



Winner of the 1998 Council of Europe Human Rights Prize

COMMISSION ON SECURITY AND COOPERATION IN
EUROPE

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Committee on the Administration of Justice (CAJ)

16th March 2004

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Thank you for the invitation to testify today. The Committee on the Administration of Justice (CAJ) is an independent human rights organisation which draws its membership from across the different communities in Northern Ireland. CAJ works on behalf of people from all sections of the community and takes no position on the constitutional status of Northern Ireland. In 1998, CAJ was awarded the prestigious Council of Europe human rights prize by the 41 member states of the Council of Europe in recognition of its efforts to place human rights at the heart of the peace process. One of the reasons for the success of our work on the peace process has been the continued involvement of the United States. In this context we would like to thank the honourable members of this Commission for this opportunity to raise these important issues and in particular the Co-Chairman Chris Smith for his work in this area. Co-Chairman Smith will of course know that I have testified before Congress before and on one occasion had the honour of doing so with my colleague Rosemary Nelson. It is salutary to note that the fifth anniversary of her death occurred yesterday.

These hearings have of course been convened to consider the progress or lack of progress in implementing the various police reforms in Northern Ireland. Before addressing that specific topic, however, the Committee on the Administration of Justice (CAJ) would like, with your permission, to set the question of policing change against the wider context of human rights measures in the wake of the Belfast or Good Friday Agreement.

Just over a year ago, CAJ and a number of other human rights non-governmental organisations (NGOs) active on Northern Ireland, some of whom are represented today on this panel, issued a short statement calling on governments, political parties and broader civil society to commit themselves to developing concrete benchmarks against which progress in the advancement of human rights and equality could be delivered. I would be grateful to have that statement placed on the record.

In particular, the NGOs called for the necessary political commitment to developing, legislating for, and subsequently enforcing a strong and inclusive Bill of Rights for Northern Ireland. Unfortunately, a full year on, little progress can be reported. The NI Human Rights Commission has not yet, two and a half years after publishing its draft of a Bill of Rights, produced another version although we believe that is imminent. We believe that the government has not given this matter sufficient priority. Given the enormous importance accorded in the US to its written constitution and its codified Bill of Rights, it would be helpful if this Commission were to lend its support to current efforts to establish a round table process involving political parties and civil society in the elaboration of a document which would protect the rights of all.

Elsewhere in the statement, the NGOs allude to the failures to date in seriously addressing the Agreement's proposals with regard to tackling socio-economic inequalities, long-term unemployment, persistent differentials in employment, and sectarian and other divisions. We argue that human rights language, concepts and principles have much to offer in this regard. Human rights abuses fed and fuelled the conflict, and – if not addressed in a fundamental and consistent way – will fuel the terrible legacy of conflict. Cycles of deprivation, alienation and social exclusion need to be broken if we are to develop a truly peaceful and just society. The government has been given the tools to break this cycle by the Agreement. In our view they have shown themselves resistant to use them. They need to start.

The area of criminal justice and emergency laws is of course one that has been a constant source of concern both in Northern Ireland and indeed further afield. Significant changes were promised by the Criminal Justice Review, which arose from the Agreement, but again change has been slow in coming. We will not see the establishment of the new Public Prosecution Service until at the end of 2005, five and a half years after that recommendation was made. Like the debacle over Patten we have had two major pieces of legislation purporting to implement the recommendations

of the Review, neither of which completely does so. It is difficult to avoid the conclusion that there is institutional resistance to many of the changes being proposed. In addition, we now have permanent emergency legislation at the very time when our emergency has ended. Ten years after the first cease-fires non-jury Diplock courts are still operating in Northern Ireland.

Nor can we seriously move ahead without addressing the past. Mechanisms need to be established to ensure accountability for past human rights abuses. The debate about the past needs to be led by the two governments and involve wider society. It should not be used to undermine existing initiatives such as the Cory proposals which my colleague Jane Winter is addressing today. We were recently concerned at proposals made by the Chair and Vice Chair of the Policing Board, purportedly in their personal capacity, which run directly counter to Judge Cory's proposals that inquiries be held into the murders of Pat Finucane, Robert Hamill, Rosemary Nelson and Billy Wright. We would be grateful if a press statement issued by CAJ on this matter could be placed on the record.

