



'Human Rights: The Agenda for Change'

**Human Rights,
The Northern Ireland Conflict and
The Peace Process**

Includes proceedings of a conference held in Belfast on 11th & 12th March 1995

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The Peace Process**

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HUMAN RIGHTS, THE NORTHERN IRELAND CONFLICT AND THE PEACE PROCESS

Conference held in Belfast 11-12 March 1995

Preface

Human rights have been at the very heart of the conflict in Northern Ireland. They must therefore be at the heart of the peace process. Throughout the history of Northern Ireland, the law has failed to guarantee equal and adequate protection of the rights and liberties of all citizens. The past has taught us that the failure to safeguard civil liberties is a mistake with tragic consequences. Accordingly, the manner in which human rights are protected and safeguarded in future will largely determine the stability and nature of the peace.

Work to protect and promote human rights has sometimes been characterised as divisive. The term "human rights" is used traditionally to denote the rights that the individual holds in respect to the otherwise potentially unlimited powers of the state. In a very polarised situation like Northern Ireland, criticism and questioning of the state and its agents was often considered unacceptable. Indeed, it is a common experience around the world that, in societies in conflict, human rights are often portrayed as an issue for the "opposition". Those working to defend human rights are accused of naivete at best. This is a perception which is very difficult to challenge in a period of intense conflict.

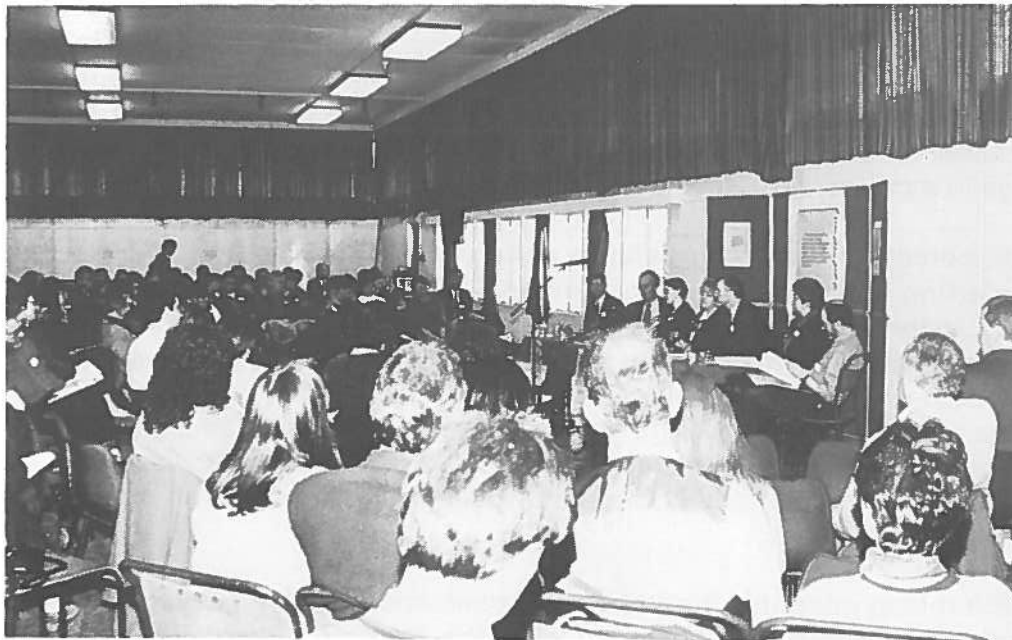
However, perceptions can alter after a period of political change and such a change is now starting to occur in Northern Ireland. Civil libertarians have always thought that their concerns were of relevance to all within the community, but this understanding was not necessarily shared. Now it is to be hoped that more open and public debate can allow people to recognise the universal significance of a respect for human rights. The struggle for human rights is of concern to all those living here: it is equally valid to unionists and nationalists, to Catholics and Protestants, to women and men, to the able-bodied and disabled, to those of all ethnic origins, to rural and to city dwellers.

It was with this in mind that a number of organisations active for years in the defence of human rights came together soon after the Downing Street Declaration and the ceasefires to discuss how the changed political situation could be built upon to bring about long term changes in the human rights situation. The five groups involved were the Committee on the Administration of Justice, the Irish and Scottish Councils for Civil Liberties, Liberty and British Irish Rights Watch. They produced a Declaration setting out both a short term and a long term agenda for change. The Declaration on Human Rights, the Northern Ireland Conflict and the Peace Process (see pages 3-4) consists of two types of measures: some long on the agenda of the

different civil liberties groups and put forward for immediate action; other issues which have been little debated and, in the new circumstances, require extensive public discussion. The five organisations also agreed jointly to convene a specialist seminar and a major public conference in Belfast to stimulate wider debate on these issues.

This report incorporates a series of speeches made at the conference, and the address by Justice McLachlin to the seminar. Most particularly, it includes a programme entitled: "Human Rights: The Agenda for Change" (see page 5) which has been evolved by the five civil liberties groups in response to these public debates. The Agenda seeks to convey the key issues which arose in the speeches and in the discussions which followed.

Everyone interested in securing peace in Northern Ireland should study this agenda for change closely. The opening phrase of the Universal Declaration of Human Rights - which was drawn up with a view to preventing any repetition of the genocide of World War II - proclaims that the "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world". So too in Northern Ireland: long lasting peace will only be secured if our society, our legal system and our political processes all affirm and guarantee these guiding principles.



Panel consisting of representatives of Liberty, CAJ, ICCL, British Irish Rights Watch and SCCL with keynote speaker John Shattuck, Assistant Secretary of State at the public conference held on 11th-12th March 1995 at Stranmillis College, Belfast.

Declaration on Human Rights, the Northern Ireland Conflict, and the Peace Process

(December 1994)

**A declaration adopted by the Committee on the
Administration of Justice, Irish Council for Civil Liberties,
Liberty, Scottish Council for Civil Liberties
and British Irish Rights Watch.**

Firm and effective legal protection of human rights and civil liberties, and the creation of a culture in which everyone's human rights are respected, are crucial if the peace process is to succeed.

For too long human rights abuses have been regarded as normal in Northern Ireland and increasingly in the neighbouring jurisdictions as well. The failure of the legal and political systems to address such abuses has left its mark on the conflict, creating a climate of abuse, oppression and fear. At this historic moment, there is a unique opportunity to put in place new structures which will defend and promote human rights.

The effects of the conflict have not been confined to Northern Ireland but have also led to the introduction of draconian legislation and practices in the Republic of Ireland, England, Scotland and Wales. In order to dismantle oppressive laws and practices, the following minimum changes are urgently required in all these jurisdictions:

- emergency legislation must be repealed;
- special courts must be abolished;
- the right to silence must be restored;
- political censorship must be ended for good and the legislation which allowed it repealed;
- all forms of discrimination must end and comprehensive anti-discrimination legislation must be introduced;
- military personnel should play no further part in policing and all forms of covert operations must be ended;
- Castlereagh and other holding centres for persons detained under emergency legislation must be closed and extended detention periods ended;
- an urgent review must be conducted in partnership with local communities into all security barriers and surveillance installations;
- there must be a planned review of the sentences of all those imprisoned under emergency legislation.

All those involved in negotiating a new political framework for Northern Ireland must recognise the central role of human rights and civil liberties if there is to be a just and lasting peace in the longer term. New systems of justice are required which will address the injustices of the past and ensure rights for the future.

In particular:

- A broadly-based and fully representative Commission on Policing must be instituted to examine the nature, structure and methods of policing in Northern Ireland with a view to producing a model of policing which is representative of and has the confidence of all sections of the community and which is impartial, just and fully accountable.
- A fully independent system for investigating complaints against the police must be established.
- A Bill of Rights must be enacted which protects the rights and liberties of everyone.
- The criminal justice system in Northern Ireland should be thoroughly and independently reviewed and, where necessary, changed.
- An independent Commission of Investigation must be instituted in order to investigate human rights abuses arising from the emergency legislation.
- Human rights education and awareness must become an integral part of every school curriculum and training programme.

Conclusion

Respect for human rights and civil liberties must be made an integral part of any political settlement and the political process must include all the communities in Northern Ireland. Everyone there is entitled to be engaged and involved in the peace process and to have his or her rights guaranteed as part of any new political settlement.

Just as the conflict in Northern Ireland has led to emergency laws and assaults on democratic rights and freedoms in all the jurisdictions in these islands, so the opportunity must now be taken not just to dismantle this apparatus of repression, but to put in place safeguards which will prevent any similar erosion of human rights and civil liberties in any of these jurisdictions in the future. To that end, we will work to ensure the adherence of the two governments to all relevant international human rights conventions and standards.

Human rights belong to everyone, being universal and inalienable. Our societies, our legal systems, and our political processes should affirm and guarantee that guiding principle.

December 1994

Human Rights : The Agenda for Change

The Declaration (see previous pages) was a first response by five of the major civil liberties groups in Ireland and Britain to the changed political environment. Subsequently, a specialist seminar and a major public conference were held with a view to exploring in more depth a human rights agenda for change: a detailed array of issues and action suggestions emerged from this wider consultation.

Further to these consultations, the United Nations Human Rights Committee made a number of important recommendations in July 1995 in response to the UK government's report, and extracts from the Committee's findings and its recommendations have been drawn upon as appropriate in the following text.

Introduction

Regardless of any political, religious, economic and cultural differences, all human beings are entitled to certain basic rights. The international community has drawn up minimum standards of behaviour for governments and defined certain rights as inalienable, given the inherent dignity of the human being. Governments themselves have agreed that this independent body of principles should guide their behaviour both in times of peace and war. In the Northern Ireland context, these rights are no less fundamental and important: the failure of the law to guarantee equal and adequate protection of rights and liberties to all has been a significant element in the continuing conflict.

In face of the suffering experienced by all the communities here, it is morally unacceptable for human rights to be used as bargaining counters to reach some "political settlement". Nor is it acceptable for human rights to be put on the "back burner" until constitutional and other political questions have been addressed and resolved. Human rights need to be protected, regardless of the political party in power, and regardless of the constitutional and political arrangements, in place or envisaged for the future. Accordingly, human rights protection must be at the basis of any political settlement or structure. Protection for human rights is not an optional extra but a pre-requisite for a lasting peace. The manner in which human rights are to be protected and safeguarded is crucial in shaping the peace process and determining the success of that process.

Respect for human rights must be the cornerstone of any credible peace process if we are to move towards a more pluralist and more just society. Only by building any settlement on the foundation of human rights can we hope to build a new and peaceful society, where all are respected and where equality of treatment is guaranteed.

The following Agenda for Change has five elements:

- constitutional guarantees
- legislative measures
- institutional changes
- dealing with the legacy of the past
- building for the future

Agenda for Change: Constitutional guarantees

It is vital that formal constitutional guarantees be developed to protect basic human rights against any future abuse. Many countries around the world (including countries with legal and parliamentary traditions similar to those of Northern Ireland) have found that the adoption of a Bill of Rights can make a crucial contribution to the protection and promotion of human rights. Experience there has shown that:

- . extensive public debate around a Bill of Rights is crucial to its public acceptance. Such a process encourages groups to feel "ownership" of the project;
- . a Bill of Rights can make fundamental changes in society by sensitising people generally to issues of rights. For example, the resultant public scrutiny of the demeanour of the courts can ensure that the justice system becomes more representative of society as a whole;
- . fears that the courts may compete with, or seek to thwart the will of parliament are not borne out. In practice, while being independent, the courts work in tandem with the legislators to ensure that the latter frame any new legislation in properly constitutional terms and in such a way as to respect human rights;
- . the existence of a Bill of Rights, while ensuring that police interrogations are better conducted, has not restricted their investigative efficacy. In Canada, statistics suggest that serious crime has diminished since passage of their Charter of Rights and Freedoms;
- . a Bill of Rights gives a voice to individuals and minorities and has led to a broad acceptance throughout society of the fact that the individual and the minority have certain fundamental rights and therefore certain expectations of society so that the people who govern cannot overstep their powers.

