, the governing body of the Ulster Unionist Party backed a motion linking the return to the power-sharing executive with the retention of the name and symbols of the Royal Ulster Constabulary.

The then-Chairman of the International Relations Committee, Congressman Gilman, strongly condemned the Ulster Unionist vote. He said the vote showed the Ulster Unionist Party was not truly interested in shared governance.

Congressman Gilman called on the British government and the Northern Secretary of State at the time Peter Mandelson to move forward expeditiously with all of the Patten report's RUC reforms.

Following 2 months of political stagnation, the British and Irish governments met with the pro-agreement parties in the beginning of May last year in an effort to save the peace process. The Patten report on policing was still on the shelf. There had been no meaningful progress on decommissioning and the British government had yet to publish a time table on its plans for demilitarization in heavily fortified areas such as South Armagh.

What emerged from the series of meetings was an historic compromise that ostensibly could resolve the three key areas of the Good Friday Agreement that were preventing Northern Ireland from realizing the hope engendered by that agreement. The deal emerged in a series of carefully choreographed and interdependent statements agreed between the IRA and the British and Irish governments between May 5 and 6, 2000.

The catalyst for the long sought-after breakthrough was an offer from the IRA on May 6, 2000 to completely and verifiably put arms beyond use and to resume contact with the Independent International Commission on Decommissioning. The IRA also agreed to the regular inspection of a number of its sealed dumps by two international inspectors who would report to the de Chastelain commission on decommissioning.

President Clinton hailed the statement, praising the IRA for "reaching out" to unionists. Irish Premier Bertie Ahearn called the statement "unprecedented." Dublin's Irish Times newspaper said the move was "a departure of historic dimensions."

However, the IRA's "unprecedented" offer was made in a very specific context and that was "The full implementation, on a progressive and irreversible basis by the two governments, especially the British government, of what they have agreed will provide a political context, in an enduring political process, with the potential

to remove the causes of conflict, and in which Irish republicans and unionists can, as equals, pursue their respective political objectives peacefully."

The "political context" in the IRA's statement refers to explicit guarantees from the British government in a letter sent to the political parities, also dated May 6th. The letter committed the British government to action on four specific issues it had committed to under the Good Friday Agreement but had not yet fully implemented.

The four areas were policing and justice, security, rights, safeguards and equality of opportunity, and prisoners. I think my colleagues' testimony today has shown that on three of those four areas the British government has not followed through on its promises. On the fourth, it has, prisoners.

I would like to enter the analysis on those four commitments into the record, but I am going to skip on.

Mr. SMITH. Without objection, again, all of your submissions will be made a part of the record, and the previous witnesses'.

Mr. KENNEDY. Thank you.

In accordance with the Good Friday Agreement and its commitment on May 6, 2000, the British government released all remaining paramilitary prisoners qualifying for release on July 28, 2000.

With regard to decommissioning and the IRA's commitment on March 6th, while paramilitary organizations such as the IRA were not parties to the Good Friday Agreement, as pointed out by Senator George Mitchell in his November 1999 review of the Good Friday Agreement's implementation and there is no specific requirement in the agreement for actual decommissioning, all parties to the agreement have recognized that decommissioning is an essential element to the success of the peace process.

In light of this, the IRA has allowed weapons inspectors to inspect sealed arms dumps following its statement on May 6th to initiate a process that would completely and verifiably put arms beyond use in the context of the statements made by the two governments on May 5, 2000.

The IRA arms dumps were inspected twice by independent international inspectors, former Finnish President Martti Ahtisaari and Cyril Ramaphosa, the one-time General Secretary of the ANC.

Following the second inspection, Mr. Ahtisaari and Mr. Ramaphosa said, on November 2, 2000, that the dumps that they inspected had contained "substantial" amounts of weapons. Mr. Ramaphosa said, "We have formed the distinct impression that the IRA are serious about the peace process. The discussions, the interactions we have had with them including being allowed to carry out these inspections, has convinced us that they are serious."

He added, "We are even more convinced about their intentions after going back for reinspection and finding that the arms dumps had not been tampered with and that they had remained secure."

In light of this statement, it can be deduced that the IRA has honored its commitment of May 6th to "completely and verifiably put arms beyond use."

This Committee should also be aware that a concerted loyalist bombing campaign has been targeting Catholics since the beginning of this year. There have been over 55 sectarian pipe bomb and

gun attacks on innocent Catholics targeted at random throughout the north since January 1st of this year.

The mainstream loyalist paramilitary groups have yet to begin a process of decommissioning weapons.

The Good Friday Agreement is the blueprint for a peaceful and just future in Northern Ireland. It is the product of painstaking negotiation, good leadership and great work, but most importantly the Good Friday Agreement has the mandate of the people. It is their agreement, not the property of government, politicians or bureaucrats.

It is clear from the testimony given here today that not all of the signatories of the Good Friday Agreement have lived up to their responsibilities. The denial of what was promised to the people of Northern Ireland in the agreement they overwhelmingly endorsed is a denial of their human rights.

The state of perpetual crisis in the peace process can only be overcome if all of the signatories to the agreement honor the promises they made when signing the accord.

United States involvement in the Northern Ireland peace process was the critical catalyst in the achievement of the Good Friday Agreement. Anything this Congress can continue to do to support, encourage and help participants fulfill their commitments under the agreement would be invaluable to the search for a lasting peace in Northern Ireland.

Thank you.

[The prepared statement of Mr. Kennedy follows:]

PREPARED STATEMENT OF GAVAN KENNEDY, EXECUTIVE DIRECTOR, IRISH AMERICAN INFORMATION SERVICE

Chairwoman Ros-Lehtinen and members of this Committee, thank you for holding this hearing and allowing me the opportunity to testify before you this morning.

INTRODUCTION

The IAIS was founded in 1991 to foster knowledge and understanding in the United States of the root causes of conflict in Northern Ireland. Our founders believed that the diplomatic and economic resources of the United States could be utilized to focus greater attention on the sources of conflict, i.e.; inequality, division, and injustice, such that they would be addressed, resolved and consigned to the past.

The IAIS has been providing coverage of the search for peace and justice in Northern Ireland to US media and Congress since 1991. Since the GFA was signed in 1998, the IAIS has monitored and reported on the implementation of the Agreement.

The Agreement focused on creating a future for Northern Ireland featuring: the protection of human rights for all, equality, reform of the police force and judicial system, decommissioning of paramilitary weapons, and demilitarization by the British Army.

This May, three years will have passed since the people of Ireland overwhelmingly endorsed the GFA in referenda, north and south. Not since the election of 1918 has there been such a mandate for an agreed future on that island.

But, while devolved government returned to the north, there remain three major interlocking aspects of the Agreement that have yet to be fully implemented. They are:

- reform of policing;
- decommissioning of paramilitaries' weaponry; and
- demilitarization by the British Army.

BACKGROUND

Policing

The Royal Ulster Constabulary (police service) has traditionally been viewed by the nationalist community as being the private army of a unionist-dominated state. Republicans point to human rights abuses, which are numerous and well documented, incidents of collusion between the RUC and loyalist death squads, and the 92% Protestant make up of the force as reasons to disband the RUC entirely.

On the other hand, unionists viewed the RUC as having been the bulwark between anarchy and order during 25 years of conflict in the North and argued strenuously for its retention.

Indeed, the issue of police reform proved so intractable in negotiations leading up to the signing of the Agreement that it was agreed by the participants that an independent international commission would be established to address this issue.

Former Hong Kong governor Chris Patten, who now serves as Britain's European Union Commissioner, was nominated to chair the body whose task was to make recommendations for future policing arrangements in Northern Ireland. The Patten Commission presented its wide-ranging report in accordance with its remit in September of 1999. His report served as the compromise between radically opposing views on the future of the RUC.

Decommissioning

In the negotiations leading up to the GFA, all participants agreed that the resolution of the paramilitary weapons issue was "an indispensable part of the process of negotiation". An International Commission on Decommissioning chaired by General John de Chastelain was established to monitor, review and verify progress on decommissioning of illegal arms.

Accordingly, all signatories to the GFA committed "to work constructively and in good faith with the Independent Commission (*on Decommissioning*), and to use any influence they may have, to achieve the decommissioning of all paramilitary arms within two years following endorsement in referendums North and South of the agreement *and in the context of the implementation of the overall settlement*".

While paramilitary organizations, such as the Irish Republican Army, were not parties to the Good Friday Agreement and there is no specific requirement in the Agreement for actual decommissioning, all parties to the Agreement have recognized that decommissioning is an essential element to the success of the peace process.

Demilitarization

In the section of the GFA entitled "Security", the British Government committed itself to:

"the objective of as early a return as possible to normal security arrangements in Northern Ireland, consistent with the level of threat and with a published overall strategy, dealing with:

> (i) the reduction of the numbers and role of the Armed Forces deployed in Northern Ireland to levels compatible with a normal peaceful society;
> (ii) the removal of security installations;
> (iii) the removal of emergency powers in Northern Ireland; and
> (iv) other measures appropriate to and compatible with a normal peaceful society."

THE BATTLE FOR DEVOLUTION

On December 2, 1999, power was devolved from Westminster to the Northern Ireland Assembly. The multi-party power-sharing Executive finally sat at Stormont for its inaugural meeting, nineteen months after the Good Friday Agreement was signed.

The reason for the 1½-year delay was that First Minister David Trimble, who is also leader of the Ulster Unionist Party, had refused to set up power-sharing government with Sinn Fein until the IRA had begun the process of decommissioning its arsenal of weapons.

The deal on devolution, brokered by the chairman of the original peace negotiations, Senator George Mitchell, involved paramilitary organizations appointing interlocutors to deal with the International Commission on Decommissioning which was chaired by General John de Chastelain.

In his report on December 10th 1999, eight days after the Executive's inaugural meeting, General de Chastelain stated:

> "We have noted elsewhere our belief that decommissioning cannot be imposed. But we believe that the above-mentioned achievements provide the con-

text for the voluntary decommissioning of arms. In our 2 July report to the governments we noted that a timetable for decommissioning is best agreed with the representatives of the paramilitary groups. We believe that still to be the case."

However, devolution was short-lived. Eight weeks after power was transferred to the Northern Ireland Assembly, First Minister Trimble, under pressure from hard-line elements within his own party and ignoring General de Chastelain's caution that decommissioning "cannot be imposed", threatened to bring down the power-sharing Assembly. His reasoning was that the IRA had failed to fulfill an Ulster Unionist Party-imposed deadline of January 30, 2000 to decommission weapons.

SUSPENSION OF DEVOLUTION

In order to prevent Mr. Trimble's resignation, the Northern Ireland Secretary at that time, Peter Mandelson, suspended the democratic institutions set up under the Agreement. Mr. Mandelson did so even though General de Chastelain had issued a positive report on the prospect of decommissioning prior to Mr. Mandelson signing the suspension order. De Chastelain's report, issued on February 11, stated:

"The [IRA] representative indicated to us today [Friday] the context in which the IRA will initiate a comprehensive process to put arms beyond use, in a manner as to ensure maximum public confidence."