CAJ believe that whilst political accommodation may be difficult at this time, advances can be made on the human rights front. The focus should move from the problems that have arisen in the various institutions established by the Agreement (including the failures of the NI Human Rights Commission and the Equality Commission), to a focus on what change is being delivered and should be delivered. To measure such change, we need to develop concrete benchmarks, and that is the work on which human rights NGOs are currently engaged.

Now I will turn to the specific question of policing. Our focus in the policing discussion is not on the new institutions per se, but whether they are delivering the change promised in the Agreement and subsequently in the Patten Commission report. That, we believe, will also be the test

applied by citizens on the ground in Northern Ireland as to whether the new policing system is working.

There have been several advances in the policing arena, including the establishment of the Office of the Police Ombudsman for Northern Ireland; the transformation of the Royal Ulster Constabulary into the Police Service of Northern Ireland; the introduction of measures to increase Catholic representation; and the creation of the Northern Ireland Policing Board and the local District Policing Partnerships. While there have been improvements in the quality of policing, CAJ has continued to hear reports of heavy-handed raids; the protection of informers involved in crime; the recruitment of children as police informers; the unnecessary and disproportionate practice of stopping and questioning people on the street; and an intimidating approach to public order policing, which tends to fuel rather than ease tensions.

In addition there are also continuing problems relating to the failure to implement important aspects of the Patten report. Patten received many submissions describing the RUC Special Branch as a “force within a force.” He also said this view was shared by a number of police officers. The Patten Commission stated that this description, whether real or perceived, is not healthy and recommended several changes, including bringing Special Branch together with Crime Branch; reducing the number of officers engaged in security work; and requiring that district commanders are well briefed on security activities and fully consulted before security operations are undertaken in their districts. In 2001, the Police Ombudsman published its report into the 1998 Omagh bomb, which killed 29 people. The Ombudsman’s report found that Special Branch did not take sufficient action in response to intelligence received prior to the bombing nor pass vital information to the team investigating the crime after it took place. As a result, the Policing Board called for reports by Her Majesty’s Inspector of Constabulary Mr. Crompton on the review of Special Branch and Her Majesty’s Inspector of Constabulary Mr. Blakey on the review of murder inquiries. Despite the Board receiving these

documents in November 2002 and June 2003, as well as additional recommendations related to Special Branch made by Sir John Stevens in April 2003, it is unclear what the current state of implementation of these recommendations is. The Oversight Commissioner stated in his last report, in December 2003, that the Patten Commission recommendations relating to Special Branch, which were made some four years earlier, have not been implemented and progress in the area has been slow. This is not simply an academic issue. Special Branch has been closely involved in a number of high-profile raids and arrests which have not, at least to date, led to convictions and which are seen by some to be politically motivated. We respectfully request that this Commission write to the Chief Constable and the Policing Board to inquire what progress has been made in this area so that the public knows whether the “force within a force” is being dismantled.

A related area of great concern to CAJ is the independence of the Forensic Science Agency. These concerns result from press reports describing the testimony of a forensic scientist who claimed that senior police officers had tried to interfere with the agency’s work for years, by requesting the agency to test evidence that may have been contaminated. An Ulster Television Spotlight programme, which was aired on the 23rd of February 2004, alleged that police officers investigating alleged dissident (i.e. anti peace process) Irish Republican activity asked a forensic scientist to delete and revise part of his report. The programme stated that the deleted information implicated another person, who it was alleged is an informer, and that an official from the office of the Director of Public Prosecutions wanted this information removed from the file and therefore made inaccessible to the defence team. The forensic scientist also described how British soldiers had opened a bag of clothing from the suspects and rubbed a gloved hand over them in an apparent attempt to “plant” forensic evidence. The extent to which these matters are aggressively dealt with by the new institutions in the policing and criminal justice fields will be a test of how far things have really changed in Northern Ireland. I would be

grateful if a transcript of the programme could be placed on the record of the Commission.