Based on these positive experiences elsewhere, the United Nations Human Rights Committee report in July 1995 concluded with regard to the UK that - "The Committee is concerned by ... the absence of a constitutional Bill of Rights."

Action Programme

1. A Bill of Rights should be enacted. Such a measure at the present time would be an important step in the peace process since it is not only a good thing in itself, but would also ease tensions and give confidence to both communities. There should be a strong international aspect in the drafting of a Bill of Rights.
2. A broad public debate about the detailed text of a Bill of Rights, of the principles involved, and about the legal machinery necessary to operate it is required.

Agenda for Change: Legislative Measures

A Bill of Rights would create a positive framework of rights against which new legislation can be measured. There are, however, a number of legislative changes which need to be introduced immediately. In particular, the whole panoply of emergency law must be challenged in the new situation.

A series of legal measures were instituted in the context of the conflict which severely restrict people's basic rights -

- the introduction of a state of emergency
- prolonged police detention powers
- a broadcasting ban (no longer in force)
- limitations to the right to silence
- exclusion orders
- the oath of non-violence for elected officials
- powers of internment (not currently exercised)
- non-jury courts
- lower standards of admissibility for confession evidence
- extensive powers of arrest, search and seizure
- restrictions on access to legal advice

None of these measures is normally acceptable under international law - the objective framework within which states must operate if they are to meet minimum standards of respect for human rights.

Having to accommodate political, legal, cultural and religious traditions of very varied kinds, international law sets minimum standards which can achieve broad agreement. International law does however also recognise that while some rights are absolute and can never be abrogated (for example a state may never torture its citizens), other principles may on occasion need to be temporarily restricted for the good of society as a whole. Explicit provision is made for the fact that there may be periods of grave crisis or civil unrest when certain important rights have to be temporarily suspended. In recognition of the seriousness of such a step, states have to indicate formally that they wish to derogate from their duties under international law. The UK government has thus argued that the civil conflict in Northern Ireland required the introduction of legislation (such as the Emergency Provisions Act and the Prevention of Terrorism Act) which would not normally be acceptable in a democratic state.

Civil liberties organisations in Britain and Ireland have consistently argued that such emergency legislation was never justified in the Northern Ireland situation. They argued that other legislation available to the authorities was sufficient to deal with the special circumstances of the conflict while providing better safeguards for all those caught up in the political violence (whether police, army, paramilitaries or civilians).

As each week of the ceasefire passes, the government's case becomes ever less tenable. There is no longer any "threat to the nation" which might in any sense justify depriving citizens of their basic liberties.

The Irish government has also used emergency legislation throughout the conflict, and indeed strengthened it in 1972. Non-jury trials have been used for allegedly politically motivated offences; extended periods of detention have been used; the opinion of a police officer has been made evidence of membership of an unlawful organisation; it has been made an offence not to give an account of one's movements; a very severe broadcasting ban was in force for many years and the legislation permitting it is still in force.

The public debates on human rights referred to earlier indicated general support for the following principles:

- . emergency laws have no justification whatsoever with the end of the state of emergency;
- . such laws are subject to challenge in international law since the onus of proof must lie with those arguing to retain them;
- . there is no legal or moral justification for keeping the laws on the statute book "just in case".

The United Nations Human Rights Committee said in its July 1995 report with reference to the UK government: *"It is the view of the Committee that the powers under the provisions permitting infringements of civil liberties such as extended periods of detention without charge or access to legal advisors, entry into private property without judicial warrant, imposition of exclusion orders within the United Kingdom etc. are excessive."* Accordingly, one of the recommendations of the Committee was that: *"in the context of the elaboration of a peace settlement...further concrete steps be taken to dismantle the apparatus of laws infringing civil liberties which were designed for periods of emergency."* But, instead of repealing the legislation, the government has announced a review of its operation. Since it is not anticipated that the review will be completed before the next parliamentary debate on the legislation's renewal, this must be considered a very unsatisfactory response to the UN report.

Action Programme

3. All emergency legislation should be repealed. Emergency legislation should be taken to include all legislation introduced or used to deal with the emergency (i.e. for the UK government this would mean not just the Emergency Provisions Act, but also the Prevention of Terrorism Act and the Criminal Evidence (NI) Order etc. and for the Irish government the Offences Against the State Acts).

4. A thorough review of the criminal justice system is required. This review would involve a broad public debate on the aims of a criminal justice system for Northern Ireland. Such a debate could look particularly at issues such as - legislative reform, the nature and training of the judiciary, sentencing policy, and the kind of police training and changes to police structure and accountability which would allow representative, acceptable and accountable policing within a renewed justice system. It should draw extensively on international expertise.

Agenda for Change: Institutional changes

The Royal Ulster Constabulary (RUC), the legal profession and the judiciary in Northern Ireland have all been inevitably tarnished by the years of conflict, civil unrest and the attacks on civil liberties. With the changed political situation (and the consequent necessity under international law to dismantle emergency legislation), the introduction of a Bill of Rights, and proposals for major legislative reform to protect and promote human rights, a review of the work of the institutions responsible for operating a changed criminal justice system is clearly required.

- . Currently the RUC is more than 90% Protestant and male, and practically 100% white. While observers may disagree as to the reasons for this situation, it is clear that the RUC is in no way representative of the diverse community it should serve and consequently there are strong calls for a thorough overhaul of the structure, composition and powers of the police service.
- . Given the extensive powers accorded the police under emergency legislation, and frequent complaints of harassment made against the security forces in general, it is vital to have a rigorous complaints mechanism: this has not been the case.
- . The right to a full and fair defence is a basic tenet of any legal system yet charges of intimidation against defence lawyers have received scant attention.
- . Members of the judiciary have not been as alert as they might have been in preventing and challenging the erosion of human rights protections within the criminal justice system.
- . The legal profession generally receives little if any specific training in human rights standards.

Debates are underway already with regard to the question of POLICING, and the following principles have been frequently highlighted:

- . the government needs to show a genuine commitment to bringing about change in the police service for NI; the RUC also needs not only to recognise the need to change but it should be demanding the right to change. A key problem currently is the apparent unwillingness of the police to recognise any such need;
- . an effective police service needs to be properly representative of the communities it serves, whether in terms of gender, religion, political belief, class, or race;
- . it must be properly responsive and accountable to the society it operates within - this requires that all officers show a commitment to community acceptability and respect for human rights;
- . a philosophy of policing needs to be developed and on the basis of an agreed philosophy, practical issues such as training (especially coherent and sufficient training in human rights principles), should be looked at afresh;

The RUC had to play an abnormal role in the past; now it is in everyone's interests to try and ensure normal policing so that the police service(s) can operate properly throughout the community.

Action Programme

5. A radical series of changes should be made to the policing function in terms of its mission, basic philosophy, powers and composition. The police, reflecting what is a largely law-abiding society, should be unarmed, should be drawn widely from across the community, and should be open to all those committed to the protection of rights.
6. An effective system for dealing with complaints against the police is needed and the commission responsible for this work needs to be completely independent of the police itself and apolitical.
7. A re-think of the role and structure of the Police Authority will be necessitated by changes in the police service.

Changes in the police function are not, however, sufficient. It is particularly important that the **JUDICIARY** is, and is seen to be, above the political fray. International experience seems to suggest that moments of transition can provide a unique opportunity to transform the judiciary by involving it in the process of change.

Action Programme

8. The judiciary should be reformed and retrained to complement the changes introduced to the legal system and to the system of policing. In particular, attention needs to be given to the process of selection, and to the human rights training of the judiciary and of the legal profession in general.

Agenda for Change: Dealing with the legacy of the past

After twenty-five years of violent conflict there are inevitably deep divisions within society. International experience suggests strongly that these divisions should be confronted and that it is counter-productive to ignore the legacy of the past. There are at least four areas that need to be considered:

- *the right to truth:*

The right to truth about past abuses must be secured because truth is the essence of justice and of history; the acknowledgement of the truth is an ethical and political necessity and is a fundamental requirement of any healing process.

There is a key educational element in the search for truth - with people establishing together what human rights violations are, accepting that they occurred, and having those responsible recognise this also. The right to truth must be equal for all; it cannot be selective. However, implicit in the right to truth is the right to change and the need to allow perpetrators of human rights violations on all sides to reform and to be rehabilitated into society.

- *prisoners:*

The question of the release of those prisoners imprisoned as a result of a violent political conflict is one which inevitably arises in the post conflict era and one which may cause great distress to people. At the end of the day, the decision to facilitate early release by both increases in remission for fixed term prisoners, and the more flexible use of release provisions for lifers, will be a political rather than a legal decision. The Irish government has responded to this reality by progressively releasing IRA prisoners.

However, given that many prisoners were convicted in Diplock Courts (with seven day detention, denial of access to lawyers, the infringement upon the right to silence since 1988) all of which cumulatively may well add up to an infringement of their right to fair trial, there is a strong case for reviewing all these cases.

The British government recently acknowledged, at least implicitly, the link between prisoner release and the ongoing peace process by the restoration of 50% remission for fixed term prisoners. The release of Private Clegg after three years of a life sentence has demonstrated the inherent flexibility within the system for lifer release. In any measures with regard to prisoners it is important to emphasise that parity of treatment and fairness must be the watch words.

The government's continued obduracy on the question of prisoner transfer to Northern Ireland or the Irish Republic remains an issue of great concern both from the point of view of the peace process and the rights of the prisoners and their families. Indeed, the government itself has acknowledged that the moral case for transfer in order to alleviate the suffering of the completely innocent prisoners' families is "unanswerable".

- *lethal force:*

Well over 3000 people have died in the bitter conflict. The authorities are under a moral and legal obligation to actively pursue by all legal means the perpetrators of such violent acts. Of these deaths, nearly one tenth, approximately 350, have been caused by the security forces. The authorities are under a similar obligation to investigate these killings since, under international law, they are required to respect the right to life of all those within its jurisdiction, whatever the level of attack on national security. Despite this:

- . the UK law on the use of lethal force by the security forces falls below international standards (in its judgement on the killings in Gibraltar, the European Court of Human Rights said it was "not persuaded that the killing of the three terrorists constituted the use of force which was no more than absolutely necessary" within the meaning of the European Convention);
- . there is much evidence to suggest that security force members have colluded with loyalist paramilitaries in a number of killings;
- . the authorities have failed to publicly investigate cases of excessive and lethal force and have thereby fuelled charges of a shoot-to-kill policy;
- . serious weaknesses in the operation of inquests in Northern Ireland have meant that concerns about security force behaviour have not been resolved and a state of de facto impunity has emerged;
- . 17 people, many of them children, have been killed, often in controversial circumstances, by plastic bullets (a weapon used by the security forces and deployed only in Northern Ireland).

The UN Human Rights Committee noted its concern that "investigations of incidents in which the police or military are allegedly involved, especially incidents that result in death or wounding of persons ... lack sufficient credibility". It urged that confidence in the administration of justice be enhanced by, among other things "resolving outstanding cases".

- . *miscarriages of justice*

A further legacy of the past is the number of outstanding cases where a miscarriage of justice has been alleged. To limit the possibility of such instances in the future, there have to be fundamental changes introduced to the criminal justice system (its Diplock courts, emergency laws, absence of audio or video recording of interrogations, denial of access to solicitors, and its restricted right of silence). As to those alleging current miscarriages of justice, much reliance will have to be placed on the recent establishment of the Criminal Cases Review Commission, but many concerns have already been raised:

- . the type of people appointed to the Commission will be crucial in determining its effectiveness;

- . it is problematic that the Commission covers both the jurisdictions of England and Wales and of Northern Ireland;
- . the Commission will refer cases back to the Court of Appeal, but in Northern Ireland there is the practical problem of a more limited panel of judges to hear appeals;
- . full legal aid is essential if people are to effectively prepare their cases;
- . the limited grounds on which a case can be referred is likely to exclude a number of valid cases.