The report ended by saying the Commission believed that this commitment held out the real prospect of an agreement that would enable the decommissioning body to fulfill the substance of its mandate.

Following its meeting with the IRA's interlocutor, the decommissioning body said it was "particularly significant" that the IRA would consider how to put arms and explosives beyond use in the context of the full implementation of the Good Friday Agreement and the removal of the causes of conflict.

Thus, despite the Decommissioning body's positive report, and against the protestations of the Irish Government and nationalist parties in the North, Northern Secretary Peter Mandelson proceeded to unilaterally suspend devolution in the North and power was returned to Westminster. Devolution had failed.

Speaking in the Irish Parliament one week later, Irish Premier Bertie Ahern said unilateral suspension was not something the Irish government supported, "because it was in breach of the British-Irish Agreement".

Following suspension, the IRA withdrew its interlocutor from talks with General de Chastelain's independent decommissioning commission. In a statement on February 15, 2000, the IRA said that the Ulster Unionists and the British government had rejected the proposals it made on February 11 which were outlined in General de Chastelain's most recent report on that same date.

EFFORTS TO RETURN TO DEVOLUTION: POLICING

Following the failure of Devolution, the governing body of the Ulster Unionist Party backed a motion on March 25th 2000 linking the return to the power-sharing executive with the retention of the name and symbols of the Royal Ulster Constabulary. The RUC's name was due to be changed, one of the many reforms recommended by the Patten Commission on Policing.

The then Chairman of the House International Relations Committee, Ben Gilman (R) NY, strongly condemned the Ulster Unionist Council vote. He said the vote showed that the UUP "aren't truly interested in shared governance".

Congressman Gilman called on the British Government and Northern Secretary of State, Peter Mandelson, to "move forward expeditiously with all of the Patten Report's RUC reforms". "The Patten Commission reforms are needed and are independent of any power-sharing arrangement. Clearly it is time to end the unionist veto of long-overdue reforms and power-sharing in the North of Ireland. The Irish people deserve nothing less.".

HISTORIC COMPROMISE: THE MAY 5–6TH STATEMENTS

Following two months of political stagnation, the British and Irish governments met with the pro-Agreement parties in the beginning of May last year in an effort to save the peace process. The Patten Report on Policing was still on the shelf, there had been no meaningful progress on decommissioning, and the British government had yet to publish a timetable on its plans for demilitarizing in heavily fortified areas such as South Armagh.

What emerged from the series of meetings was an historic compromise that ostensibly could resolve the three key areas of the GFA that were preventing Northern Ireland from realizing the hope engendered by the Agreement. The deal emerged

in a series of carefully choreographed and interdependent statements agreed between the IRA, and the British and Irish governments between May 5 and 6.

The catalyst for the long-sought-after breakthrough was an offer from the IRA on May 6 to "completely and verifiably put arms beyond use" and to resume contact with the Independent International Commission on Decommissioning. The IRA also agreed to the regular inspection of a number of its sealed arms dumps by two international inspectors who would report to the Independent International Commission on Decommissioning.

President Clinton hailed the statement, praising the IRA for "reaching out" to unionists. It was a very good day, he said. Irish Premier Bertie Ahern called the statement "unprecedented". Dublin's Irish Times newspaper said the move was 'a departure of historic dimensions'.

GOING FORWARD: THE IMPLEMENTATION PLAN

However, the IRA's "unprecedented" offer was made in a very specific context. That was: "The full implementation, on a progressive and irreversible basis by the two governments, especially the British government, of what they have agreed will provide a political context, in an enduring political process, with the potential to remove the causes of conflict, and in which Irish republicans and unionists can, as equals, pursue our respective political objectives peacefully"6.

The 'political context' in the IRA's statement refers to explicit guarantees given by the British government in a letter sent to the political parties, also dated May 6th. The letter committed the British government to action on four specific issues it had committed to under the GFA but had not yet completed.

The four areas were:

- Policing and justice,
- Security (including demilitarization),
- Rights, safeguards and equality of opportunity, and
- Prisoners.

Devolution returned to the North on May 30th 2000 amid growing tensions between the nationalist parties and the Northern Secretary, Peter Mandelson, over reform of the RUC. The Deputy First Minister and SDLP deputy leader, Seamus Mallon, said that Mr Mandelson was refusing to discuss the policing issue with the SDLP and had failed to act as an honest broker.

PROMISES KEPT OR PROMISES BROKEN?

Policing and Justice

The British government promised, in the letter to the parties on May 6th 2000, to enact legislation to implement the Patten Report's recommendations on Policing by November 2000.

However, within the week the promise was in jeopardy. The Ulster Unionist Party's expressed its opposition to the British government's decision to change the title of the Royal Ulster Constabulary in accordance with the Patten report recommendations. It was an issue which UUP leader David Trimble said may prevent him from recommending a return to power sharing with Sinn Fein.

On July 11th 2000, MPs at Westminster backed the proposed legislation to create a new policing service. However, it is on the record in this Committee that the proposed legislation fell well short of implementing what the Patten Commission had recommended.

A September 7th 2000 resolution in this House's International Relations Committee supported a resolution to Congress demanding the full and unequivocal implementation of the Patten Recommendations on policing in Northern Ireland.

At the resolution's mark-up, Congressman Smith NJ (R) spoke of the bipartisan support for a new policing service and said that the Policing Bill clearly fell short of what was needed to produce a policing service supported by nationalists. "The RUC is not acceptable," he said.

Congressman Peter King NY (R) made the point that policing was a metaphor for the entire peace process. The real importance of the legislation and the whole debate was to send the message "that both US political parties were united behind the Patten Commission". "Americans see the whole issue of policing as being a metaphor for what's wrong in Northern Ireland and what can be good about Northern Ireland," he said.

In a statement, Senator Ted Kennedy MA (D) said that, while welcoming Patten's "sensible agenda for reform", the report "shouldn't be watered down under unionist pressure".

Patten Report 'Gutted'

Perhaps the most powerful analysis of the proposed legislation to enact the Patten Report's recommendations comes from actual members of the Patten Commission itself:

Gerald Lynch, president of John Jay College, testifying before Helsinki Commission here on Sept 22nd 2000 said it was crucial that the recommendations of the Patten Report "not be cherry picked but be implemented in a cohesive and constructive manner". The people of Northern Ireland "deserved no less than this new beginning for policing" he said, and "any significant modifications will deprive them of this long awaited police service capable of sustaining support from the community as a whole".

In an article in the Manchester *Guardian* newspaper, another member of the Patten Commission, Professor Clifford Sheering said that the Patten Report had been gutted. He said that the British Government's policy had failed to fulfill the hopes and vision of the Good Friday Agreement.

The Police Bill "dismantles the foundations" on which the Patten Commission's plans were built, he said.

Professor Shearing said he subjected the Police Bill to a line-by-line analysis to prove it "bore little relation" to the original recommendations.

"The Patten report has not been cherry-picked, it has been gutted. The Bill does not fulfill the hopes and vision of the Belfast Agreement. Nor does it satisfy the very clear mandate set out in the commission's terms of reference," he said.

In spite of these protestations, the Police (NI) Bill passed the House of Commons and became law. Testimony given to the Helsinki Commission in this House gives great detail into how the legislation had departed significantly from the Patten Report's recommendations.

Four days later, Irish premier Bertie Ahern said he could not recommend that nationalists should join the new Police Service of Northern Ireland as it stood.

On this analysis, it would be difficult to argue that the British government had lived up to its promise to implement the Patten Report by November 2000. The cornerstone of the May 5–6th deal had crumbled.

Security

(1) Demilitarization

The British government promised, in the letter to the parties on May 6th 2000, to "progressively take all the necessary steps to secure as early a return as possible to normal security arrangements in Northern Ireland, consistent with the level of threat".

The participants to the GFA recognized that the development of a peaceful environment on the basis of the agreement could and should mean a normalisation of security arrangements and practices.

Since the May 5–6th deal, troop numbers have been reduced and a number of security bases have been closed. But republicans argue that the movement has been minimal.

The British Security forces argue that dissident groups, intent on destroying the GFA, make widespread demilitarization more difficult. On December 19th 2000, Northern Ireland Secretary Peter Mandelson said he had to balance the calls to dismantle security installations "against society's need for protection". "The price of getting it wrong could be another Omagh" he said.

However, republicans argue that the failure of the British Government to establish a precise timetable to achieve "normalization" of the security situation by expressing "an exaggerated fear" of the threat posed by dissident groups is unacceptable.

Republicans question what branch of the British military or security establishment decides, on behalf of the people of Northern Ireland, what exactly constitutes a credible threat?

Given the suspicion with which the nationalist community views the security establishment in the North, many are skeptical of such a process of decision-making. They wonder what is there to prevent scare tactics being used to indefinitely block progress on a substantive process of normalization.

(2) Emergency Legislation

The British government agreed in the GFA to reform emergency legislation laws such as trial without jury and abrogation of the right to silence. Specifically, the government promised to "the removal of emergency powers in Northern Ireland."

However, instead of bringing criminal law and procedure into line with accepted human rights norms, Britain has enacted some even more repressive laws, made some of the laws permanent, and applied some of those laws to Britain, as a whole.

Among other things, the "Terrorism Act of 2000" continued Britain's power to "derogate" or exclude itself from selected rights contained in the European Convention on Human Rights, shifting the presumption of guilt to defendants in certain cases, and extended police power to arrest people and hold them incommunicado.

Amnesty International described the situation: "This Act effectively takes emergency powers that were conceded to deal with the situation in Northern Ireland and puts them permanently into legislation."

The Committee on the Administration for Justice said the opportunity for eliminating the non-jury Diplock courts had "been squandered".

Britain has broken the promise in made to remove emergency legislation in Northern Ireland.

Mr. SMITH. Thank you very much, Mr. Kennedy.

Just to inform the panel, we are going to draft a resolution that will be a comprehensive resolution admonishing our friends in the British government and all players, it will have as one of its key features calling again for an independent inquiry into the murders, the assassinations of Patrick Finucane and Rosemary Nelson.

We will also initiate a letter, especially with some of the insights we have gleaned from today's hearing, and later on today at the speaker's luncheon I will be table host for Dr. John Reid and others and I can assure you I will give him each of your testimonies and hopefully will have his ear for the entirety of that luncheon and beyond to try to encourage him to look with fresh eyes on this.

You know, I get concerned when I hear—I will never forget, in September, the chairman of the policing authority in Northern Ireland stated, and I quote, "The overall result of the legislation as it stands is a less powerful policing board and a more powerful secretary of state."

This is exactly what Patten argued against. After the bill becomes law, the policing authority turns around and supports it.

Last week, Chris Patten stated when he was asked at the Irish Parliament, at a meeting of the Irish Parliament, whether or not the legislation adequately reflected his report and he said, "Yes, I do."

However, fellow Patten Commission Commissioner Clifford Shearing wrote in The Guardian last November, and I quote him, "The Patten report has not been cherry picked, it has been gutted. The bill does not fulfill the hopes envisioned set forth in the commission's terms of reference. It is not a new beginning. It will not serve the people of Northern Ireland."