Another issue of concern is the manner in which the PSNI deals with sectarianism. In its 1999-2000 report, Her Majesty's Inspectorate of Constabulary reiterated the need for the PSNI to monitor sectarian incidents. The PSNI has just recently, after five years, begun consulting on a definition of sectarian and is not currently monitoring this type of hate crime. It is also not clear how the PSNI is attempting to combat sectarianism within the service. A neutral working environment policy has been introduced, but the Human Rights Commission and the Oversight Commissioner have criticised the lack of progress in demonstrating adequate human rights and anti-sectarianism training for PSNI recruits. We respectfully call on this Commission to help us ensure that the quality of the training is as state of the art as the police college itself will be.

Regarding the Policing Board, we believe it is much more accountable and powerful than the previous Police Authority and the fact that it is able to act and take decisions despite the diversity of opinions regarding policing on the Board, is commendable. The Code of Ethics for the Police Service and the Board's plan for monitoring the human rights compliance of the PSNI are two major accomplishments. We do, however, have serious concerns relating to the Board's transparency, level of engagement with statutory bodies, human rights and community organisations and the public, and its ability to bring about fundamental change within the PSNI. In our opinion, the Board does not adequately cooperate with, or seek the opinions of, the various statutory bodies and human rights groups, community organisations and the public. Likewise, important decisions, such as the Board's endorsement of the PSNI's acquisition of CS Spray, continue to be made in private without the public knowing that the decision was even taking place. There is good work that the Board is performing, but if the public is not aware of such work, they will not be confident that the Board is effectively holding the police to account. CAJ has recently written a commentary on the work of the Policing Board, and

I would like to request that this publication be placed on the record. I referred above to the intervention by the Chair and Vice Chair of the Policing Board in the discussion about how to deal with the past in Northern Ireland. It seemed to us that this intervention was designed to undermine the Cory process. Such interventions, even and perhaps especially when they are purportedly in the personal capacity of the individuals involved, not only damage the discussion around truth but also undermine the credibility of the Board.

In relation to the Office of the Police Ombudsman, CAJ also warmly welcomes the creation of this office, which has shown its ability to assert its independence and seriously criticise the Police Service. The Office of the Police Ombudsman is a massive improvement over the previous complaints body, but again there are some areas of concern. One is the power of the Police Ombudsman to investigate operational matters, policy and practice. The 2003 Police Act gave the Police Ombudsman additional powers in this area. However, it is still not entirely clear what operational issues the Police Ombudsman will investigate and which will fall outside her remit. Operational decisions are of such magnitude and have such impact on police-community relations that they must be subjected to independent scrutiny. If the Police Ombudsman regards some issues as outside her remit then we need to be clear whose responsibility it is to investigate those matters. As the Patten Commission stated, the Chief Constable has operational responsibility to take decisions without interference, but it should “never be the case” that such decisions be exempted from inquiry or review after the event by anyone.

It is not clear whether the Office of the Police Ombudsman has been able to substantiate more complaints than its predecessor or whether the problems highlighted in complaints have been fed back into the Police Service in such a way as to effect changes in police behaviour on the ground. According to the Police Ombudsman’s latest annual report, 1% of the complaints concluded during the year were forwarded to the Police Service for disciplinary hearings and 5% were forwarded to the Director of

Public Prosecutions. This 5% figure seems low considering that it includes cases in which the Police Ombudsman believes prosecution is and is not warranted. CAJ has also received reports of cases in which the Police Ombudsman has recommended the prosecution of police officers but the Director of Public Prosecutions has refused to bring the charges. If this is a particular problem, it may be that the good work of the Ombudsman is being stymied by the resistance of another institution.

CAJ has also been concerned over the years by the continued use of plastic bullets. While it is the case that the number of occasions on which such bullets have been fired has reduced significantly in recent years, we are concerned that the weapon continues to be deployed. Some commentators have attributed the reduction in use of the weapon by the police to the investigation of the use of such weapons by the Police Ombudsman. We are concerned however that the use of the weapon by the military in Northern Ireland is not subject to investigation by the Police Ombudsman. This situation needs to be rectified.

The human rights situation in Northern Ireland has improved dramatically over the course of the last few years. Human rights discourse is everywhere and employed by everyone. Expectations have been raised that change is on the way. If it is not delivered, these expectations will be dashed. To borrow a phrase from the US, government and its agencies in Northern Ireland are certainly “talking the talk” of human rights but they must now “walk the walk”.