Action Programme

9. A mechanism for establishing the right to truth is needed. Creating a Truth Commission to investigate past human rights abuses is only one mechanism that could be pursued, but if this avenue is chosen, care should be exercised in advance to determine its mandate clearly.

10. A series of initiatives should be taken with reference to prisoners. To ensure parity of treatment the government should review the sentencing, release and licensing arrangements for all prisoners in view of the reduced risk of re-offending. They should, furthermore, permanently transfer all prisoners seeking such transfer. Resources should be made available for self-help programmes to be managed and implemented by former prisoners themselves.

11. Independent powers of investigation into alleged miscarriage of justice cases should be ensured. The Criminal Cases Review Commission should not have to rely on the police to investigate the police. The Commission should also have full and enforceable powers of disclosure.

12. Greater public disclosure is needed. Responding to concerns around outstanding cases of lethal force, the British government should release those reports which already exist on such cases i.e. Stalker/Sampson and both Stevens' reports. In similar vein, the Irish government should release details of the investigation into the Dublin/Monaghan bombings.

Agenda for Change: Building for the future

The political changes do not require merely that we try to redress the grievances of the past but that we build a society which is just and at peace with itself.

International, regional and domestic human rights promotion and protection derive from the unassailable principle that "all human beings are born free and equal in dignity and rights". Accordingly, states are obliged to ensure that their laws, practices and institutions are non-discriminatory. The Northern Ireland civil rights movement of the '60s highlighted discriminatory practices by the then government in areas such as housing, electoral practices and employment. It is vital to the establishment of long term peace that any remaining discriminatory practices are ended and that, where appropriate, positive action is taken to promote equality. In this regard, it is very worrying to note that:

- . racism against ethnic minority groups (including Travellers) has not yet been made illegal;
- . the Irish language is given insufficient resources in government policies and programmes;
- . Catholic males are still twice as likely as Protestant males to be unemployed and Catholic females are 1.8 times more likely to be unemployed than their Protestant counterparts;
- . women's disadvantage is still very great, particularly given the lack of provision of childcare arrangements, weak equal pay legislation, the absence of legal aid in sex discrimination cases, and the absence of strong legislation regarding domestic violence;
- . the government has virtually ignored children's rights in Northern Ireland and the impact of the conflict upon them. There is still no requirement in health, education or criminal justice legislation to act in the child's best interests, as required by Article 3 of the UN Convention on the Rights of the Child. Children are often not permitted to participate appropriately in decisions affecting them. Many children in our society are abused; most are unaware that they have any rights. Our legal and administrative systems do not yet treat them with the respect essential to their full and proper development as citizens.

An obvious need in Northern Ireland is to develop a variety of anti-discrimination measures which will strengthen society's commitment to pluralism and tolerance. In discussing such measures, several principles were put forward -

- . Legislation alone is not the answer to discrimination, though it is of course an important element in the campaign.
- . Strong government policies are required, initially in respect of those groups most disadvantaged.
- . It is a matter of serious concern that several matters (eg sexual orientation, race) are not effectively covered by any legislation and, therefore, people have no remedies available to them in these areas.

Action Programme

13. **Anti-discrimination legislation should be extended and strengthened. As an important element of the campaign for greater equality, legislation is a crucial first step since it creates the framework for a variety of other actions. There should be legislation to address discrimination against disabled people, and legislation dealing with racism and ethnicity. The anti-discrimination legislation which already exists regarding sex (especially the question of equal pay), and political and religious discrimination, should be further strengthened to ensure real change on the ground.**

14. **A statutory basis should be given to the government's Policy Appraisal and Fair Treatment (PAFT) guidelines. This would mean that proper equality measures are integrated fully in their policies, programmes and procedures. This duty should be made enforceable through the courts. There should be proper government monitoring and the government should set an example in complying with and implementing equality legislation and programmes.**

15. **Greater resources should be allocated to education and particularly education in human rights. Problems of disadvantage which show up in the problem of adult illiteracy, and in low educational attainment levels for many, need to be addressed. While some boast about the quality of education in Northern Ireland, the proportion of school leavers without qualifications is very high. Children's views on curriculum, discipline, and bullying etc should be sought as of right; they are best placed to highlight where the system is failing them. There must also be greater cultural equality with, for example, full funding for areas like teaching of the Irish language.**

16. **Remedial actions regarding discrimination should be pursued. For example, consideration should be given to the use of class actions to allow the issue of indirect discrimination to be better tackled; the use by tribunals of a fuller range of remedies (especially reinstatement and fair compensation); and innovative remedies - e.g. outreach measures, employers required to run workshops when found guilty of discrimination, tougher penalties for companies reoffending including companies/ individuals being put on probation or suffering a loss of public funding or even a possible use of criminal sanctions (as is for example envisaged in the health and safety laws).**

Any agenda for change must, last but not least, emphasise the necessity to create a culture of rights within society if we are to build a better future:

Action Programme

17. The values which underpin the Universal Declaration of Human Rights must be made to imbue our political institutions and our legal systems. It is vital that those charged with making and enforcing the law - politicians, police, judges, and lawyers - accept that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace" (preamble to the UDHR).

18. Responsibility for human rights is, however, too important to be left to legal experts alone. Nor can one ever assume that basic rights have been permanently secured - vigilance is ever necessary. In our schools, places of work, homes, political and social organisations, there must be an understanding of and commitment to the protection and promotion not only of our own rights, but just as importantly, the rights of others.

Much of the above agenda for change relates very directly to the situation in Northern Ireland. It bears repeating, however, that the conflict in Northern Ireland has led to serious assaults on democratic rights and freedoms in the Republic of Ireland, Scotland, England and Wales also. It is vital, for all of the jurisdictions in these islands, that the opportunity be taken now, not just to dismantle the apparatus of repression, but to put in place safeguards which will prevent any similar erosion of human rights and civil liberties in the future.

SUMMARY

All those concerned to build a just and lasting peace in Northern Ireland are encouraged to lend their support to the following campaign:

1. the establishment of mechanisms to ensure the debating, drafting, and the passage of a Bill of Rights, together with necessary enforcement measures (see Human Rights Agenda for Change, recommendations 1 and 2);
2. the ending of all emergency legislation in Britain and Ireland and the reform of the criminal justice system in Northern Ireland (see Human Rights Agenda for Change, recommendations 3 and 4);
3. a thorough review of the institutions of the criminal justice system - most particularly the police service (which will also involve the introduction of an effective police complaints system and a re-thinking of the Police Authority function) and the judiciary (see Human Rights Agenda for Change, recommendations 5-8);
4. a mechanism for establishing the right to truth about the past and specific measures addressed to the issue of prisoners, lethal force incidents, and continuing allegations of miscarriages of justice (see Human Rights Agenda for Change, recommendations 9-12);
5. a series of measures which look to the future by both strengthening anti-discrimination measures and developing a strong human rights culture (see Human Rights Agenda for Change, recommendations 13-18).

Keynote address by John Shattuck¹

Assistant Secretary of State for Democracy, Human Rights and Labour in Clinton's Administration



I come today to Northern Ireland as President Clinton's Assistant Secretary of State for Human Rights. Having in the last two years travelled all over the world on human rights missions I just want to make a couple of observations about the world that we are all living in today and to put this conference in some context. This is a time of enormous tragedy and hope for human rights all over the world: six years after the fall of the Berlin Wall and the end of the Cold War, and five years before the end of the bloodiest century in history. We know of the tragedies of this time all too well - I certainly personally know them very well having been engaged with them and travelled to them repeatedly. The great forces of conflict that have been unleashed in places like Bosnia and Rwanda which seem in many ways very far from here - but in the world we live in today everything is very close. There are many other places where human rights have been destroyed and where even the horrors of genocide, which we thought had been banished forever given the world's revulsion at the Holocaust, have reappeared like ghosts.

But there is also enormous hope to be found in the powerful, worldwide, popular, grassroots movement - of which all of you are a very central part - for human rights and democracy. This movement has in many respects fundamentally changed the face of the globe over the last six or seven years. Not only through the liberation, of course, of all of Eastern Europe and the countries of the former Soviet Union, but also even more powerfully and recently in the transformation of South Africa. This country has been transformed into a multi-racial society and a multi-racial democracy, headed by a powerful and perhaps the most distinguished figure in office today, also a former political prisoner, President Nelson Mandela.

We also have the brave example of millions of Cambodians, in an often forgotten part of the world, who defied Khmer Rouge terrorism to go to the polls to vote for the first time in their country's history not so very long ago. We have the return of democracy and human rights in perhaps halting ways (but nonetheless there) to places such as Haiti and El Salvador, which not very many years ago were deeply deeply riven by crisis and human rights abuses. In the case of Haiti, such was the situation until just a few months ago.

We can see many triumphs for human rights around the world. Let me tell you just one brief personal story in a way that shows the dramatic changes that have occurred. I was earlier this week in Geneva at the United Nations Human Rights Commission, where I met my counterpart Sergei Kovalyov, Director of the Russian Ministry of Foreign Affairs' Office of Human Rights. Not so many years ago, he was a Soviet political prisoner and when I met him two years ago, he and I had a flicker of recognition that somehow we had encountered each other at some earlier stages of our lives. It turned out that I had been the Vice-

¹ Assistant Secretary of State John Shattuck :

was sworn in as Assistant Secretary of the US government's Bureau of Democracy, Human Rights and Labor in June 1993. Immediately preceding this appointment, he was Vice President of Harvard University where he taught human rights and civil liberties law. A long time human rights advocate, Mr Shattuck was the Executive Director of the American Civil Liberties Union (ACLU), Washington Office, from 1976-1984, having previously (1971-1976) served as ACLU National Counsel, litigating in the areas of privacy, government secrecy and political surveillance. In a voluntary capacity, he was vice-chair of the US section of Amnesty International and was on the executive of the Leadership Conference on Human Rights.

Chairman of Amnesty International working on his case when he was a former Soviet political prisoner in Siberia for eight years. He has now moved from being a prisoner of conscience to a Russian Minister of Conscience and he was one of the principal critics of his government's human rights abuses in Chechnya.

Today, here in Belfast, there is another odyssey of hope, another struggle for human rights taking place before the world - and all the world is watching. You in this room are propelling it forward. Northern Ireland in the last seven months has become one of the places where visions of peace and justice are coming to life. These visions were perhaps once held only by grieving relatives and families - including many of you here - but are now vindicating the hopes and dreams of people of Northern Ireland of various backgrounds, eager for a better life for their children and a new start for their country.

Of course these events are not happening by magic. The demanding often tedious work of democracy and the challenges of economic development still lie ahead. But there is another task - an urgent task - one that involves building political and legal structures of justice, civil liberties and reconciliation. This task is the responsibility of government together with everyone in a society working to overcome decades of violent struggle.

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Movement towards the future begins with a responsibility of governments and people for reckoning with the legacy of the past. The human cost of long conflict is felt not only in lives lost, but in pervasive damage to society. The tragic history of violent conflict must be confronted and then transcended on the way to reconciliation.

What do I mean by reconciliation? I mean the responsibility of governments to help end discrimination, protect civil liberties and promote equal opportunity. I mean the responsibility of paramilitary groups to decommission their arms and obey the rule of law. I mean the responsibility of groups in society to set aside differences for the larger project of building a better future, in which different traditions and communities in conflict come to live together, and see each other as partners in a common project of strengthening a shared society. This is the great enterprise in which all of you are engaged.

This is not an erasure of memory or of truth - but on the contrary, a construction of a shared public space in which people are not identified by their differing identities, but one where they associate with each other through new cross-cutting networks of commerce and culture, mediated by an overarching commitment to a peaceful society grounded in justice, civil liberties and the rule of law.