Two diametrically opposed assessments and it seems to me, based on your reading and the Subcommittee's careful reading of the facts, Mr. Shearing and others like him are more reflective of the reality.

You know, one thing that I hate after 20 years as a Congressman is spin. Spin is just another way of saying distortion and we are getting distortion after distortion about what has actually been done. And that does not mean we do not recognize any progress that has been made, as each of you have done, but if you undermine——

I mean, you might recall when we had Mr. Patten here, I made it very clear at that meeting, at that hearing, that we saw the Patten report as flawed coming out of the blocks. It did not have any provisions dealing with vetting, so that as he called them, bad apples would be grandfathered into the service and those who had committed heinous crimes would not be gone after and, to me, that

was an outrage and yet all of us pretty much by consensus said, well, let's hope that this is a new beginning and that going forward the entirety of the 175 provisions would be implemented without cherry picking or gutting, as it looks like has happened. So the point is it did become a ceiling down which the House of Commons and Lords began to work.

Let me just ask you a couple of questions. Many of us have been in contact, yesterday I spoke to President Bush just coincidentally, I was with him and other members flying up to New Jersey for a stop that he had to talk about his tax bill, but I have also spoken to Dr. Rice, a very sharp and articulate national security advisor. We know that I raised questions right here in this room when Colin Powell, our new Secretary of State, testified about Ireland. Many of us are trying to proffer for all of the best reasons advice to the Administration as to what it should do.

Your testimonies will be given to all of the relevant parties today within the Administration and some of you who gave it to us earlier, I transmitted it and I am sure others did as well, to very responsible parties within the Administration as well. But the role of the Bush Administration going forward, is it to be a junior partner, senior partner, equal partner, raising specific issues, you might want to speak to that, if you would.

The issue of the reform of the criminal justice system, if we have seen lack of transparency and adequate reform with policing, why do we have hope that criminal justice reform will go forward?

Mr. O'Brien, you might want to touch on that.

I will never forget when I met with Lord Carswell and had lunch with him and talked about the issues relating to convictions, in an incredulous exchange that I had with him which I found to this day amazing, he made the point that, well, if the prosecutor presents it, there must be something to it. The weight was clearly vested on the part of and in favor of the prosecution rather then the defendant. I did not see that sense of being a fair arbiter, two sides come before me as judge, I decide based on the presentations and the analysis of the evidence. He gave enormous weight to the prosecution.

And you pointed out, Ms. Winter, in your testimony about the dubious prosecution of RUC officers, or lack thereof, of any meaningful—you might want to touch on that and elaborate on that.

That is an opening, Mr. Posner, or anyone who would like to begin.

Mr. POSNER. Let me begin in a broad sense, Congressman Smith. I think the question of how the Bush Administration deals with Northern Ireland generally and with regard to these issues specifically is critically important and we have some concerns in that regard, frankly.

One of the concerns is that there needs to be, in our judgment, a clear articulation from the president himself that these issues matter.

When President Bush met with Tony Blair last month, one of the things he was quoted as saying was something to the effect that we will get involved in Northern Ireland when we are invited to do so. That is going to be a long time coming, that invitation. And our sense is that there has to be a formal assertion that as a good

friend and a partner to the British government there is a history of engagement and we are going to continue to engage, including with respect to these issues.

So I would urge you and others who have access to the president to see if he cannot express publicly his commitment to continuing the engagement that we have seen in the last 5 or 6 years, which has been so critically important to moving the process forward.

Secondly, I think there needs to be clarity about who is guiding the policy on a day-to-day basis, both at the White House and in the State Department, and one of the things we have heard is that Mr. Haas, the Assistant Secretary for Policy Planning, may have the Northern Ireland portfolio. Well, it is not really his background, although he is an incredibly bright guy who has a lot of interest and involvement in the Middle East, the question is if that is true, and nobody has said it publicly, how did that come to be and what does it mean and how much time is he going to spend?

I would urge that both the State Department——

Mr. SMITH. You have a good grapevine. Let me tell you that.

Mr. POSNER. I would urge that at both the State Department and at NSC where we have always had people like Mr. Norland and Nancy Soderberg who really pay attention to these issues are seized of these issues, there need to be people who when they come to work in the morning are trying to figure out how do we advance the peace process with respect to Northern Ireland and I would urge you and other Members of this Committee to get in there and make sure those things happen.

The third thing which I think is a bigger calling is whether or not there needs to be in the broader sense some special envoy or some special representative of the president who deals with Northern Ireland. And, again, it may be premature to be talking about that, but it is not premature to be thinking about it, and it would seem to me if an eminent, close associate/friend of the president were deemed the person who is dealing with this, it would raise the profile.

Again, the Irish press is full of articles that are saying Northern Ireland has fallen off the page in Washington and that is the perception we need to correct. The British government and the authorities in Northern Ireland need to know the concern in Washington continues. We know it is true with you, it has to also be true with the Administration.

Ms. WINTER. Mr. Chair, I would like to echo Mike Posner's sentiments and in particular to say that the role that the USA has played in the Northern Ireland peace process has been absolutely vital. The U.K. government is an actor in that process, it is not an entirely impartial party, and it needs the advice and the encouragement of an impartial and an external friend and anything that the President and this Administration can do to play that role and to continue to take a detailed interest, I think the devil is in the detail now in the peace process.

We are getting down to the nitty gritty and the more that my government can see that your government is on top of that detail and is watching developments carefully, the more helpful I believe that will be.

The criminal justice system in particular, much of the report looks like very dry material, but we are talking here about reform of the judiciary. We are talking about the restoration of trial by jury in every case and we are talking about an independent prosecution service. These are really crucial to a democracy and crucial to a peaceful and stable society.

Martin O'Brien has touched on the role of the Lord Chief Justice and I would like to associate my organization with CAJ's criticisms of his role of late, in particular in relation to his understanding of human rights. He is in a position that is absolutely vital in setting both the tone and an example on respect for human rights and inculcating human rights into the culture in Northern Ireland and so far his pronouncements have not been promising.

Ultimately, the courts in Northern Ireland must be seen to be delivering justice to everybody on all sides of the community, impartially, fairly, without doing deals and without letting off lightly RUC officers who offend and soldiers who offend against basic human rights principles. And these are the things which at the end of the day will decide, I believe, whether or not the peace process is a success.

If we can achieve a situation where everybody in Northern Ireland regardless of their religion, their political affiliations, their gender, their race, can go to court and believe that they will get justice and get justice, the peace will have arrived in Northern Ireland.

Thank you.

Mr. O'BRIEN. I think the points which Mike Posner raised are absolutely at the heart of this and our experience of working initially to secure human rights protections inside the Good Friday Agreement and in the follow-up to that to secure their implementation, our experience has consistently been without international, external interests and pressure that change will not occur and that even with that external pressure change is very slow in coming.

One only has to look at the question of public inquiries into the murders of Patrick Finucane and Rosemary Nelson and Robert Hamel and other cases, one only has to look at the resistance, the absolute, resolute resistance, on the part of the British government to move on that question in the face of overwhelming international demand for those things to be done to see really the importance of continued pressure.

It would, I think, be a very unfortunate step if there was to be any signal given or any impression created that the spotlight was going to be switched off and, if anything, the glare of the spotlight should become more intense. I think the fact that hearings are taking place so quickly after the change in the Administration is a very good sign that the speculation about a wane in U.S. interest is misplaced and I think that it is vitally important that that interest be maintained.

One of the key questions, I think, which we do need to look at, and this is something which I think we have touched on in earlier hearings, is what are actually the blocks to change, what are the things that are holding change up, and I think this is very important when we turn to the implementation of the criminal justice review because the signs are that that very important process of

change will go exactly the same way as the Patten report and the concern would be that while there was a very strong mobilized interest in Patten, that does not exist to the same extent in relation to criminal justice.

I think the experience that we saw in relation to Patten was that while there were undoubtedly some issues which were of a very sensitive nature in terms of the Catholic and Protestant community, particularly the questions around symbols, very many of the failures in implementation are not actually things which were controversial or were divisive in the context of Catholic and Protestant divisions.

What they were in fact about was an unwillingness to have an accountable police service and an unwillingness to have change and that unwillingness resided within the police, but more importantly within the broader policing establishment and within some of the civil servants who were advising the Secretary of State. And while we have a new Secretary of State, those civil servants remain in place and while very many within the civil service are, I think, committed to the process of change, there are those who are not.

And the Secretary of State, I think, needs to pay particular attention to ensure that the civil servants who are handling the implementation of the criminal justice review do not turn it into the same fiasco and the same debacle which occurred in relation to Patten and I think one very specific thing which the Administration could do would be to signal very clearly to the United Kingdom government that they do not want to see a repeat of the disaster in respect of Patten in respect of criminal justice and that similarly they will be following very closely the government's response to the recommendations produced by the Northern Ireland Human Rights Commission for a bill of rights and that they will also be looking very closely at the recommendations which the Human Rights Commission is to publish, I think, today on increased powers for the Human Rights Commission. And that the Administration is interested in seeing whether the U.K. government is serious about the protection of human rights, whether the U.K. government is serious about implementing the human rights protections that are contained in the Good Friday Agreement or whether they are not.

And it is very often, I think, the question of these are very sensitive issues, these are issues on which Catholics and Protestants are divided in Northern Ireland, is in fact a smoke screen on occasion, and it is a smoke screen to cover up those who actually do not want to see change, who do not want to see a new society and who want to remain within unaccountable institutions. And anything you can do to encourage the Secretary of State to make sure that change is in hands of people who are actually committed to it, rather than people who are determined to thwart it, would, I think, be a very welcome step.

Mr. KENNEDY. I also want to echo Michael's comments. I think there was some concern in circles in Ireland that after the joint statement between President Bush and Prime Minister Blair, there was a concern that he had expressed that maybe Tony Blair would have a veto over American involvement in the peace process. In other words, if Bertie Ahearn or even the parties asked for help

from the Administration here that he would have to maybe go through Tony Blair before acting. And so that was a major concern.

There is a tremendous confidence following the work of this Committee and the U.S. Congress in general that they will hold the British government to the fire with regard to implementing the Good Friday Agreement and, as you said before, it is nearly 3 years since the agreement was signed. Since that, there have been various hurdles presented totally outside of the agreement, deadlines imposed arbitrarily, and so forth.

I think if this Government and this Administration can force the signatories of the agreement to go back to what is written there, it is the only agreement that matters, it is the one that was voted on by the people, it is the mandate of the people, and any departure from that agreement will be a fatal mistake and I just hope that this Congress and Administration will continue to emphasize that.

Mr. SMITH. Thank you very much, Mr. Kennedy. My hope is, and in many of my conversations with people within the Administration, there is a sense that they are still ramping up. Most of the assistant secretaries have not even been picked, some have been. The under secretaries, obviously, at the next level, have not been confirmed. So there is that sense that they are still ramping up.

So the importance of this hearing, your comments and the comments of all our witnesses, I think, is extremely important. Many of us on both sides of the aisle have already intervened so that they do the right thing and are very robust in their activity and not a junior partner, so to speak.