Two absolutely essential and related ingredients of justice and reconciliation are firstly a climate of security and secondly, and perhaps even more importantly, the protection of civil liberties and human rights. Unless people feel fundamentally secure in their persons and homes there can be no rebuilding of society riven by conflict. Basic physical safety must be assured to all, irrespective of political beliefs or affiliations.

“The challenge of putting respect for human rights into the responsibility of government is perhaps the greatest and most urgent challenge of the peace process that is underway”

The other major element of reconciliation is respect for civil liberties and human rights. Human rights must begin at home. The timeless expressions of the Universal Declaration of Human Rights must be translated into the daily prose of governance. The challenge of putting respect for human rights into the responsibility of government is perhaps the greatest and most urgent challenge of the peace

process that is underway. History has shown that real reform, real democracy, real reconciliation, real justice, real human rights, cannot be guaranteed by any specific set of political mechanisms, unless those mechanisms are complemented by a structure of tolerance, which in turn, and above all, must be protected and promoted by government. Civil society, the arena lying between government and the individual, in which citizens meet each other as people, is the seedbed of democracy and freedom.

A friend and former colleague of mine at Harvard, Robert Putnam, published a book last year called Making Democracy Work. In it, he traces political development in Italy from the late Middle Ages to the present day. He found that the one critical variable that held true over all the centuries for those areas of Italy that have successfully engaged in political reform and the cultivation of freedom was civic culture - groups of people coming together to solve social problems and ultimately, today, groups of people protected by civil liberties. Indeed, the emphasis among social scientists and political writers in recent years on civil society did not spring from abstract reflection, but from real life experiences, like those of dissidents behind the so-called Iron Curtain, people such as Vaclav Havel and Adam Michnik. They saw that civil society was an organising principle that not only gave form to dissent, but also enabled them to carve out their own freedom, even under totalitarianism.

The dissidents struggling against Soviet-style dictatorship faced awesome challenges. The starkness of their struggle etched all the more vividly what the French writer Alexis de Tocqueville said in the United States more than a century and a half ago: no amount of government reform can ever assure long term democracy in the absence of cross-cutting networks of local groups which can flourish without fear of reprisal. That is the essence of civil liberties, and that is the essential task of government.

The American Catholic theologian, John Courtney Murray, characterised the clauses of the US Constitution that guarantee the religious freedom of all, while disallowing the primacy of any one creed, as the "great articles of peace". The United States itself is a highly imperfect society - it has known many injustices and continues to grapple with its many human rights shortcomings. But we in the US have in place a legal system and a political culture that enables us to confront, debate and work to correct injustices and inequalities, and deeply felt divisions over questions of morality and law. Our commitment to the procedures of democracy is rooted to the civil culture and civil liberties that we constantly work to deepen and strengthen.

The task of civil liberties, of creating public space where all can come together on an equal basis, can only proceed in a climate in which individuals feel secure and in which their individual human rights are protected. How then, to get to there from here?

I would like to outline several basic steps that might begin the process of building a framework of justice and reconciliation - steps that you are already taking, but steps which I would like to review. The first three are directed towards further neutralizing the culture of violence that has plagued Northern Ireland for decades. A climate of tolerance and fairness cannot exist in a society divided along political and social lines.

I think the framework for this process involves three basic elements. First the rule of law and civil liberties, protected by government, is the role of government and it should enjoy the confidence and commitment of all the various groups in the community. The rule of justice should be incorporated as an essential element in the peace process. Unlike many societies, you already have systems of criminal justice on which to build - the law, the police and the courts. The foundations of these systems, shared with comparable institutions of the US, the Irish Republic and other democratic societies, have proven their worth. However, as part of the peace process, it is the responsibility of government to strengthen the commitment of these systems to civil liberties.

"The rule of justice should be incorporated as an essential element in the peace process"

Efforts should be made by the government to recruit substantially more minority members into all ranks of the justice system and to increase its local contact and accountability. We in the US are dealing with similar issues ourselves, and we have much to learn and share with you as we strive on both sides of the Atlantic to make our justice systems into genuine guardians of civil liberties and democracy.

One cannot overestimate the importance of the rule of law for the health and survival of civil society. The judiciary and the law it interprets and enforces must stand above the political fray and render its judgements in the light of abiding principles of human rights and equity. The judiciary must not only check abuses of power - it must also give citizens the opportunity to pursue their grievances and work out their differences, on issues great and small, in a shared civic arena. Basic civil liberties, such as the right to trial by jury, the right to silence and against forced self-incrimination, and the right to due process of law are all essential elements of an effective justice system. So are the rights of prisoners to be visited by their families and to fair and humane treatment. So is the right to truth, the right to speak one's own language and other basic elements of justice, fairness and tolerance which lie at the heart of government's responsibility in its promotion of civil liberties.

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The second element of this framework is that the rule of paramilitary groups must be supplanted by the rule of law. Paramilitary groups derive their power from secrecy and dedication to their particular goals. Civil society, by contrast, is strengthened precisely by openness and by the yielding of defensive identities for the common good. While guns silence dialogue and fracture society, the builders of civil society actively work to promote a shared feeling of security and active ongoing dialogue among all the sectors of society.

The history of violence leaves a legacy of suspicion and fear. It is the responsibility of governments to promote a climate of tolerance and civil liberties that can overcome that climate of fear. Anyone and everyone desiring a peaceful future for Northern Ireland must support the dissolution of terrorist organisations, the decommissioning of arms, the demobilisation of troops and the elimination of such deadly security measures as the use of plastic bullets for civilian crowd control.

The third element of reconciliation is the creation of a broad opportunity for employment and economic growth, and the end of discrimination. History has repeatedly shown that economic opportunity has benefits far beyond material well-being. It creates the breathing room necessary for civil liberties, it empowers people throughout society, and it gives everyone a stake in continued, peaceful, social evolution.

For the values of civil liberties to take root they must also extend to the workplace -- non-discrimination and equal access are not only important for a durable reconciliation, they also make good economic sense. Northern Ireland is fortunate in having a highly skilled population offering tremendous talent and potential. In this respect, as in many others, you are well ahead of the game already.

Over the last quarter century you have suffered from high levels of unemployment, disproportionately affecting Catholics, while the disappearance of large scale industrial sectors has combined with the poor security environment to stifle economic growth. And many young people have emigrated precisely because of the absence of hope that has for so long pervaded the community.

Today there is great hope, and out of this hope it is clear that the economic future of every man, woman and child in Northern Ireland is intimately bound up with the peace process. Material prosperity stands

or falls with the chances for peace. It is for these reasons that President Clinton has put one of our most distinguished public servants, former Senator George Mitchell, in charge of our efforts on behalf of economic development for Northern Ireland, and why we will be hosting a Northern Ireland investment conference this Spring in Washington. This conference must address issues of justice and equity as part of a strategy for economic rebuilding of Northern Ireland.

The ceasefires have not only stilled the violence. They have also ushered in new opportunities for growth, which in turn will fortify the peace. Throughout all of these efforts the United States is seeking to play a strong supportive role - supporting the Joint Declaration of 1993, the Framework Agreement, the efforts to build on the ceasefires, and strengthen the justice system and support all those who want to lay down arms and walk the paths of peace.

The United States does not intend to take sides, but will do everything it can to support peace and work with the governments of Ireland and the United Kingdom to build on the courageous steps that have been taken in recent months. Beyond the institutions of justice, and the private sector and the government, there is another group of institutions that has a very crucial role to play - indeed, I would say, the critical role to play in the process of civil liberties development... and that is you.

You of course well know this role, because you are already playing it. The non-governmental organisations represented here in this room, and your counterparts elsewhere, are in many ways the key institutions of peace in Northern Ireland, and the key institutions of justice. It is you who synthesize politics and culture; it is you who cultivate ties of trust and solidarity; it is you who create networks of cooperation across group lines; and, above all, it is you who pressure governments to deal with the injustices that have occurred.

Non-governmental organisations (NGOs) provide a forum for people to discuss and organise around issues, thrash out their differences, create alliances and coalitions, and press governments for justice. In short, your role in cultivating civil society is very, very important. Northern Ireland's NGOs, including all the ones represented in this room, have played stirring roles in the struggle for human rights. Very brave people, over many years, whose work and commitment and great courage and vision, should be at the heart of this conference, and should be what this conference is dedicated to, as you press governments to meet their responsibility to protect civil liberties.

“Guaranteed human rights do not simply balance communities off against each other; they make it possible for communities to develop a broadly-shared allegiance to justice that enables them to work out their inevitable differences”

Respect for human rights is not, and must not be used as a camouflage for a partisan political agenda of any kind. It is, rather, a vessel of justice and reconciliation. Guaranteed human rights do not simply balance communities off against each other; they make it possible for communities to develop a broadly-shared allegiance to justice that enables them to work out their inevitable differences.

In civil society, democratic politics is not a zero-sum game in which somebody's gain automatically means someone else's loss. It is true that human rights find their realisation in the highly imperfect arena of politics - and politics will be with us until the end of time, as will the competing claims of various interests. But that does not free governments from their responsibility to support respect for human rights in the processes of law; they cannot shirk this responsibility by invoking claims of national security, or social stability, or economic development, or religious difference.

Human rights protections have emerged in the course of a long and painful struggle, in the United States and elsewhere, in a sweeping historical drama displaying great cruelty and injustice alongside great courage and vision. The challenge of reconciliation and justice must meet the unique features of every

society even as it aspires towards universal norms of justice. It is hard painful work; it is work well worth doing. You are showing the way - and it is at the heart of your struggle and that of millions of others around the world in this period when a grassroots movement for human rights in many countries - and nowhere more poignantly and powerfully than here in Northern Ireland - is changing the face of the globe that we are living in. I congratulate you and salute you - thank you for inviting me. I bring you greetings from our President, and wish you the very best as you address the issues of the day in this very important conference.

Address by Frank LaRue²

"Dealing with the Past: The Right to Truth"

It is a wonderful wonderful pleasure to be here again with you all in Belfast. I was here almost exactly a year ago, slightly more. I was talking to friends about how different the atmosphere seems. Many things have not changed, and are still to be changed - but at the same time what a different expectation and hope exists. This hope for peace, this promise of peace, has to be developed. It has to be developed by you all - by the civil society of Northern Ireland, by the NGOs, and by the people committed to human rights and to justice. It is very important to remember that peace can only be achieved with justice and where there is no justice, there will be no peace, no matter how many agreements are signed.

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Of course bringing about justice means ending impunity. Impunity, at least in Latin America, is a term we used often. Impunity was the system in which human rights violations had some degree of official sanction which allowed the perpetrators of those abuses to get away with them. Impunity was normally equated with the lack of justice - no prosecution of those responsible, or where the relatives could not really find those responsible and initiate a trial. At the same time, and it is something new in the era for the struggle for truth, impunity has come to mean the lack of truth.

Impunity is based on two elements - the lack of prosecution, whereby people feel somehow protected for what they are doing, but also the anonymity in which some of the violations occur. When violations are carried out by anonymous forces it is easy to see - after the first time - how they can do it again and again. They believe that their names and their identities will never come out publicly. So in dealing with impunity, we are dealing with justice but also with truth.

I differentiate between these two concepts, since both can have a slightly different approach. In our discussions in Latin America, we have said that with regard to human rights violations there are actually four elements of response:

² Frank LaRue:

is a Guatemalan labour lawyer who became active on human rights questions through his involvement in the ecumenical Committee for Justice and Peace and the Democratic Front Against Repression, of which he was a founding member. For some twelve years, Mr LaRue was in enforced exile in Washington where he was Director of the Centre for Human Rights Legal Action. The centre takes legal action against governments which abuse human rights, using international fora such as the UN, the Organisation of American States and the International Labour Organisation. Despite being at personal risk, he determined to continue this work on his recent return to Guatemala. In recent years he has specialised on questions of impunity and the Right to Truth; in early 1994 he was a panellist at the Truth Commission Forum in Guatemala.