I do have a number of questions, but I will yield to my colleague, but I do want to know about your thoughts on why there is a delay in the implementation plan and I do have a number of other questions, but, again, we are running out of time with the luncheon coming up, regrettably.

Ms. McKinney.

Ms. MCKINNEY. Thank you, Mr. Chairman. I do not have many questions. I was just wondering, the Chairman has noted that the Administration has not really filled out its team yet and I was wondering if there were any heavyweights on this issue that were among the names being mentioned and, if not, then perhaps we could work together to try and put forward some names of people that have a background on this issue.

It just seems to me that we are really limited in what we can do as Members of Congress. We can pass a resolution, we can lean on the Administration, but the heavy lifting is really going to be done by the Administration and to the extent that we can have people who are sensitive inside the Administration, that is always a good thing.

So, one, are there any people who are around this Administration who would be sensitive and, two, what is it that we can do that would really make a difference? The resolution, the letter to the Administration, but they seem to pale in comparison to the poverty stats and the effect on young people in Northern Ireland, young Catholics. So tell me that, first of all.

Mr. POSNER. Well, again, if I can come back to what I said earlier, I do think—we would be eager to work with you and others

on the Committee to talk about specific people who have an interest. I think it is a little earlier in this Administration to know who specifically has an interest, but the more important question to me would be to structurally be sure that it is somebody's responsibility both in the White House and at the State Department to push a rights oriented agenda with respect to Northern Ireland. Then we can come up with a name, finding somebody that really wants to do it and has the background and expertise. But I do not know that that commitment has yet been made in a way that is right.

Secondly, I think that congressional interest can be expressed not only through the resolutions, which I think are very important and we have found credibly useful, they really resonate, but I think also the kinds of visits that many of you have made to Northern Ireland, both reinforce to the people there, they are a shot in the arm to the rights community there, and they are also another reminder to the government that people are not only listening at a hearing once a year, they are taking the time to show up and find out what is really going on.

The more you get engaged in the specifics of what is happening, every time that officials of the government are hearing and meeting with Members of Congress who are well informed, it is another reminder that these issues are not going away. I think secretly some of the permanent bureaucrats in the Northern Ireland office and elsewhere are assuming that at one time or another we are all going to go away and stop caring. And our job is to make sure that they know we are not going away and we still care.

And so we just need to keep showing up, being in their face and making sure that there really is a commitment to change the way things are done.

This is a tough process and now is actually the hardest part and it is the most important part and it actually is the moment where more visits, more scrutiny, more resolutions, more attention needs to be paid.

So I think there is a lot you can do, we are ready to work with you but we need your help.

Ms. McKINNEY. Mr. Chairman, if you could just let me do one more, one more in two parts.

I was just reviewing the State Department human rights report and it seemed to me a bit incomplete and I was just wondering about what you thought about the human rights report and then if you could tell me the reasre vesuraem Mt ad easrsue s add d re-auccyid.

MsW M

We would welcome a much more transparent process for drawing up that report and anything that this Administration can do to help to bring that about would be much appreciated.

It is, I think, rather a strange position to find our country under scrutiny by another country on this basis. It is not often clear to us quite which human rights principles are being used to asses what is going on. Very often the assessment seems to be more political than rights oriented and, as I say, we would be very happy to cooperate more than we do at the moment in future to help to make those reports better than they already are.

Mr. O'BRIEN. Just to add to that, I think the State Department country report, the most recent one, does, I think, while maybe would not go as far as we would like, I think is a much more comprehensive report than it has been in previous years and certainly covers a range of the issues that we have referred to today.

So I always view it, I think, as a constant work in progress and I think that while we might be happier with it this year, I suspect that the United Kingdom government is not particularly happy with it and in that sense the report does remain an important vehicle by which these issues can be addressed and assessed and certainly I think the most recent report does represent something of an improvement on previous years but does not go quite as far as we might like it.

Ms. MCKINNEY. Mr. O'Brien, the Chairman did just mention to me that you were the quintessential diplomat.

Mr. POSNER. Congresswoman, last week, my colleague, Elisa Massimino, who is here today and runs our Washington office, testified in a hearing on the country reports and there is a section in that testimony about the Northern Ireland entry and particularly some of the omissions or, we think, misrepresentations with respect to policing in particular, we will share that with you, but we have some concern.

Mr. KENNEDY. With regard to your question why Peter Mandelson acted unilaterally in suspension, that truly is a question that he himself could answer best, but I think the speculation—there has been speculation that the reason he did it was he was set an ultimatum by the leader of the Ulster Unionist Party, David Trimble, who said to him if I do not see that suspension has been enacted by 6 p.m., on the 6 news tonight, I am going to resign. And if he did resign, it would have been very hard to reestablish the whole thing again. So even though Mr. Mandelson had a positive report from the decommissioning body, he went ahead.

And that is kind of a recurring theme and problem with the peace process, that Peter Mandelson—now, Secretary Reid has yet to follow the same route, but Peter Mandelson and the British government were significantly seen to be dancing to David Trimble's tune again and again.

Mr. SMITH. Thank you, Ms. McKinney.

Let me just say the fullness of my comment is that Mr. O'Brien is the quintessential honest and fair diplomat who speaks truth to power and I think that is the importance of human rights organizations in general and each of you here today, whether it means criticizing our own government for its lack of work on behalf of human

rights, our own problems here in the U.S., you do not shy away from it and we are very appreciative of that.

We need the truth, unvarnished, no spin, and then make our policy based on that and our actions should flow from that.

We are almost out of time because there is a floor vote and we both have 4½ minutes to get to the floor to make our votes, but I do not want to leave, and I do have a number of questions, as, does I know, my good friend from Georgia, but in the context of John Stevens' investigation of Patrick Finucane's murder, the British government has sought to prevent whistleblowers such as Martin Ingram from revealing evidence about collusion between the security forces and loyalist paramilitaries. The government has also gone so far as to stop journalists from reporting allegations of such collusion. And it does raise the even larger question can a third investigation by Stevens really protect witnesses, can it really get to the truth?

As you know, we have called, I will continue call for an independent inquiry and it seems like—you know, we will wait until hell freezes over before we get to the bottom of this with this approach that has been adopted so far.

If you could, since we are out of time, provide that, speak it to the record, I will read it later as will my colleagues, right now, if you could, and I will just make my way over to the floor to vote. Please.

Mr. POSNER. With respect to that, I think there is no question that the Stevens inquiries have, at this point, outlived their usefulness and there needs to be a public independent inquiry.

Right now, the Stevens inquiry is in effect regarding what really needs to happen, which is a full blown, public independent inquiry into everything that happened in that case. And Stevens goes on and on and on and there are more things every week, things pop up, and there is a sense here of a lot of collusion by officials both through this Force Research Unit and the Ingram case you mentioned. Ingram was one of the people who has come forward and then been intimidated.

And basically there has to be a fresh start here with a public body, a public inquiry, that really gets to the bottom of what happens and is not afraid to get into questions about police and army involvement.

So that is where we are and it seems to me this is absolutely the right time to force the hand of the government on that.

Ms. WINTER. Mike Posner is absolutely right about that. The Stevens inquiry is limited, like any police investigation, to finding out who murdered Patrick Finucane. I think it is pretty well an open secret who murdered Patrick Finucane and that is not the question any more.

The question is how come there was, and we say categorically that there was, state collusion in his murder, both on the part of the army and the police force. That is a scandalous state of affairs and regrettably Patrick Finucane was by no means the only victim.

What has come to light in the pursuit of justice for one lawyer has been a horrifying picture of a systematic policy which has resulted in the death of many U.K. citizens, which is completely un-

acceptable in any developed democracy. The time is past for police investigations. We need a public inquiry.

Mr. KENNEDY. I think it is really symptomatic of the emergency legislation that has been in Northern Ireland for over 25 years that journalists who investigated this kind of thing actually could be prosecuted and go to jail. And I am not sure if with the new legislation that was brought in that that can still happen, but there was very repressive legislation insofar as investigations and subpoenaing journalists and putting them on the stand as to who their sources were and so forth, so obviously the issues of collusion and so forth did not come to the surface until quite recently.

Ms. NOONAN. If I could just be so bold to ask my own question, yesterday, Shamus Mallon had pointed out that one of the other problems with the policing board might be financing and I did not get a chance to follow up with that and find out what he might mean.

Do any of you have any thoughts on that?

[No response.]

Ms. NOONAN. That is a question I will leave the hearing with and on behalf of the Committee and the staff, we thank you for your testimony.

[Whereupon, at 11:27 a.m., the Subcommittee as adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE ROBERT MENENDEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Thank you, Mr. Chairman. Thank you for holding this important hearing.

Let me get right to the point—this hearing is important because there is still a great need to address human right issues in Northern Ireland.

All parties to the peace process in Northern Ireland must be praised for the progress they have made to date. The Good Friday Agreement still stands as a remarkable achievement and the best hope for lasting peace in Northern Ireland.

The problem lies in the lack of implementation of the accords contained within the Agreement. And this problem is particularly true, as I'm sure our witnesses today will testify, in the area of human rights.

While the Equality Commission and the Human Rights Commission have both been established, it is not clear that sufficient political will yet exists to rectify the wrongs of the past and create a more equitable society based on human rights and equality under the rule of law.

The continued existence of Emergency Powers serves to undermine these tenets. The continued failure to hold independent public inquiries into the murders of Patrick Finucane and Rosemary Nelson remains a barrier to full reconciliation and to the lifting of the threat of violence under which lawyers in Northern Ireland continue to live and work.

Perhaps most pressing is the issue of police reform. Without a full implementation of the recommendations of the Patten Commission—a commission called for in the Good Friday Agreement—the peace process will remain lopsided, and a full peace will remain elusive.

Common sense and fundamental fairness calls for the name of the police force—the Royal Ulster Constabulary (and I cannot imagine a more British-sounding name than that)—to be changed; and for the membership in police force—now 93 percent Protestant and 7 percent Catholic—to be more equitably formed to reflect the 58–42 percent population split in the community.

We are—is it "once again"?, or "still"?—at a perilous point. The answers lie in moving forward to full implementation of the Good Friday accords—to full participatory, accountable and representative, and equal government, rule of law and human rights in Northern Ireland—not in foot-dragging that serves only to subvert the will of the people of Northern Ireland as expressed through the Good Friday Agreement. Thank you, Mr. Chairman.

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1ST SESSION

H. RES. 128

Condemning the murder of human rights lawyer Rosemary Nelson and calling for the protection of defense attorneys in Northern Ireland.

IN THE HOUSE OF REPRESENTATIVES

MARCH 23, 1999

Mr. SMITH of New Jersey (for himself, Mr. GILMAN, Mr. KING, Mr. CROWLEY, Mr. PAYNE, Mr. MENENDEZ and Mr. WALSH) submitted the following resolution; which was referred to the Committee on International Relations

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RESOLUTION

Condemning the murder of human rights lawyer Rosemary Nelson and calling for the protection of defense attorneys in Northern Ireland.