- the right to truth: a right every citizen should have to investigate the violations that he or she suffered, or which their relatives, or members of their community suffered; the right to identify those responsible; the right to seek an investigation by the authorities; and eventually, the right to publicise that information.
- the element of prosecution: the prosecution of those responsible for those human rights violations since this should be the basis for the rule of law of any country.
- the element of punishment of those responsible: it is necessary to differentiate the prosecution from the punishment because often times in moments of transition there have been pardons for those prosecuted.
- the element of reparation: this is a new concept even at the UN level. They have developed a Rapporteur on Reparation - this recognises the responsibility of the state, to the extent possible, to repair the damage that has been done.

Of course, there is nothing new in all this. What is being done basically is to clarify some of the old concepts of human rights. It is very clear in all international documents from the Universal Declaration on, that it is the duty of all states not only to protect but also to promote and to guarantee full respect for

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human rights for all those within its territory. In the case of Latin America, we have a decision of the Inter-American Court of Justice in Costa Rica, which was a decision against the state of Honduras with regard to a disappearance case. The Velasquez-Rodriguez case led to the court deciding not only that the state of Honduras was responsible for the disappearance, but added as

a corollary that the state was also responsible for the fact that a number of proper steps were not taken and should have been. This ruling clarified that states are not only responsible for protecting and promoting human rights, and promoting respect for those rights, but they are also consequently responsible for investigating when those rights are violated - who violated those rights and how and, where possible, to repair to the extent possible the damage done to the victim. Now this decision, while not mentioning the right to truth, clearly identifies that states have an obligation to respect rights and uphold the law and that they must carry out investigations and inform victims of the results of those investigations.

Of course this seldom happens in any country in the world. It is very difficult to secure the disclosure of information, especially in countries of political turmoil such as Guatemala, my own country, or El Salvador, our neighbour. Political strife and internal conflict have flourished for many years and the state under the banner of national security has withheld important information. Obviously every state has the right to defend its integrity and national security, but it does not have the right to do so at the expense of the rights of its citizens. There is an inherent contradiction there and when those rights are being systematically violated, the state loses its character and eventually begins to represent factional interests.

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In this case, I think it is important to clarify a little bit more why we believe that truth is so important. Some people, especially in moments of transition, say that this is the time to forget or the time to pardon; others say that if justice is carried out fine, but we should look to the future and not worry

unduly about the past. I believe there are many reasons to uphold the right to truth, but there are four fundamental reasons we should stress.

“...truth is the essence of justice”

The first one is that truth is the essence of justice. If there is no right to truth, if truth is not fully acknowledged, if truth is not fully documented, one can seriously doubt if justice will be achieved. Justice has to be based on

truth. There has to be a full, independent, and objective investigation. If such an investigation is carried out there has to be a political will to share the results of that investigation with those who are interested: with the victims themselves, or the relatives, or the community, or with an NGO representing the victim. This is essential if one is to be able to believe in the system of justice.

The second reason is because truth is also the essence of history. We base ourselves on the true facts of the past, whether the past is a glorious past or whether it is a painful past, whether it is something we like to recall or something we do not like to recall. Every nation in the world will have dark moments in its past, but it is not by ignoring these that we can erase history. A society can only build its future if it fully acknowledges its past: otherwise that future will always be handicapped by the lack of knowledge of the past. In the same way, we can establish the principle that it is an inalienable right of the peoples of every nation to fully document their past, which will obviously include documenting human rights violations.

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In talking about the past it is important to note a further debate we have had in Latin America about the right to identity of those who have died. Death is the end of life but not the end of identity. Many of our relatives and of our friends, and many unknown people, have died in the past and they have a right to live on in some way - they should never be forgotten, that would be the worst offence to their memory. Those people have a legacy in their identity, in what they did, in the reasons for their death, and it is a legacy for new generations. Many of these memories will be painful - some will be good and some will be bad - but it is precisely that fully identified past which will allow new generations to learn from it.

Thirdly, it is important to recognise that truth is an ethical and political necessity. This is true for all societies, but especially for a society in transition. Today in Northern Ireland there is a moment of transition, there is a hope for peace, there is the beginning of a negotiation process, which is very important. But that negotiation will only be able to succeed if it is based on truth. It is important if we are to correct the wrongs of the past, that those wrongs be recognised. But more important yet is the need for those who made mistakes and committed violations and harmed society in the past, to recognise openly their responsibility. It is this recognition of responsibility which makes us believe that those events will not occur again. If we do not fully acknowledge this and there is no full recognition of the past abuses, we will always suspect that they may recur time and again. They can stop for an interim period, but at some future point, another spark will initiate violations again. This is why the idea of reconciliation is very important, but reconciliation can only be based on truth.

I personally believe in pardon. I believe we have to be able to pardon but we don't pardon what we do not know. Pardon has to be based on truth otherwise it cannot exist. This is part of building the political future of a society.

And, finally, as a fourth element truth is very important as a healing experience for societies just as it is for individuals. Of course, truth is often very painful - especially if we are talking about human rights violations. But it is healing because it is only by acknowledging what happened, and by fully

understanding what happened and why it happened, that a person can begin to cure his/her emotional wounds of the past. The possibility of knowing the truth, but also of sharing the truth with others, will eventually provoke that emotional healing process - both as individuals and as a society. This is very important for the mental health of the future.

Of course when we are talking about truth and about the past, we have to talk about how we are going to establish this past, how we are going to document this past? Here is where we can begin discussing the mechanisms of documenting the past. There are many mechanisms - some are national and carried out by NGOs, or other forms of civil society. Others are more related to the negotiation process such as a Truth Commission. Those deriving from local initiatives can take many forms. For instance, in the case of Guatemala, one of the most important experiences of documenting the truth has been that of carrying out exhumations.

In 1982 and 1983, we had a military government that destroyed and murdered people in 440 villages, just burnt the villages to the ground. Even the army has now recognised that that happened, even if they still do not accept that they were responsible - they do accept that it happened. We all know who did it, but it is quite different to know this because one has been able to document it rather than knowing it through rumours. With the support of Dr Clyde Snow, a forensic anthropologist from the United States, we formed a forensic team in Guatemala, along the lines of that in Argentina. This forensic team started carrying out exhumations: it has been one of the most painful processes you can imagine.

One of the largest organisations in Guatemala is called the "Coordination of Widows" - all Mayan indigenous women, widows because of the repression, who lost their husbands as a result of army massacres. Many women and children were murdered, but the majority were men. So these widows have organised together and they were largely responsible for demanding these exhumations. For many of them it was very difficult to come to terms with this experience, and for many of them it was very painful to be at the site of the exhumations. It is not easy to be at the grave of your loved ones, and these were mass graves, where the army had just dug a big hole and piled in bodies. But it was important for them - in terms of the right to truth - to be able to show through DNA studies and a study of teeth and hair that their children could be identified and given a proper burial. In the indigenous culture of Guatemala, this was extremely important. The burial sites and the whole relationship to your ancestors, and the idea of whole families being buried together is essential to the way they see life and death. In that sense, they were also demanding a cultural right. After four or five exhumations in Guatemala, I must say that however painful they have been, they have eventually been a healing experience.

The army allowed this to happen not expecting us to find out very much from the old remains. Little did they know that with the advance of forensic analysis it was not only possible to identify the bodies, but we could also identify the calibre of the weapons used, the direction the victims were shot from, the fact that many were tortured before being shot - all elements pointing to the military as the culprits of these massacres.

This is just one example, but truth can come out in many ways and in many forms of investigation. The Catholic Church in Guatemala in rural areas has begun under its own initiative to document some of these experiences. A Guatemalan priest, an anthropologist - Ricardo Faller - went into the mountains to displaced communities, to those people who had been forced out by the army massacres, and he lived hidden in the mountains with them. While working as a priest, he documented little by little the events of the community he was living with. A year ago, he published his book -it is now translated into English and is called "Massacres of the Jungle". It was the most detailed harrowing testimony of what was happening at that time. This is only one example of the importance of giving testimony, but by bringing out information on this one example we have been able to imagine the reality of many other villages of rural Guatemala.

Finally, we have another effort going on which is the brainchild of a student of political science who decided to develop a database. The team now developed is evolving an interesting computerised database collating all possible evidence available through press cuttings, testimonies and/or forensic reports (including government forensic reports). The team has been working for four years and has already documented 39,000 cases. Of course part of the issue is the credibility of these cases - how do you believe these cases? We established some elements of credibility. For example in press reports, they are determining how many sources exist - is a case reported by only one newspaper or by several simultaneously? In testimonies, is this the testimony of only one person, or of two or three seeing the same event. In terms of the forensic evidence things are easier since the scientific basis is much clearer. The idea is that when the Truth Commission is formed in Guatemala (this has been agreed as part of the negotiation process, but at the time of speaking it has not yet been established) it will receive all this information. I don't know if they will use it at all, but it will at least create an important element of pressure on them to carry out their work effectively.

So there are many ways of documenting the past - from testimonial gathering to scientific methods. What is important is to try to publish this material and to try and make some of these experiences live again in our memory, and make those people live again in our memory.

The other aspect of documenting the past is more institutional: the idea of Truth Commissions. There has recently been an article in the Human Rights Quarterly (some of you have it I believe) in the US. This article was written by Priscilla Hayner, an academic who worked in the Truth Commission in El Salvador and she reported on some fifteen commissions. All of the commissions have had a different mandate, a different nature and a different effect - some better than others. But we have to see them in a historic dimension. In Latin America, for example, the first one for us was the Argentina Commission where the main problem was one of disappearances. Thousands of people were "disappeared" by the security forces and their families did not know of their whereabouts, did not know even if they were dead or alive. Initially through the exhumations, and then the research by the government appointed commission, the information was gathered. They decided not to publish the names of those responsible but eventually a parallel list was leaked to the press (by the government itself) and trials were initiated.

There was a major debate about amnesty laws and the Law of Due Obedience which exonerated junior members of the military who were "only carrying out orders". In any event there was a trial against four generals who had been heads of state - it turned out to be a symbolic trial but a very important one. The symbolism of prosecution of generals who had been the heads of state of a country was a way of breaking from the past. This is part of the healing process I talked of. Eventually though they were condemned, they were pardoned, but the prosecution had taken place and they had been found guilty. Even if they were later pardoned, the impact on society of a finding of "guilty" was very strong and very important.

The Truth Commission in Uruguay also investigated disappearances, but the Chile one ranged somewhat broader. The latter investigated all forms of abuse - political murders, torture and disappearances. In Chile again there was a decision by the state to establish the Commission - this Commission also did not release the names, but it attached to its official report an annexe with all the individual testimonies, many of which named particular individual officers. So there was some vindication of this element. More importantly however in terms of political symbolism was the attitude of President Allwyn himself. After receiving the report, he (in the name of the state of Chile) recognised full responsibility for the atrocities committed in the past. Of course he had not been in power at that time, but as current head of state he felt the need to accept that responsibility in the name of the state.

This was a major step for the victims and for those who had suffered under Pinochet. Pinochet is still there, and still plays a big role in politics, so it was a major blow to the general and to his followers. His shadow still hangs over the Chilean government. The other major step that President Allwyn took was to establish a fund for reparation. Of course you cannot compensate for the suffering of people, but again

the question of reparation had more to do with the symbolism of exacting responsibility from the Chilean state. The Chilean state was going to repay to the extent possible all the victims after the persecution suffered. It was important economically but more important morally to be vindicated and to receive recognition of the state's responsibility.