Whereas on September 29, 1998, Rosemary Nelson, a prominent Catholic defense attorney in Northern Ireland, who testified before the Subcommittee on International Operations and Human Rights of the Committee on International Relations of the House of Representatives, stated that she had been harassed and intimidated by the Northern Ireland police force, the Royal Ulster Constabulary (RUC) in her capacity as a defense attorney, and that she had been "physically assaulted by a number of RUC officers" and that the difficulties with the RUC in-

cluded "at their most serious, making threats against my personal safety including death threats";

Whereas Param Cumarswamy, the United Nations Special Rapporteur on the independence of judges and lawyers, also testified before the Subcommittee on International Operations and Human Rights citing the grave dangers faced by defense attorneys in Northern Ireland and stated that "there have been harassment and intimidation of defense lawyers by RUC officers" and that "these harassments and intimidation were consistent and systematic";

Whereas the United Nations Special Rapporteur recommended that authorities other than the RUC conduct "an independent and impartial investigation of all threats to legal counsel in Northern Ireland" and "where there is a threat to physical integrity of a solicitor" the "Government should provide necessary protection";

Whereas despite the threats and the intimidation, Rosemary Nelson courageously continued to represent the rights of Catholic clients in high profile cases, including the residents of Garvaghy road in their bid to stop controversial marches in their neighborhood and the family of Robert Hamill who was beaten to death by a sectarian mob in 1997;

Whereas, because of her human rights work, Northern Ireland solicitor Rosemary Nelson, the mother of three young children, suffered the ultimate harassment and intimidation and was brutally murdered on March 15th, 1999, by a bomb placed on her car;

Whereas all those involved in the targeting and killing of defense attorney Rosemary Nelson, including the Red Hand Defenders, an anti-Catholic group that is opposed to the

peace process and that has claimed responsibility for the murder, must be brought to justice;

Whereas the success of the peace process is predicated on the ability of the people of Northern Ireland to believe that injustices such as the murder of Rosemary Nelson will be investigated thoroughly, fairly, and transparently;

Whereas the murder of Rosemary Nelson is reminiscent of the 1989 murder of human rights attorney Patrick Finucane, who, according to the United Nations report, had also received numerous death threats from RUC officers;

Whereas the United Nations Special Rapporteur reported that since the Patrick Finucane murder, further information that seriously calls into question whether there was official collusion has come to light; and

Whereas Rosemary Nelson's fear of the RUC, the United Nations report, and other unresolved investigations necessitate the establishment of inquiry into Rosemary Nelson's murder that will be completely independent of the RUC so that the police force she herself feared will not be the prime source used to gather evidence, conduct interviews, follow leads, or produce final reports: Now, therefore, be it

1 *Resolved,* That the House of Representatives—

2 (1) recognizes the historic significance of the
3 1998 Good Friday Peace Accords and commends the
4 people of Northern Ireland for their commitment to
5 work together in peace;

1 (2) condemns all violence committed in violation
2 of the Northern Ireland cease-fire agreement, an
3 agreement that has been largely successful; and
4 (3) calls on the Government of the United
5 Kingdom—
6 (A) to launch an inquiry totally inde-
7 pendent of the Royal Ulster Constabulary
8 (RUC) to gather evidence, conduct the ground
9 investigation, and issue a detailed, public, re-
10 port on the murder of defense attorney Rose-
11 mary Nelson;
12 (B) to institute an independent judicial in-
13 quiry into allegations that defense attorneys are
14 systematically harassed and intimidated by se-
15 curity forces; and
16 (C) to implement the United Nations Spe-
17 cial Rapporteur's recommendation for an inde-
18 pendent inquiry into the possibility of collusion
19 in the killing of defense attorney Patrick
20 Finucane.

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Paying the Ultimate Price for Human Rights
The Life and Death of Rosemary Nelson

By Elisa Massimino

Rosemary Nelson was one of a small number of defense lawyers in Northern Ireland who took politically sensitive cases in a climate shaped by thirty years of conflict between a Protestant majority and Catholic minority. Rosemary had a thriving general law practice in her hometown of Lurgan, providing a variety of legal services to the local population. She represented clients drawn from both the Protestant and Catholic communities in Northern Ireland. Although most of Rosemary's cases were very ordinary, she had a few high-profile clients whose cases attracted a lot of publicity, including:

- The family of Sam Marshall, who was murdered by Protestant loyalists in March 1990 just after he was released on bail from the Lurgan police station. The bail arrangements were known only to the Royal Ulster Constabulary (RUC), the police force in Northern Ireland, and to Marshall's lawyers. A car spotted at the scene of the murder was later discovered to belong to the security forces. No one was ever charged in the murder.
- Colin Duffy, who was with Sam Marshall when he was murdered but escaped injury himself. Duffy spent several years in jail after being convicted of killing a former soldier, but Rosemary Nelson achieved his acquittal after it came to light that a key prosecution witness had been arrested for gun running on behalf of a loyalist paramilitary group. Duffy was arrested again in 1997, for the murder of two Lurgan police officers, and spent three months in jail until Rosemary Nelson convinced prosecutors that they had the wrong man.
- The family of Robert Hamill, a young Catholic father who was attacked by a loyalist mob in 1987 and died twelve days later from head injuries. Eyewitnesses reported that armed police officers parked nearby failed to intervene to protect Hamill. RUC press releases falsely claimed that Hamill and a friend, who was also attacked, had been involved in a fight and that the police had also been attacked. The RUC later admitted that this was not the case.
- The Garvaghy Road Residents Coalition, formed to respond to Orange Order marches through their nationalist neighborhood.

Because of this work, and in particular after the acquittal of Colin Duffy, Rosemary Nelson began to receive death threats from loyalist paramilitary organizations. In addition, some of her clients, arrested under the emergency law regime (the system of laws put in place to deal with terrorism suspects) told her that RUC officers relayed abusive language and threats against her to them. During the 1997 Marching Season, the annual marches of loyalist fraternal orders commemorating historical Protestant events,

Rosemary was assaulted by members of the RUC while trying to represent her client's interests on the Garvaghy Road. As she reported to the Lawyers Committee for Human Rights, "I went up to the police lines and asked, 'Could somebody please tell me what's going on here?' One of them grabbed me by the arm and took me into them, right into the circle [of riot shields] and said, 'Rosemary, you Fenian f*****,' and they threw me about a bit. I said, 'Can I have your number please?' Somebody else said, 'F*** off.' The difficulty there was, because of the way they were dressed, there were no [badge] numbers distinguishable, you just couldn't see any numbers, and they were wearing balaclavas [over their faces]. I can't recall ever being so fright-

protection. Many human rights organizations, including Amnesty International, British Irish Rights Watch, the Committee on the Administration of Justice, Human Rights Watch, and the Lawyers Committee for Human Rights, urged the British Government to ensure her safety. Dato' Param Cumaraswamy, the United Nations Special Rapporteur on the Independence of Judges and Lawyers, interviewed Rosemary in 1997 and personally wrote to the British Government, expressing concerns about her safety.

On September 29, 1998, Rosemary testified before the House International Operations and Human Rights Subcommittee in Washington, D.C., about the ongoing harassment and intimidation of

IRISH AMERICAN UNITY CONFERENCE

THE GOOD FRIDAY AGREEMENT IN 2001: PROMISES MADE—PROMISES BROKEN

It has been almost three years since the Good Friday Agreement was signed. In the GFA, Britain promised human rights reform for all of the people of the north of Ireland, and promised that nationalist voters would have a portion of governmental power. From the beginning, the IAUC had deep concerns about whether those promises would become realities, and we set about to monitor Britain's performance on its promises. So far, they remain mostly words on paper.

The Good Friday Agreement's promises include:

1. Devolved Power Sharing. Britain promised in GFA to redistribute governmental power away from the British government in London and to the people of the north of Ireland. That devolved power was to be exercised jointly by the elected representatives of both communities—unionist and nationalist—through the Northern Ireland Assembly and Ministers from both communities. This power sharing contained several elements. Particularly important to nationalist voters was that their share of power not be subject to the whims of London, or to disenfranchisement by the traditional "unionist veto" which had controlled the old Northern Ireland Parliament. All parties to the Agreement, including the Ulster Unionist Party, agreed to this new form of government.

The N.I. Assembly and Executive have been established, and actually have been working reasonably well, when they are allowed to. Unfortunately, the unionist veto is alive and well, and destroys the integrity of the new institutions. In February, 2000, Unionist First Minister David Trimble threatened to collapse the new government because his party was not satisfied with the IRA's pace of decommissioning. The then British Secretary of State for Northern Ireland, Peter Mandelson, beat Trimble to the punch by unilaterally "suspending" the Northern Ireland Executive and taking away the powers of nationalist Ministers. The Unionist Party also threatened further collapses of the government if the party was unhappy with policing reform. In January 2001, Trimble, devised another away to disenfranchise nationalist voters by removing certain powers of nationalist Ministers and leaving unionist Minister's' powers intact. Trimble simply refused to take the administrative steps necessary to allow elected Sinn Fein Ministers to take their seats at the North-South Ministerial Council, comprised of all Ministers from Northern Ireland and the Republic of Ireland. Although, a court has ruled Trimble's action illegal, the British government has not stopped him. The British government and Unionist Party's promises of a nationalist share of governmental power safe from the whim of the British government and a unionist veto have been broken.

2. Policing Reform (Patten Commission). The GFA obliged the British government to change policing to achieve the support of both communities. That government established the.Patten Commission, which considered many options, including many nationalists' call for completely disbanding the Royal Ulster Constabulary. The Commission, in 1999, settled on a middle ground of substantially revamping the police, with joint control by both communities. On May 5, 2000, the British government issued a "letter to Northern Ireland parties" in which the government specifically promised legislation to implement the Patten Report.

But, in fact, the British government has implemented only part of the Patten Commission's recommendations. Key Patten recommendations not implemented include: fully redistributing control from Britain and the RUC Chief Constable to local officials' control, adequate local powers to investigate and oversee police performance, police oaths to respect human rights, and neutral flags and symbols. This partial implementation has been insufficient to earn the support of the nationalist parties—SDLP and Sinn Fein—or the nationalist community as whole. As one member of the Patten Commission expressed it: "The core elements of the Patten commission's report have been undermined everywhere. The district policing partnership boards that are so vital to the Patten commission's vision have been diluted. So have its recommendations in the key areas outlined in its terms of reference—composition, recruitment, culture, ethos and symbols. The Patten report has not been cherry picked—it has been gutted." (Clifford Shearing, Guardian, 11/16/00). This GFA promise remains unfulfilled.

3. Demilitarization. The GFA states that: "The British Government will make progress towards . . . as early a return as possible to normal security . . . (including] . . . the reduction of the number and role of the Armed Forces to a level compatible with a normal peaceful society [and] the reduction of security installations." (GFA, "Security", para. 2). So far, Britain's reductions in troop levels and military installations have been minimal. 13,500 British troops remain. Nationalist areas

such as South Armagh remain honeycombed with British Army forts and electronic surveillance post. This GFA promise has not been fulfilled.