Then we had the Truth Commission in El Salvador. In El Salvador they went a step further: the Truth Commission's mandate allowed it to name names and this was very important. In Salvador they went as far as to create two Commissions - the Truth Commission and the Ad-Hoc Commission. The Truth Commission was formed by three foreigners appointed by the United Nations - well known politicians - and its function was to investigate all the abuses that people wanted to present to them and conduct their own investigations, find those responsible, publish a report and incorporate in this report recommendations. The Ad-Hoc Commission on the other hand would take that report and other testimonies and decide which officers of the army should be released from duty so that they could no longer commit atrocities. This was a major step and a major step for the military in particular. Some 110 names were cited; not all were dismissed immediately, but the very fact that the Ad-Hoc Commission cited them and said that these were the individuals mainly responsible for the atrocities, made a big difference.

There has been a lot of criticism of the Salvador Peace Agreements, mainly focussing on the fact that they did not deal profoundly with socio-economic problems. That is true, and these are very difficult problems to address in a peace negotiation. You can reach peace and still not solve the economy of a country. But what is true about El Salvador is that there was a transition. The transition went from a militarily dominated country to being today a civilian dominated country. The corollary of that is that they went as far as to change the nature of the security forces, not only the military via a "cleansing" operation, but also the police. They disbanded the national police and formed a new national civilian police force which was to be professionalized (with outside training and support) but which was clearly to be controlled by a civilian government. This was probably the most important step - the idea of demilitarising the police. This police was formed by independent individuals asking to work on it but also by demobilised individuals on both sides, on the government side and the FMLN. This was an alternative way of integrating these people into society by a new commitment to becoming members of a civilian peace force. Not everything has worked out perfectly, but despite the many problems they have had, the country has gone through a major major transformation. If you go there now, they certainly have many serious economic problems and a problem with crime, but they did solve the political crisis in that country, and the nature of the state changed from being a military repressive state to an open civilian state where free discussion takes place and citizens' powers and prerogatives can be freely exercised.

In the case of Guatemala, my own country, the peace agreements last year established a Truth Commission. It will be a different experience and has some good and some bad elements. It will be sponsored by the UN but it will be a mixed commission. It will be headed by the current mediator of the negotiation process - a Frenchman Jean Arnaud and it will have two Guatemalan citizens. It actually has a good mandate in general. While in Salvador the Commission only examined the last ten years (the 1980s), the Guatemalan equivalent will investigate the last 30, even 35, years - ie since the conflict began. The problem is that, like the Chilean Commission, they made a retrograde step by deciding that the commission should not release the names of those responsible. We have often said that half the truth is not the truth, and we are not very pleased with this decision and have openly criticised this element of the peace agreements. But the day that this Commission is formed we will support its work and will work with it. We are not happy with the mandate, and it is very important to ensure that the mandate of the Truth Commission is as detailed as possible.

We believe that it is important to have this official body and if there are weaknesses - as in this case a mandate not allowing the reporting of the names of those responsible - we can compensate for this somehow ourselves. We will have the atrocities mentioned by the Commission, and we will be able to

document those responsible in those atrocities. There are ways of working jointly with these endeavours. What is important is to clarify the mandate as clearly as possible for these Commissions.

In Salvador, it was very clear that the Truth Commission should also draft a series of recommendations. And the recommendations ranged from the need to transform the judiciary by changing the Supreme Court, since the Supreme Court had been subservient to the military, to more symbolic gestures, such as the need to recognise the victims and establish some form of national memorial for the victims of human rights violations. So the series of recommendations were actually very good.

I drafted a proposal for the mandate of the Truth Commission in Guatemala which was not taken up. But I also shared it with people working in South Africa with the Truth Commission there. I think it is important in establishing the mandate of a Truth Commission to be clear about several different elements: you have, for example, to be very clear in the timing - how long a period should the Commission investigate? What is the historic period you want covered? And obviously there is always a conflict since what you gain in length you lose in depth - the longer the period covered the less you can document the cases. But that is up to every country, every society, to decide... it just must be clearly specified for them to do their work.

Secondly, you should clearly specify the type of violations to be investigated: the mandate on this should not be vague. Establish what it is you want to investigate and spell it out clearly.

You need to clearly establish the time the Commission will work - six months? a year? It should not be too short to prevent it carrying out its mandate successfully, but it should not be too long either because otherwise the issue passes, people lose interest and the effect of the Commission dissolves in time.

Finally, I think it is important to mention that these Commissions should not try in their recommendations to apply sanctions to those responsible. Here is where it is important to differentiate between the four elements mentioned earlier - while one element is to document the truth it is quite another to carry out justice and it is important that justice be carried out within the judicial sphere. Whether it works or not; we must make it work. It should not be up to the Truth Commission to apply sanctions - it should restrict its work to documenting the truth, the facts and the events, signal who did it, and then transfer this information to the judiciary which should then be challenged to apply the law.

I understand that often there is no trust in the judiciary - that was the situation in El Salvador certainly. But this is precisely the moment to transform the judiciary. If it is not transformed at this time, it will be very difficult to do so afterwards.

I also think it is important to discuss the amnesty laws. There are many approaches to amnesty laws. I must say in general, human rights organisations in Latin America oppose amnesty laws. There is even an advisory opinion in the Inter-American Court against the amnesty laws used in Uruguay and Argentina. But we believe that again by establishing the four areas of response - the right to truth, justice and prosecution, punishment and reparation - you can identify in each society how far you want to go. I was speaking to Albie Sachs in South Africa one time and he was saying that the South African government had decided to go only for the right to truth and not prosecution, so they were going to pass an amnesty law but that had already been a decision made beforehand. Talking of South Africa reminds me too of an innovative idea Albie had for memorials to the past. Instead of having monuments, which are good - we just did one in Guatemala at one of the exhumation sites with all the names of those who had died in the massacre - they were contemplating making parks. And they were going to ask the international community to bring trees and varieties of plants from all around the world to testify to those who had died. Such parks would testify to the new future as well as to the past. This was Sachs' idea and I don't know if they will carry it out but it is a very attractive idea.

These are very important issues. In Guatemala we have talked of establishing pardons, not an amnesty law. This would then allow you to go two steps - the investigation and disclosure (which is the right to truth) and then the prosecution, even if those found guilty are later to be pardoned. Nevertheless, it is felt that it would be important to prosecute and come to a guilty conclusion where appropriate, even if - as an act of reconciliation - they would not be expected to fulfill their punishment. These choices are to be determined by each society.

I understand how in Northern Ireland it could be very different and many people would be interested in an amnesty law and establishing an amnesty as a moment of reconciliation. Establishing an amnesty law may be very important but as said by a member of the Inter-American Commission on Human Rights, amnesties should not be confused with amnesia. Amnesty should be the pardon that is accorded after the truth has been established. What I think should never be forgotten in any society is the element of the right to truth. Even if the punishment element is set aside in the name of reconciliation, the idea of documenting the atrocities and of ensuring reparation to the extent possible should still be maintained by the state.

There are many people who have suffered handicaps from acts of violence by security forces: we have Emma (a victim of a plastic bullet) with us here today. So there are many acts for which reparation is due. An amnesty can preclude prosecution, but cannot preclude the truth and should not preclude the reparation either.

I would also say that all this is part of the negotiation process, and all this is negotiable. What is not negotiable -and it is important to repeat and maintain as a principle - is respect for human rights. You can negotiate the mechanisms in which the past will be documented - this is where a Truth Commission comes in... whether national or international, UN sponsored or nationally sponsored, NGO or officially sanctioned. But what is not negotiable is the need as of now to respect human rights - therefore there should be within the peace process demands for immediate transformation of the society here. Many specific demands were mentioned this morning by John Shattuck as well. For example, we should not only be documenting the effects of plastic bullets in the past, but ensuring that they are banned now immediately. And it is important that the repatriation of political prisoners be carried out immediately. It would be important to review trials which had obvious anomalies within them and to abolish special emergency laws.

All these elements are important to sustain as an immediate necessity since it is very difficult to negotiate a peace process when human rights are still being violated. A government or any political force cannot say let's continue negotiating and when we reach peace then we'll respect human rights. We must uphold the fact that it is a permanent responsibility of any state to defend and protect human rights. It is also important to uphold within the gamut of human rights the new concept - for which we are trying to get some international recognition - of the right to truth. Truth Commissions are negotiable, but the right to truth is not. Truth is not only part of our past, truth should also be the basis for our future.

“Truth is not only part of our past, truth should also be the basis for our future”

Address by Gareth Pierce:³

"Whither Policing?"

I have been truly troubled to have been included as a speaker in this forum. This trepidation was enhanced last night when someone suggested that I should stick to the things I know something about ... and that's how I feel since the issue of policing is clearly at the centre of this extraordinary make-or-break moment of history. Unlike some of the jurisdictions the speakers have talked of, no one here has won and no one has lost, and all the institutions are in place. Therefore the question of the institutions, in particular the police, and the answer to such questions are matters solely for the people here in the north of Ireland. All my observations, save for one, are second-hand. Last night I considered whether there was any contribution I could usefully make, and after hearing Frank LaRue I thought about the only direct testimony that I could offer that in some way coincided with the issues he had been talking about - issues of grappling with the truth, and the past and emergencies. That testimony stemmed from a long time ago, in another time and place.



It dates from 1967-1968 in the United States, where I then lived. There was massive and unexpected civil disorder in which all the major cities in the US went up in flames. It constituted a national emergency, with events referred to as riots or uprisings. The uprisings were amongst the black community, particularly those in the ghettos, but initially the reason for the unrest was an unsolved question for society and government. Was it organised? Was it spontaneous? Was it politically inspired? What had caused it? The Koerner Commission was set up. As so often happens in emergencies in democracies, a commission is appointed to be a whitewash, certainly to take care of the protest. It is a way of defusing the problem and a way of government showing that something is being done; a way of suggesting that people can participate and make a contribution. And that is probably how it would have rested. Certainly it was composed of many people who might be considered "sacred cows" and who could have been expected to have come to safe conclusions.

Fortunately, the emergency was so great that investigation groups were also set up, quite distinct from the Commission itself. These groups were randomly selected and cobbled together hastily overnight: effectively they were volunteers - young, old, black, white, not police, not government, some journalists, some lawyers, some civil rights workers. And they were given carte blanche to go into every community and conduct their own investigations - to retrieve data as to what had caused the riots. They were given access to FBI and Fire Department logs, and the power to inspect all police files. The police were told to co-operate with their endeavours. The groups went out anonymously; they made no notes; they had no tape-recorders; they had names of one or two contacts perhaps in each community and these led on to others. They talked with as many as they could and then each night they went back to where they were collectively staying and debriefed themselves one to another and then went back out again onto the streets.

³ Gareth Pierce:

became involved in human rights questions through exposure to the civil rights movement in the United States; on her return to England she qualified as a solicitor and build up an extensive criminal practice as a defence lawyer. She has been involved in most of the major miscarriage of justice cases which have gone through the English legal system (including the Birmingham 6, Guildford 4, Judith Ward, and Cardiff 3 cases).

Ultimately they went back to Washington and provided their data to the Commission. The Commission was aghast at the implications of the data. There was effectively a palace revolution: the data was unanswerable and it led in short to a situation where the then President of the US (Lyndon Johnson) spoke to the nation on TV. A man, who had himself run on a racist ticket, had to look the nation in the eye on TV and say "we are a racist nation", "we are steeped in racism", "our institutions and our policies have created the ghetto". Amongst the urgent problems that had to be addressed was the discovery that at the cutting edge of every uprising, the trigger mechanism that had provoked it was police activity. It was recognised that long term sustained inequality, brutality, and unfairness, had been perpetuated generation after generation by police forces that were all white, and that there had to be radical changes to the nature of policing. The Rand Corporation, which was an unlikely choice, since it normally advised the Pentagon, and was an up-market, high-priced think tank, was appointed with the urgent task of making the police forces in America, especially the urban police forces, representative of the communities they policed.

Last night, I thought that this experience would be of most relevance to you and I would focus on that. But this morning I looked at the conference's extract from the Framework Document and the paragraph on "Law and Order". And I found the terminology all too familiar; as I read it through there were such echoes in it of everything to do with my work in England. After all, the work of a defence lawyer is the police - we spend our lives in police stations, and in courts. The expressions of intent in the Framework Document are so similar to that used in emergencies that have happened in England in the past, and the proposed responses were so similar, that I felt I could most usefully contribute by talking about our English experience as an example of how not to do things!

"There is nothing unique in Northern Ireland...about police powers which have become too sharp or too cutting for the communities they are policing"

There is nothing unique in Northern Ireland, or in England, Guatemala or El Salvador, about police powers which have become too sharp or too cutting for the communities they are policing. Nor is there anything contemporary about the issue. All of the history of the birth and the

acknowledgement of individual rights is about the recognition over and over again that no country or community ever learns the lessons of the past. The police have particular facets and idiosyncrasies that make experiences echo through all time and in all countries. However, I think that the particular relevance in comparing our two countries and our two communities lies in the fact that after all the Framework Document is entitled a British government paper. We are dealing with the same government and we can look at what it has done in the last 20 years in England in relation to its police force.

The particular features of the police that have recurrently troubled observers are their powers to (or rather one should say their illegal ability to) conduct arbitrary search and seizure and arbitrary arrest and detention, since these are the very hallmarks of a dictatorship. But such powers are only a hairsbreadth away from the legal powers that the police are given; the trespass from legality to illegality is extremely easy. Police carrying out illegal acts are committing crimes and are engaged in a flagrant abuse of tyrannical power against powerless individuals. But what happens when the law itself takes on so many powers that the powers themselves become those of a repressive regime? What is the role then of the police and what is the proper response of the community on the receiving end of those powers?

A second concern must be the fact that the police have unique discretion in their jobs. There is probably no other person who wakes up in the morning to go out to work with so little direction and control over what they choose to spend the day doing. Probably 90% of police who patrol streets and communities do not know in advance what they will do for 90% of the time. Therefore they have the choice in any human encounter as to whether to act or not to act. Inevitably all of what they do is determined by their attitudes: who they are, where they come from, what they have grown up believing, on whose behalf they think they are policing, who the people are who are committing crimes, how the

police decide about crimes, which crimes they turn a blind eye to because they understand the community that is involved and in their mind they are no longer seen as crimes, and so on.

This last feature of their work is all the more crucial when one considers that the police have a far greater ability than the rest of us to avoid retribution and detection if they act lawlessly. If they commit crimes, whether quite independently of their work, or as part of their work as they see it, there is no one to police them because they are the only law enforcers.

In England, our chance - our opportunity - came in 1981. We could have confronted this vital topic of policing when it came to the fore in a similar manner to the American experience. First in Brixton, and then all around the urban communities, the black community rioted. The riots were fairly limited but they were nevertheless shocking to English society. Nothing similar had ever been experienced before. On the whole, it was children on the streets throwing stones and then petrol bombs, but for exactly the same reasons and with exactly the same trigger mechanisms as had occurred in America. The police were not representative of the community. One could hear the same echoes, and see the same problems as Martin Luther King had spoken of when saying "violence is the voice of the unheard". Being on the receiving end of an unrepresentative police force was the trigger mechanism. We did not retrieve data in the same way the US did; instead we set up a judicial inquiry, under Lord Scarman. The inquiry was static; it was legalistic; it had barristers and solicitors; it had witnesses called to testify into microphones; and naturally the data collected was to prove inadequate. Given that environment, who would come who genuinely had something to say and who had something difficult to say?

It didn't work but it was our way of dealing with it. And the police for a while were in active retreat: they were not assertive, they were not confident, they were deeply shocked and, until Scarman reported, the police feared that something dramatically different and fundamental was going to happen to them. They and their practices and their composition and their whole mindset was going to be forced to change and to acknowledge the truth. However, no-one in England took the initiative that Lyndon Johnson had in admitting that the US was a racist nation. Nobody said that in relation to England. Nobody acknowledged the truth, and the response of Scarman was muted. It was probably the case that the Home Office didn't want him to touch the issue of racism. Rightly or wrongly, he ended up recommending an independent police complaints authority, which when it was ultimately set up proved to be toothless and useless. He also recommended more ethnic representation within the police force. So, single individuals join the police, feel isolated from their own community, and endure racism themselves within the police force - thereby becoming further victims of it. Some of the recommendations, however, were enthusiastically taken up by the police: they regained their confidence and took up actively the recommendation that they have better equipment for dealing with riots. This highlights their potentially militaristic response to any disorder, to any uncomfortable forms of social protest.

And since then, the police have transformed themselves and it is in this respect that I think there are comparisons to bear in mind. The police have become adept at using the media; they have become sophisticated in presenting themselves as a professional well-managed force. They have also become involved in issues which simply do not concern them. After Scarman, they became urgently involved in being part of the community: that is not their job. Their job is to provide a service, to ensure they meet the basic needs for policing on behalf of communities and for communities. Their job is not to dictate to the community what they are to have, or to be part of that decision making process, nor to decide who represents the community. It is an extremely dangerous exercise when the police say "we are here to represent the majority". Perhaps the majority want window boxes on their street but the minority don't; the majority in the gentrified areas of the inner cities may then decide that they do not like young black men hanging around in front of their window boxes; and then the police, thinking that they are policing on behalf of the community, feel able to say that young black men can no longer stand on that street...they have to stand somewhere else...they should not play their music too loud....

But, after Scarman, the police entered into community decision-making and entered into the process of deciding who got grants. They started vetoing particular groups which were seen as anarchistic, or subversive, or anti-police. Much of this involvement was secret and was unknown to the communities. And on top of that, further and further police powers were demanded and can now be seen as coming to fruition in legislation.

That was our first opportunity and we didn't take it and we are dramatically the worse off because of our failure to do so. We were given a second opportunity with the realisation that a number of people had been imprisoned for many years for crimes they had not committed. This terrible state of affairs had come about because of dishonesty, fabrication, and brutality on the part primarily of the police. Forensic scientists and others were involved, but the fault lay primarily with the police. And that again sent shock waves and reverberations through the English criminal justice system as well as English society. That was our opportunity: it was our second chance to tackle issues such as arbitrary arrest, arbitrary search, interrogation, brutality, but we failed to tackle it effectively. We lost the opportunity. We took the wrong approach again.

We set up a Royal Commission (representing the absolute power of the monarch) to adjudicate on the community's discovery that there had been within the nation an exercise of brutal and arbitrary power. To respond to this charge, we set up a Royal Commission with five knights, QCs, judges, policemen and so on. But in addition - beware - it was lobbied non-stop by the police, who have enormous resources. You need to consider this when decisions are being made, when people are meeting, some in public, some in negotiating sessions, some in community groups: remember that there is an infinite capacity and infinite appetite on the part of the police to think they need more powers. Arising from this exercise, there was never any acknowledgement, never any apology forthcoming from the police or the courts or indeed anybody in England, to any of those defendants wrongly imprisoned. There has been no recognition of the truth in England and no possibility of a Truth Commission. The result of the Royal Commission was not merely an endorsement of those very powers which the police had used to prove wrongful convictions, but an increase in police powers against defendants.

That is perhaps why another word of caution is necessary: is it profitable in an urgent and desperate situation such as this, to analyse the past in a search for truth? If things are not satisfactory now, then there is an urgent need for analysis now and for drastic reform and change of things as they are now. An analysis of the past may just lead to the conclusion that the problems were all to do with the armed conflict, but the real question arises over what was cause and what was effect.

If emergency legislation were abolished tomorrow in England it would make not a blind bit of difference. The police have now brought all their powers within normal law and they have everything in their hands that was in emergency legislation. Road blocks are allowed; the right to silence has gone; safeguards have disappeared. Solicitors are now about to become part of the coercive process - warning you of what happens if you don't talk. We have introduced in Europe the culture of fear of terrorism, fear of immigration, and the wish to erect boundaries around "fortress Europe". We have transmitted to others that neurosis of the outsider who may come in. In doing so, we have in fact abandoned, and encouraged others to abandon, many classic and beautiful safeguards hammered out in the past. An example of that is the issue of extradition. Many of these safeguards have disappeared from international law, and in large part due to pressure from us.

That is what I would offer this conference - reflections on our experience in England of not learning from the opportunities. I will finish simply by trespassing on the areas that are not my business but they are raised repeatedly in the press and it is impossible to ignore them. They must be part of the equation. One reads about the decommissioning of weapons of paramilitary groups, but that has to be seen as part and parcel of the debate about whether communities feel themselves protected by the police. If there is nobody to protect people it is going to be inevitable that they will contemplate retaining those

weapons. Police have to offer total protection to every individual on the same footing, to every member of every community, so that every individual feels safe and can call on the police as necessary.

“Police have to offer total protection to every individual on the same footing, to every member of every community, so that every individual feels safe and can call on the police as necessary”

Punishment beatings is another issue that arises. Again, is that part of the syndrome of no one conducting normal ordinary policing who is trusted by the community? Surely, if trust existed, there would be no opportunity or capacity for any vigilante group to intrude itself.

The shortcomings of the police are critical to all of these issues. The police force here is I understand 93% drawn from one community when there are two communities almost equally divided. I do not mean to suggest by that comment any understanding, or misunderstanding, on my part that the police necessarily police on behalf of the community from which the 93% is drawn. They may not. I do not know. It is simply a statistic that defies belief: it is unarguable, it is unanswerable. This is the first problem that an outsider detects, and anything other than total change in this matter is quite unacceptable.

Northern Ireland - viewed by an outside observer - is a uniquely peaceful society, law abiding, law observing ... far more so than Britain. I don't know if it is apocryphal, but I have been told that Derry in 1968 had a defunct police station because there was so little crime in the community. This is a society which has strongly preserved social values and although it has been depicted as warmongering to the outside for a very long time, this does not represent the inherent underlying reality of the community. Such a community must need minimalist policing and it deserves policing of a responsive and genuine kind. Instead, Northern Ireland has maximum policing and, within the provisions set out for law and order in the Framework Document, one notices the tenacity of the desire to hold on to policing by reference to the possible return of a terrorist threat. That is troubling: what is cause and what is effect? If there is maximum policing with a force which is too big, too overloaded and disproportionate to the community's basic needs, it has nothing to do but look for things to do.

Beware of repetition and of empty promises. I found an interesting example of this in the application brought against the United Kingdom in the early 1970s by the government of Ireland to the European Commission of Human Rights. The case went ultimately to the European Court. It is interesting to look back at forgotten documents and read there that the European Commission, when ruling about allegations of brutality in different police barracks, was very reassured about promises of future protections to be afforded to detainees. The Commission had made a number of serious findings and was reassured by the British government, which informed the Commission of two further measures then being actively considered. In 1976, the British government was apparently considering a new procedure involving some form of independent commission for the investigation of complaints against the police and a Bill of Rights to be added to the existing legislation for the protection of human rights in Northern Ireland.

Since neither of these promises has yet been honoured, my contribution to this meeting is a warning - "BEWARE".

Panel discussion on policing

Panellists reported on various debates underway on the topic of policing

Caitriona Ruane
(Belfast Community Forum on Policing):

Belfast Community Forum on Policing (BCFP) was founded after the ceasefires to create and facilitate debate on the issues of policing. We see policing as a very crucial issue in this peace process. BCFP's aim is to facilitate public discussions and have as broad a debate as possible given the dramatically transformed situation since the ceasefires.

BCFP organised a conference entitled "Policing in a New Society", in the Whiterock, West Belfast, which brought together different political parties, community activists, loyalists, republicans and human rights groups. We followed that up with a conference on Young People and Policing. A working group was formed looking at the whole issue of young people and policing.

We also helped facilitate and participated at other debates in the local community - in Twinbrook, in Lenadoon, Derry and Newry. We are currently producing a comprehensive report on the conference which will be circulated widely. We also made a submission to the Forum for Peace and Reconciliation in Dublin.