4. Emergency Laws. The British government agreed in the GFA to reform these notorious infringements on civil liberties, such as trial without jury and abrogation of the fight to silence. Specifically, the government promised to "make progress towards the objective of as early a return as possible to normal security arrangements . . . [and] the removal of emergency powers in Northern Ireland." (GFA para.2(ii,), (iv)). Remarkably, instead of bringing criminal law and procedure into line, with accepted human rights norms, Britain has enacted some even more repressive laws, made some of the laws permanent, and applied some to Britain, as a whole. Among other things, the "Terrorism Act of 2000" continued Britain's power to "derogate" or exclude itself from selected fights contained in the European Convention on Human Rights, shifting the presumption of guilt to defendants in certain cases, and extended police power to arrest people and hold them incommunicado. As Amnesty International described the situation: "This Act effectively takes emergency powers that were conceded to deal with the situation in Northern Ireland and puts them permanently into legislation." (AI press release, 2/19/01). As the Committee on Administration for Justice described the chance for eliminating the non-jury Diplock courts: "[T]he opportunity has been squandered." (CAJ Nov. 2000). Britain has not broken this GFA promise—this promise is shattered.

5. Criminal Justice Review. The GFA requires the British government to undertake a comprehensive "review" of all aspects of the criminal justice system with an eye towards reform. The government formed a "Criminal Justice Review Group" which has made wide-ranging recommendations for reform of the criminal justice system in which not one judge on the superior criminal courts is a nationalist (despite the fact that 45% or more of the population is nationalist), and in which prosecutors have little real independence. The recommendations do not go far enough in fixing such problems. Nevertheless, many of the recommendations would be positive steps forward. Unfortunately, even those positive steps may never happen because they are linked to devolution and a functioning N. I. Executive, which the Unionist Party and N.I. Secretary have collapsed once already, and may do so again. The CJRG report was issued over a year late—in March, 2000. To date, the CJRG recommendations have not been implemented, and it is not clear when, if ever, they will be. This promise is unfulfilled.

6. N. I. Human Rights Commission. The NIHRC has been established, includes people of good intent from both communities, and has shown some independence. However, the Commission has little legal power; it cannot even issue subpoenas to conduct an investigation. Its primary power is to advise the British government on human rights. And, unfortunately Britain is not following that advice. For example, the NIHRC opposes what Britain is doing with the emergency laws, but the British government has simply disregarded that advice.

7. N. I. Human Rights Legislation. The GFA called for the European Convention on Human Rights to be made applicable to Northern Ireland, and for the NIHRC to develop a specific N.I. Bill of Rights to supplement the European Convention. NIHRC is still in the process of developing a draft Bill of Rights, which it will present after it has finished its review in August, 2001. However well intentioned the NIHRC may be, its ability to deliver a meaningful Bill of Rights is in serious jeopardy for several reasons. First, the British government has so severely underfunded NIHRC that the Commission will have to curtail its consultations in developing a Bill of Rights. Second, the Bill of Rights is supposed to consist of additional rights on top of those contained in the European Convention of Human Rights, but Britain's continued derogation from the Convention makes it impossible for the NIHRC to deliver even the minimal rights set forth in the Convention. Third, the British government's track record for the past years is to ignore the advice of the Human Rights Commission; the prospects for Britain accepting the Commission's advice on a Bill of Rights appear dim.

8. Equality. The GFA required the establishment of an Equality Commission and that all "public bodies" or governmental entities promote equality of opportunity. A Commission has been established and governmental entities are in the midst of a lengthy process of making the required assessments of how their practices impact across the range of possibly discriminatory categories—religions, political opinion, race, gender, disability, dependents, age and marital status. This flurry of procedural activity is fine, but some of the main problems of discrimination which gave rise to the conflict have not changed. The long history of employment discrimination has not yet been rectified. The fact is that the Catholic unemployment rate is still much higher—176%—the rate for Protestants. And long-term unemployment remains a much greater problem for Catholics. (British Government Statistics and Re-

search Agency, Statistics for 1999, published 3/1/01). This GFA promise remains open.

9. Decommissioning. No party to the Good Friday Agreement promised to "decommission" weapons. Rather all parties, including the nationalist parties of Sinn Fein and the SDLP, agreed to use their "influence" to bring about decommissioning "in the context of the implementation of the overall settlement." The Good Friday did establish an Independent International Commission on Decommissioning, which is headed by General deChastelain. The IRA did not sign the Agreement, as pointed out by Senator George Mitchell in his November 18, 1999, review of the GFA's implementation. Nevertheless, the IRA has maintained a cease-fire since 1997, and has allowed international monitors to inspect and monitor its weapons. The IICD has been satisfied that the IRA has maintained its cease-fire. Those who signed the GFA have kept their promises regarding decommissioning.

10. Timing. The GFA's schedule for implementation of the interlocking piece of the Agreement is that a fully functioning Executive, policing reform, demilitarization, emergency law repeal, and criminal justice reform are to be in place *before* the date set for decommissioning.

11. Sectarian Harassment. The GFA guaranteed citizens "the right to freedom from sectarian harassment." (GFA , "Rights, Safeguards, and Equality of Opportunity", para. 1). In the first two months of 2001, loyalist paramilitaries have made over 50 bomb attacks on Catholics' homes. The British government and its Royal Ulster Constabulary have been unable or unwilling to stop this loyalist pogrom, and to fulfill this guarantee. As the Unionist Enterprise Minister, Reg Empey, has said, "[L]oyalists are actually completely undermining the unionist case on disarmament because the republicans are saying to us that while we are asking republicans—demanding republicans—disarm, these loyalist elements are running around pipebombing." (2/15/01).

12. Justice. Perhaps the British government only implied this promise to nationalists in the GFA. But, in a range of specific cases, justice, or even truth, has not been delivered. For example, as evidence of Army and RUC collusion slowly leaks into public view, the full story of British government involvement in the murders of nationalist human rights lawyers Patrick Finucane and Rosemary Nelson remains concealed. The British government has refused to establish independent inquiries into these cases despite the urging of human rights groups, the Irish government and Members of the U.S. Congress. A particularly egregious case is that of two British soldiers, Fisher and Wright, convicted of murdering an eighteen-year-old nationalist, Peter McBride. The British government released the two soldiers from prison after relatively short terms, and almost unbelievably, restored them to their positions as British soldiers. Justice for nationalists remains an unfulfilled promise.

Conclusion. The terrific irony is that in February 2000, Britain and the Unionist broke their promises by suspending the duly elected N.I. Executive because Unionist leader David Trimble threatened to quit. Trimble's threat was predicated on his claim that Sinn Fein had broken a promise—IRA decommissioning—which Sinn Fein had not in fact, made. The record shows that in reality it is Britain and the Unionists who have broken their GFA promises . . . repeatedly.

The Good Friday Agreement is no mere contract. However, as attorneys, the authors of this review believe that if ordinary principles of contract law were applied, the British government and Unionist Party could be sued for breach of contract—by the nationalist parties of the SDLP and Sinn Fein, as well as by the citizens of Northern Ireland,

The IAUC remains firmly committed to the Good Friday Agreement as the best chance for a just and lasting peace. The GFA should be implemented fully and completely. For the GFA to work, however, all parties must keep their promises. This includes the British government and the Unionist Party.

Prepared by: Thomas J. Fox, Esq.—IAUC Human Rights Chair, Jerry Lally, Esq.—IAUC Political Action Chair
Date: March 4, 2001

EVIDENCE PRESENTED BY THE NORTHERN IRELAND HUMAN RIGHTS COMMISSION

TO

THE U.S. HOUSE OF REPRESENTATIVES, COMMITTEE ON INTERNATIONAL RELATIONS, SUBCOMMITTEE ON INTERNATIONAL OPERATIONS AND HUMAN RIGHTS

ON

"HUMAN RIGHTS IN NORTHERN IRELAND: PROMISES KEPT OR PROMISES BROKEN?"

THURSDAY 15 MARCH 2001

IN THE PRESENCE OF MS INEZ McCORMACK, MEMBER OF THE NORTHERN IRELAND HUMAN RIGHTS COMMISSION

Part One:
Background Information about the Northern Ireland Human Rights Commission

1. Origins and composition

The Northern Ireland Human Rights Commission is a body which was provided for in the Belfast (Good Friday) Agreement of 1998 and which was formally established under the Northern Ireland Act 1998 on 1 March 1999. At present it comprises a full-time Chief Commissioner and eight part-time Commissioners, all of whom have been appointed initially for a three-year period until 28 February 2002. The Chief Commissioner is Professor Brice Dickson. The other Commissioners are Professor Christine Bell, Mrs Margaret-Ann Dinsmore QC, Mr Tom Donnelly MBE JP DL, Rev Harold Good OBE, Professor Tom Hadden, Ms Patricia Kelly, Ms Inez McCormack and Mr Frank McGuinness. Following the resignation of Ms Angela Hegarty in December 2000, for personal reasons, the Northern Ireland Office of the UK Government has recently advertised for one or more replacements Commissioners.

2. Accountability

The Commission is funded by the Northern Ireland Office, receiving £750,000 in each of its first two financial years, but otherwise the Commission is completely independent from government. It is accountable, through the Secretary of State, to Parliament at Westminster (not to the Northern Ireland Assembly in Belfast) and is subject to oversight by the UK Parliamentary Commissioner for Administration.

3. Premises

The Human Rights Commission is based at Temple Court, 39-41 North Street, Belfast BT1 1NA (tel: 028 9024 3987; fax: 028 9024 7844; e-mail: nihrc@belfast.org.uk). Its website is www.nihrc.org.

4. Functions

Under section 69 of the Northern Ireland Act 1998, the Commission has the following seven *duties*:

1. To keep under review the adequacy and effectiveness in Northern Ireland of law and practice relating to the protection of human rights.
2. To advise the Secretary of State and the Executive Committee of the Northern Ireland Assembly of legislative and other measures which ought to be taken to protect human rights.
3. To advise the Northern Ireland Assembly whether a Bill is compatible with human

rights.

4. To promote understanding and awareness of the importance of human rights in Northern Ireland by, for example, undertaking or commissioning or otherwise assisting research and educational activities.

5. To provide advice to the Secretary of State on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights.
6. To make to the Secretary of State within two years such recommendations as it thinks fit for improving the Commission's effectiveness.
7. To do all that it can to ensure the establishment of a Joint Committee with the (proposed) Human Rights Commission in the Republic of Ireland.

In addition, under the same section, the Commission has the following four *powers*:

1. To give assistance to individuals who apply to it for help in relation to proceedings involving law or practice concerning the protection of human rights.
2. To bring proceedings involving law or practice concerning the protection of human rights.
3. To conduct such investigations as it considers necessary or expedient for the purpose of exercising its other functions.
4. To publish its advice and the outcome of its research and investigations.

5. Mission Statement

The Commission has adopted the following Mission Statement based on the above statutory duties and powers:

> *The Northern Ireland Human Rights Commission will work vigorously and independently to ensure that the human rights of everyone in Northern Ireland are fully and firmly protected in law, policy and practice. To that end the Commission will measure law, policy and practice in Northern Ireland against internationally accepted rules and principles for the protection of human rights and will exercise to the full the functions conferred upon it to ensure that those rules and principles are promoted, adopted and applied throughout Northern Ireland.*
>
> *In carrying out its functions the Northern Ireland Human Rights Commission will be independent, fair, open, accessible and accountable, while maintaining the confidentiality of information conveyed to it in private. The Commission is committed to equality of opportunity for all and to the participation of others in its work. It will perform its functions in a manner which is efficient, informative and in the interests of all the people of Northern Ireland.*

6. The Commission's core values

The Commission has agreed to abide by the following core values in all its activities:

- Accessibility
- Accountability
- Equality
- Fairness
- Independence
- Openness
- Participation

Part Two: The Commission's work to date

This section of our evidence lists the Commission's main activities since its establishment on 1 March 1999. They are categorised under four headings, reflecting the main duties and powers conferred upon the Commission by section 69 of the Northern Ireland Act 1998.

1. Reviewing law and practice

- We have commenced a programme of visits to all places of detention in Northern Ireland (juvenile justice centres, the Young Offenders' Centre, prisons, police stations, holding centres and mental hospitals). So far two juvenile justice centres as well as Muckamore Abbey Hospital and Maghaberry Prison have been visited.

- In December 1999 we helped to facilitate a visit to Northern Ireland by the Council of Europe's Committee for the Prevention of Torture.

- In May 2000 we initiated investigations into (i) juvenile justice centres in Northern Ireland and (ii) the way in which the policing of parades has affected individuals and communities in Northern Ireland.

- We have conducted research into the use of plastic bullets in recent years, focusing on the injuries caused and the methods for recording the firing of the bullets. We plan to publish reports on these matters in April 2001.

- In June 2000 we commenced a Victims' Rights Project to examine the rights of victims of violence, including violence by non-state actors such as paramilitary organisations. We plan to publish a report on the project in May 2001.

- We have commissioned reviews of the law as it affects the human rights of older persons and of persons who are gay, lesbian, bisexual or transgendered. We are currently examining these reviews with a view to their publication.

- We have commissioned a further review of law and practice as they affect persons who have, or have had, a problem with mental health. This should be complete by September 2001.

- By meeting with the investigating teams we have kept a watching brief on the investigations into the murders of Belfast solicitor Patrick Finucane in February 1989 and of Lurgan solicitor Rosemary Nelson in March 1999.

2. Advising the Government

- We have launched a wide and deep consultation process on what should be contained in a *Bill of Rights for Northern Ireland,* as required by the Belfast (Good Friday) Agreement, and have undertaken to present draft advice to the Secretary of State in May 2001 and final advice early in 2002.

- We have proofed proposed legislation (at Westminster and in Belfast) and have lobbied for change where appropriate. In particular we worked on the *Asylum and Immigration Bill 1999,* the *Terrorism Bill 2000* and the *Police (NI) Bill 2000.*

- We have given oral briefings to Parliamentarians at Westminster on the human rights aspects of the *Terrorism Bill* and the *Police (NI) Bill* and on our Bill of Rights work.

- We have given evidence to an *ad hoc* Northern Ireland Assembly Committee on the draft Financial Investigations (NI) Order 2001 and on the draft Life Sentences (NI) Order 2001.

- We have appeared before the Assembly's Committee of the Centre to explain our role and before the Standards and Privileges Committee to give our advice on the human rights implications of the appointment of a Commissioner on Standards.

- We are to appear later in March 2001 before the Assembly's Committee of the Centre to give our views on the proposal of the First and Deputy First Ministers to create a Children's Commissioner for Northern Ireland.

- We are on the point of finalising a Protocol with the Northern Ireland Government departments which will allow us to gain early access to proposed legislative *and* policy changes.

- We are also on the point of finalising a Memorandum of Understanding with the Northern Ireland Office.

- We advised the Government not to fast-forward the commencement of the Human Rights Act so as to make it applicable to decisions by the Parades Commission of Northern Ireland from April 2000.

- We made submissions on the UK's Periodic Reports to the UN's Committee on the Elimination of Discrimination Against Women and to the Council of Europe's Committee on Social Rights.

- We are about to make a submission on the UK's Periodic Report to the Council of Europe's Monitoring Committee on the Framework Convention for the Protection of National Minorities.

3. Promoting an awareness of human rights

- We have maintained a policy of openness and accessibility, meeting with anyone at any place on any human rights issue in Northern Ireland.

- We have established and maintained a website at www.nihrc.org.

- We have produced a video and an Education Manual promoting the idea of human rights and stimulating people to submit views to us on what should be contained in a Bill of Rights.

- We have run a series of educational seminars on human rights, primarily for members of voluntary, community and statutory organisations. Several two-day "Training for Facilitators" events have trained approximately 400 people to run events for others on the Bill of Rights.

- We have produced a series of 11 pamphlets setting out some of the issues that arise in connection with our work on a Bill of Rights for Northern Ireland. These cover *Children and Young People, Criminal Justice, Culture and Identity, Education, Equality, Implementation Issues, An Introduction to the Bill of Rights, Language, Socio-Economic Rights, Victims and Women.*

- We have published the reports of nine working groups established to advise the Commission on specific rights which may be included in the proposed Bill of Rights. The reports were discussed at a conference open to members of the public in January 2001.

- We have initiated the establishment of a Human Rights Education and Training Forum to promote human rights education and training in all sectors.

- We are represented on two cross-border projects designing human rights education materials for schools.

- In December 2000 we hosted a week's visit by Justice Arthur Chaskalson, President of the Constitutional Court of South Africa. He spoke to four different audiences and met the Northern Ireland judiciary.

- We gave a presentation to the Judicial Studies Board of Northern Ireland on our duties and powers.

- We have attended monthly meetings of the Liaison Group attached to the Home Office's Task Force on the Human Rights Act.

- We sought to influence the way in which the police and Government departments in Northern Ireland prepared for the commencement of the Human Rights Act.

- We have distributed to all public authorities in Northern Ireland a booklet providing guidance on how they might prepare for and react to the commencement of the Human Rights Act 1998 on 2 October 2000.

- We observed and reported on the training programme put in place by the Royal Ulster Constabulary to train their officers on the Human Rights Act 1998.

- We have published for the general public a guide to the impact of the Human Rights Act 1998, based largely on a booklet issued in Great Britain by the Citizenship Foundation.

- We addressed the UN Commission on Human Rights in April 1999 and April 2000 and secured observer status at meetings of the International Co-ordinating Committee of National Human Rights Institutions.

- In September 1999 we addressed the Commonwealth Law Association Conference in Kuala Lumpur on the need for an independent judiciary.

- In May 2000 we collaborated with the British Council in organising a large international conference in Belfast on *Democracy, Rights and Equality*.

- We organised a conference in Belfast in June 2000, in conjunction with the Commonwealth Lawyers' Association, on *Human Rights, Emergency Law and National Security: Comparative Perspectives*.

- We held a further conference, on the Review of the Criminal Justice System of Northern Ireland, in Armagh on 5 September 2000.

- We have established a register of researchers to enable the Commission to commission small pieces of work on, for example, the human rights implications of proposed legislative initiatives.

- We have produced a five-year *Equality Scheme* under section 75 and Schedule 9 of the Northern Ireland Act 1998. It is currently with the Equality Commission for approval.

4. Litigating

- By the end of November 2000 the Commission had received 315 general inquiries relating to casework. These generated 165 applications for assistance, of which 54 were still awaiting consideration. Of the 111 applications already considered, 50 were refused and 43 were withdrawn, resolved or closed because further information requested had not been supplied. The Commission granted assistance in 11 cases and decided to apply to intervene as a third party in the remaining 7 cases.

- Of the 11 cases assisted, four concerned inquests, three concerned discrimination, two concerned the right to life and two concerned the right to a fair hearing. The final results of these cases are still pending but in one we were able to get the inquest adjourned because the victim's family had not been given proper notice of all the material submitted to the coroner by the police.

- Of the 7 cases where we applied to intervene as a third party, 4 were applications for judicial review. Two of these 4 cases concerned alleged discrimination, one concerned the right to a fair hearing and one involved allegedly cruel, inhuman or degrading treatment of a prisoner. Two of the other 3 cases where the Commission applied to intervene were cases before the European Court of Human Rights and the third case was a planning inquiry. Six of these seven cases have so far reached judgment stage (including one European case which was declared inadmissible): in all of them our submissions were *not* accepted but in one the result we favoured was arrived at by the judge through other reasoning.

- In line with the Bangalore Principles (1988, as amended), our goal in these cases has been to persuade the judges to refer to international human rights standards whether or not they are *binding* on them.

- We are currently challenging through judicial review a coroner's ruling that the Commission does not have the power to apply to intervene as a third party. The Lord Chief Justice decided in December 2000 that the coroner was correct in his ruling and we are awaiting the outcome of our appeal to the Court of Appeal. This is one of two cases which have been taken by the Commission in its own name.

- The other case taken by the Commission in its own name was against the BBC in October 2000. It was an attempt to stop the broadcasting of an edition of *Panorama* which identified four individuals as partly responsible for the bomb in Omagh in August 1998. We wished to protect the right of these individuals to a fair trial and the right of the victims to see justice run its proper course. The attempt was unsuccessful.

- On one occasion we have been asked by a coroner to serve as a "friend of the court" (*amicus curiae*) by giving advice on international human rights standards.

- We hosted an information session on coroners' inquests for families of the Omagh bomb victims.

- We have signed a Memorandum of Understanding with the Equality Commission for Northern Ireland in order to delineate more clearly the respective roles of the two Commissions, especially as regards casework. It is envisaged that other such Memoranda will in due course be agreed with the Assembly Ombudsman and the Police Ombudsman.

- We have established a register of barristers to record their level of knowledge and experience in international human rights law.

Part Three: The Commission's Report on Its Effectiveness

On 28 February 2001 the Commission submitted a report to the Secretary of State for Northern Ireland, under section 69(2) of the Northern Ireland Act 1998, on the extent to which it felt that its powers were adequate and effective. Included here are an edited version of the introductory chapter of that report, together with the 25 recommendations it makes. The Commission is currently awaiting a response form the Government to the

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report.

Introduction

Section 69(2) of the Northern Ireland Act 1998 provides that the Northern Ireland Human Rights Commission must, before the end of the period of two years beginning with the commencement of the section, make to the Secretary of State such recommendations as it thinks fit for improving:

(a) the Commission's effectiveness,
(b) the adequacy and effectiveness of the functions conferred on the Commission by sections 68 to 72 of the Act (and Schedule 7), and
(c) the adequacy and effectiveness of the provisions relating to the Commission in sections 68 to 72 (and Schedule 7).

Since most of section 69 commenced on 1 March 1999, the Commission resolved to submit its recommendations to the Secretary of State by 28 February 2001.

In compiling its recommendations the Commission was particularly conscious of what was said by the Minister of State, Lord Williams of Mostyn, during the House of Lords

Lord Williams made it absolutely plain that the Government had not closed its mind on the issue of greater powers for the Commission; indeed he stated that the Government was sympathetic to the arguments advanced by the peers who had suggested amendments. Finally, Lord Williams said that "if the Commission reported that it had been frustrated in carrying out its work, we believe that that would offer a powerful case for legislation to deal with the absence of the powers" (*Hansard*, 21 October 1998; vol. 593; col. 1543).

A few weeks later the same Minister of State reiterated that "it is a prudent approach to let the Commission develop its work, carry out its inquiries and investigations, and if it comes to the conclusion that its powers and functions are not up to the work it is required to do, it would be able - a certain amount of time having passed - to make a full report on what it needed to carry out its functions" (*Hansard*, 10 November 1998; vol. 594; col. 711).

The Commission has also borne in mind the words of the former Secretary of State for Northern Ireland, Rt Hon Peter Mandelson MP, when he said at an international conference on *Democracy, Equality and Human Rights* in Belfast on 8 May 2000 that Northern Ireland "is now transforming itself into a world leader in the protection and promotion of human rights". He referred to the new Northern Ireland Human Rights Commission as "potentially a radical and ground breaking body, the depth and weight of whose work I hope will grow. It is one of the key pillars of Northern Ireland's rights culture".

Conscious of the importance of the present report, the Commission held several internal meetings to discuss its content. It also hosted a meeting, to which approximately 60 persons were invited, at which the Commission's provisional recommendations were discussed. The Special Adviser on National Human Rights Institutions to the UN High Commissioner on Human Rights, Mr Brian Burdekin, attended this meeting. The report also reflects what many people have said to the Commission during its first two years of existence. By way of a supplement to the report the Commission also intends in the near future to engage independent external consultants to gather further information about the Commission's effectiveness from persons and organisations who have experience of the Commission's activities during the past two years. This will add to survey data collected by the Commission in the summer of 1999 on support for a Bill of Rights.

We arrive at the recommendations in our report by first of all examining the Commission's need to be independent and adequately resourced and then by considering in turn the various functions already conferred upon the Commission by section 69 of the Northern Ireland Act 1998. We outline in relation to each of these functions what we think we have been able to achieve and what, if any, obstacles we have encountered in seeking to exercise them.

We think that all of the report's recommendations are important, but if we were required to highlight the three which concern us most we would have to mention Recommendation 5 (sufficient resources), Recommendation 15 (intervention in cases as a third party) and

Recommendation 24 (compelling the production of information). Implementation of those key recommendations would, we believe, enhance enormously the effectiveness of the Commission and allow it to comply in almost every respect with the UN's Principles in this context.

We pay particular attention in the report, as required by section 69(2)(c) of the 1998 Act, to the wording of the existing legislation in this context. In view of a restrictive ruling by the Lord Chief Justice on 8 December 2000 concerning one of our functions, some of our recommendations are included in order that that judicial doubt about what duties and powers the Commission does or does not have can be very largely eliminated. We would otherwise not have been so specific on some points, preferring to rely, for example, on our existing powers to promote awareness and understanding as a legislative underpinning for the work we do on reports for UN and other regional human rights bodies.

The Commission's Recommendations

The Commission's independence

1. In section 68(3) of the Northern Ireland Act 1998, the following underlined words should be inserted: "In making appointments under this section, the Secretary of State shall establish an independent selection process, complying with the requirements of section 75 of this Act and of the Principles Relating to the Status of National Institutions, approved by the General Assembly of the United Nations in Resolution 48/134 of 1993, and as far as practicable secure that the Commissioners, as a group, are representative of the community in Northern Ireland".

2. A new section 68(3A) should be inserted into the Northern Ireland Act 1998 which reads: "Each member of the Commission shall serve impartially and independently and shall exercise or perform his or her powers, duties and functions in good faith and without fear, favour, bias or prejudice and subject only to the law".

3. Paragraph 4(1) of Schedule 7 to the Northern Ireland Act 1998 ["The Commission may employ staff subject to the approval of the Secretary of State as to numbers and as to remuneration and other terms and conditions of employment"] should be deleted.

4. A new paragraph 12 should be inserted into Schedule 7 to the Northern Ireland Act 1998 which reads: "The Crown shall enter into a Memorandum of Understanding with the Commission in respect of all relevant matters to ensure that the Commission's status as an independent human rights commission as set out in the Principles Relating to the Status of National Institutions, approved by the General Assembly of the United Nations in Resolution 48/134 of 1993, is fully guaranteed".

The Commission's resources

5. A new section 68(3B) should be inserted into the Northern Ireland Act 1998 which reads: "The Commission shall be provided with sufficient resources to ensure that it can carry out each of its functions effectively".

6. A new paragraph 6A should be inserted into Schedule 7 to the Northern Ireland Act 1998 which reads: "Subject to the duties imposed by section 68(3A) [impartiality and independence of Commissioners], and in order to further its activities for the promotion and protection of human rights in Northern Ireland, the Commission may from time to time apply for or accept grants from lawfully constituted bodies or raise funds through the provision of services or other lawful activities."

7. A new paragraph 2(2A) should be inserted into Schedule 7 to the Northern Ireland Act 1998 which reads: "The Chief Commissioner and two of the other Commissioners shall be appointed on a full-time basis". (The Commission does not, however, wish this recommendation to be implemented unless the necessary associated resources are made available to it for the payment of two extra full-time Commissioners.)

The Commission's reviewing functions

8. In section 69(1) of the Northern Ireland Act 1998, the following underlined word should be inserted: "The Commission shall keep under review the adequacy and effectiveness in Northern Ireland of law, <u>policy</u> and practice relating to the protection of human rights".

9. A new section 69(1A) should be inserted into the Northern Ireland Act 1998 which reads: "Without prejudice to subsection (1) the Commission shall keep under review the implementation in Northern Ireland of the Human Rights Act 1998 and of the Bill of Rights for Northern Ireland." (The Commission does not, however, wish this recommendation to be implemented unless the necessary associated resources are made available to it for the performance of this duty.)

10. A new section 69(2A) should be inserted into the Northern Ireland Act 1998 which reads: "The Commission shall, before the end of the period of three years beginning with the making of the recommendations required by section 69(2), report to the Secretary of State on the extent to which the recommendations made have been implemented, make such further recommendations for improving the Commission's effectiveness as it thinks fit and, for these purposes, obtain the assistance of independent assessors".

The Commission's advisory functions

11. A new section 69(3A) should be inserted into the Northern Ireland Act 1998 which reads: "The Secretary of State and the Executive Committee of the Assembly shall

refer to the Commission all draft laws and policies proposed for Northern Ireland as early as practicable and before they are introduced to Parliament or the Assembly or made available to the general public".

12. A new section 69(3B) should be inserted into the Northern Ireland Act 1998 which reads: "The Commission shall advise the Secretary of State on the desirability of the United Kingdom becoming bound by international instruments on human rights".

13. A new section 69(4A) should be inserted into the Northern Ireland Act 1998 which reads: "The Secretary of State and the Executive Committee of the Assembly shall have due regard to the Commission's advice".

The Commission's casework functions

14. In section 69(5) of the Northern Ireland Act 1998 a new paragraph (c) should be inserted which reads: "[The Commission may] give information and advice involving law, policy or practice relating to the protection of human rights".

15. In section 69(5) of the Northern Ireland Act 1998 a new paragraph (d) should be inserted which reads "[The Commission may] intervene as a third party on any matter or in any proceedings in any court, tribunal, inquest, hearing or adjudicative process involving law, policy or practice relating to the promotion or protection of human rights in Northern Ireland and the persons conducting the court, tribunal, inquest, hearing or adjudicative process shall have due regard to the points made by the Commission in its intervention".

16. In section 69(5) of the Northern Ireland Act 1998 a new paragraph (e) should be inserted which reads "[The Commission may] appear as *amicus curiae* on any matter or in any proceedings in any court, tribunal, inquest, hearing or adjudicative process involving law, policy or practice relating to the promotion or protection of human rights in Northern Ireland and the persons conducting the court, tribunal, inquest, hearing or adjudicative process shall have due regard to the points made by the Commission as *amicus curiae*".

17. In section 71(1) of the Northern Ireland Act 1998, the reference to section 69(5)(b) of the same Act should be deleted – so that the Commission will then have the power to bring proceedings in its own name and when doing so rely on Convention rights.

The Commission's promotional functions

18. A new section 69(6A) should be inserted into the Northern Ireland Act 1998 which reads: "The Commission may express an opinion, as far as the position in Northern Ireland is concerned, on the reports which the United Kingdom is required to submit to United Nations bodies and committees, and to regional institutions, pursuant to its treaty obligations".

19. A new section 69(6B) should be inserted into the Northern Ireland Act 1998 which reads: "The Commission may consult with, and attend the meetings of, such national or international bodies or agencies having a knowledge or expertise in the field of human rights as it thinks fit".

20. A new section 69(6C) should be inserted into the Northern Ireland Act 1998 which reads: "Statutory authorities with responsibility for education or training in Northern Ireland shall consult with the Commission when determining or reviewing the human rights aspects of the content or delivery of education (including the Northern Ireland Curriculum) or training".

21. A new section 69(6D) should be inserted into the Northern Ireland Act 1998 which reads: "The Commission shall monitor the content and delivery of the Northern Ireland Curriculum from the point of view of the promotion and protection of human rights". (The Commission does not, however, wish this recommendation to be implemented unless the necessary associated resources are made available to it for the performance of this duty.)

The Commission's investigative functions

22. A new section 69(8A) should be inserted into the Northern Ireland Act 1998 which reads: "The Commission shall, in order to assure itself that human rights are being protected or to investigate any alleged violation of human rights, have access to all places of detention in Northern Ireland and to all places where persons are in the care of a public authority or of a person or body exercising functions of a public nature".

23. A new section 69(8B) should be inserted into the Northern Ireland Act 1998 which reads: "For the purposes of conducting investigations under section 69(8), the Commission may apply *ex parte* to a magistrate for a warrant to authorise the Commission,, subject to strict safeguards protecting the Convention rights of all persons in those premises, (a) to enter and search premises if it reasonably believes that a human rights violation has occurred or is occurring there and (b) to remove any article discovered in those premises if it reasonably believes that the article provides evidence of a violation of human rights".

24. A new section 69(8C) should be inserted into the Northern Ireland Act 1998 which reads: "For the purposes of conducting investigations under section 69(8), the Commission may require a person whom the Commission reasonably believes to be in possession or control of any information, document or thing that is relevant to an investigation being conducted by the Commission, (a) to furnish that information, document or thing to the Commission and (b), where appropriate, to attend before the Commission to answer fully and truthfully any question put to him or her by the Commission (other than a question the answer to which might incriminate the person) and (c), if so requested by the Commission, to sign a declaration of the truth of his or her answers to any questions put to him or her under paragraph (b)".

The Commission's incidental functions

25. A new section 69(10A) should be inserted into the Northern Ireland Act 1998 which reads: "The Commission may do anything incidental or conducive to the performance of the functions set out in this section".

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