We produced 50,000 leaflets, in relation to the Royal Ulster Constabulary (RUC), jointly with the Centre for Research and Documentation, Cullyhanna Justice Group and the Pat Finucane Centre in Derry.

In the short time available to me, I will outline what type of a police service we would like to see. We believe in a representative, accountable and responsive police service:

1. **Representative:** The current RUC is 93% Protestant and 100% Unionist; working class Protestants are largely excluded; women only make up 5% of the force.
2. **Accountable:** The Independent Commission for Police Complaints is perceived by many as a toothless body and totally ineffective. It has failed to substantiate any complaints of ill-treatment in the holding centres despite concern expressed by international agencies like Amnesty International, the UN Committee Against Torture, and the European Committee for the Prevention of Torture.
3. **Responsive:** One of the many issues that keeps recurring at local level throughout the north of Ireland is the failure of the current RUC to deal with crime in the community: muggings, break-ins, abuse of women and children, drugs and joyriding. Many people expressed the concern that the RUC is

trained to deal with "terrorist" crime. The point was made by many that if there is a mugging or a break-in it takes the RUC three to four days to respond. However, if there is a political crime, then the RUC has the area sealed off in five minutes.

Regarding the consultative process by the Police Authority there is a lot of talk about this and about the Chief Constable's Commission. There is a debate going on in local communities about the process - how do we view that process? Do we make submissions? That is the debate that we are having within our group at present and I am sure that other groups are having this too. I was at the Forum for Peace and Reconciliation on Friday and it was interesting to note that the SDLP and Sinn Fein are not going to be making a submission (to the Police Authority). So, there are a lot of questions to be asked. When Seamus Mallon was asked why they were not making a submission he said their party had looked at it and that they see it as a cosmetic exercise. He claimed that the Police Authority has no power. I think that is the feeling of a lot of communities on the ground, and we need to bear this in mind. We will make our own independent decision but local opinion is something we will be taking on board.

At the moment, what we see in the local communities are desperate attempts by the RUC to make itself acceptable. It seems to me that they are saying that the crime wave is now over and we will just get on with things, with the same structures as before, but perhaps losing a few police men and women. We have a scandalous waste of public money: billboards, adverts, bus ads to "help the police build the peace"! Gareth Pierce talked about regret - there has been no expression of regret, no acknowledgement that the police was also involved in human rights abuses. They are also saying that they are very interested in what local communities have to say. We personally invited David Cook to both our conferences, we rang his office, to date we have received no reply and he did not attend either of them.

In conclusion, I would like to sum up with a few points:

1. we are being criticised - and Seamus Mallon was criticised at the Forum - for not participating in the Police Authority proposals. We are accused of being insensitive about police deaths. I have worked with families whose loved ones have been killed by the British army and the RUC and I understand only too well the trauma suffered by their families - many of those families here today - and we are not saying a policeman or woman's death is any less traumatic for that family... it certainly isn't. But that should not stop us talking about what kind of police service we want.
2. We are accused of being anti-dialogue for calling for an Independent Commission to investigate human rights abuses by state forces and guerrilla movements, as has happened in the Goldstone Commission in South Africa, and the Truth Commission in El Salvador. We are more convinced than ever of the need for an Independent Commission here. The police or quangos investigating themselves have been shown to be a useless exercise. Sinn Fein and the SDLP are accused of being anti-dialogue also, because of non-participation in the Police Authority exercise.

3. Finally, it is not a case of recruiting Catholics into the police force. In South Africa, it was not a case of recruiting blacks into the police force. Blacks and Catholics can be just as brutal as the police have been in the past. It is much more fundamental restructuring that is required.

The real challenge for our society is a police service that is representative of the communities it serves in terms of religion, class, gender, race and political allegiance.

**Billy Hutchinson
(Springfield Inter-Community Development Project):**

I was involved in the conferences that Caitriona talked about and actually spoke at them, giving a working class Protestant view of the RUC. What I have tried to do on the Protestant side is to try and get some groups together in working class areas to actually talk about the effects of the police.

I felt that the official Unionist line of supporting the police was one I did not need to examine too closely. It was there and it was public. I wanted to go and try and get people together who felt that they had suffered at the hands of the police. What we wanted to do was to look at how we should move forward, rather than look at what the police had done in the past. We came up with a number of proposals.

We did not do it the way Caitriona described in open forums: we had done it quite privately and had small groups of people that we spoke to. I have written down some of the things they said. Amongst the proposals was the fact that people wanted a strong representative apolitical Police Authority which had some teeth. I am disappointed to hear Caitriona say that there are political parties on the nationalist side who are not going to put in their proposals to the Police Authority. I think the Authority needs to hear this - whether they act on it is another matter, but they do need to hear it. The proposals need to be given them in writing, and if they ignore these contributions then they ignore it at their own peril. So, I think people should put in their proposals, but that is of course a matter for those political parties to decide. I will be encouraging the fringe loyalist parties to put submissions into the Police Authority, even though we might feel that they might not be listened to it still needs to be done.

So, in addition to the strong representative apolitical Police Authority, we talked about a completely independent apolitical investigation of complaints authority. We also talked of the need for a philosophy of policing: what is it all about? why do we need police? what sections of society need them most? what sections of society receive their attention most? why do men and women join the police? If possible, motivations should be changed so it is seen more and more as a public service vocation rather than a government service occupation. Once a philosophy of policing is agreed, then the practicalities can be addressed. Those are the things we want to talk about - about changing the skills within the RUC. We looked at some other police forces around the world, like New Zealand, where police officers are trained in conflict mediation. We felt that the police should be doing that here.

We also recognised that there are sections of the community that feel that the police don't understand them - particularly young people, battered women etc. and how can that be rectified? We were saying that the police needs to separate out different issues and look at them differently. One of the big things which came out in discussion was the need for a new police force in a new society if we were going to go forward. The ceasefires had provided this opportunity to create a new society.

What was also recognised was the fact that the RUC had suffered as much as the public had suffered. We recognise that and recognise that they are citizens just like the rest of us. If we are demanding rights and justice for all people, then we cannot exclude RUC members.

We are saying that we should move forward. Everyone has the right to change. I actually said at one of the conferences in West Belfast that I demand the right to change, as a former loyalist prisoner. We have all carried out human rights abuses against each other and I feel that the RUC are not any different. We need to move forward. I would leave it on that note that we have to realise that these human rights abuses have been carried out by everybody. Let us put it in the past and build a new future and get rid of this society which is divided not just between Irish and British, but also between the security forces and the community. Let us change it and build a society for us all.

Paul O'Connor
(Pat Finucane Centre):

I think Billy said something very important there: everybody needs the right to change and needs to be allowed to change. The problem that we have, and I think we share this with a lot of communities throughout the north, is that we have not heard anything in the language of the RUC, or the Police Authority, or the British government, to indicate that they are demanding the right to change. That is the major problem that we have been facing in the last six months.

I have heard breathtaking arrogance in the last six months. I want to talk briefly about just two things: the language that has been used and what we have been doing in Derry.

We have Hugh Annesley telling us that he leads the best force in the world, or one of the best forces in the world, and it is time to build and time to move on. Now it is impossible for many people in working class Catholic areas to simply say - alright, build for the future, move on, accept the RUC, no problem. That goes right back to what Frank LaRue was saying yesterday about the issue of the right to truth, the issue of accountability for human rights abuses, and that is what differentiates the debate at the moment.

The debate in our communities is being carried out in large public halls, in public meetings, in small workshops, with community groups, small groups of 8-10 people coming together in rooms in a non-challenging atmosphere and feeling free to talk about the drugs problems in the area, about drink problems in the area, about alternatives to punishment beatings, about ways forward. Some of the results of the discussions we have had in Derry are the possibilities of drawing up Charters of Pro-

Social Behaviour (rather than anti-social behaviour), organising meetings between pensioners and young people, a demand that the security budget be diverted into working class areas to build up social structures in those areas. That is the kind of debate that I am seeing going on in Derry, in Ballymagroarty, Creggan, the Bogside and elsewhere.

The other debate I see going on, if it is worthy of the title "debate", is the Police Authority saying that they are coming to Derry next month to a closed meeting where they decide on the invitations, in coordination with the RUC Community Relations Branch, with the principals of schools, with the Catholic middle-class. In other words, let us talk with those people who don't have a problem with us. That is where the major problem is at present as we see it. We are not going to cooperate with it - we find it unbounded arrogance that David Cook would dare to come to Derry on those terms. What we are doing, however, is issuing a leaflet with other groups which I can briefly go through now.

It is an open letter to Hugh Annesley. I won't go through all the points but will just give you a flavour:

"Since the ceasefire, debate has focussed on the future of policing in our communities. Every society needs a trusted, democratic, accountable, and representative police service. You as RUC Chief Constable have said that the RUC is one of the best, if not the best, police forces in the world. You added that "I do not think there is anything inherently wrong with the RUC".

We are told that it is time to build for the future by supporting the RUC. Some questions need to be asked of you, as RUC Chief Constable. If the public contact the RUC, can you give a guarantee that those RUC officers that would deal with the public have not been involved in:

- *shoot to kill*
- *collusion*
- *ill-treatment (etc).*

None of the above questions would be necessary had the relevant authorities dealt with human rights violations by the state. Were you unaware of all of the above Chief Constable? Do you intend publishing the findings of the Stalker and Stevens inquiries? Or will it remain for your eyes only?

Can you answer the questions posed above and reassure the public. Since members of the security services have not been charged in connection with the above offences, is it logical to assume that they have in fact been promoted? Did you promote them? Where are the Special Branch detectives who set up Pat Finucane for assassination now based? Can you give a guarantee that contact with members of the RUC will not involve contact with those guilty of systematic and unpunished violations of human rights over a prolonged period.

Until the above questions are answered openly and honestly, it is unreasonable to expect cooperation, truth and support."

We have printed thousands of these leaflets. I heard this morning on the radio that the Police Authority are printing 600,000 of their own leaflets! Our leaflet is signed by the Pat Finucane Centre, the Centre for Research and Documentation, Cullyhanna

Justice Group and the Belfast Community Forum on Policing. We need any help we can get on distributing the leaflet.

Finally, I think there is a massive challenge posed especially to people like myself - how do we carry on the debate on policing so that people from working class loyalist and working class nationalist areas can find what they have in common, and determine what they want for the future? Policing and the police should not be seen as belonging to one community: at the moment, we perceive of it doing so but how can we carry on a debate to ensure that it doesn't belong to any one group?

(A Police Authority panellist, David Cook, was ill and unable to attend)

Presentation by Justice McLachlin⁴

The Canadian Experience of a Bill of Rights

(This text reflects the oral remarks made by Justice McLachlin at a specialist seminar held in January 1995 in Belfast)

A central problem facing many democracies at this point in time is how we deal with human rights. Generally western democracies feel that there must be some recognition of individual and minority rights within a majoritarian democracy as it has developed on the British model. The question is how we go about doing this.

In Canada, we have tried a variety of ways. We started with the British model - being, as we were, a colony of Britain. There was no written constitution - other than that dealing with the separation of powers necessary for a federation - hence, no constitutional bill of rights. Nor did we, until the middle part of this century, have much in the way of written legislation guaranteeing rights. While there had been a number of cases in the 1930s in which the courts in Canada had affirmed an implicit freedom of expression and certain implicit democratic rights, much in the way the Australian High Court has done recently in Australia with respect to freedom of speech and certain aboriginal rights, human rights were not formally recognised.

Then, in the '60s and '70s we witnessed a growing interest in human rights statutes. Each of the provinces and the federal government introduced human rights statutes, which dealt with issues such as employment equity and discrimination. They shocked a lot of people at the beginning. Many employers asked "why do I have to provide a toilet for females? I'm quite content to run my business with men only" or "what kind of country is this where I am not allowed the freedom to have as many or as few toilets as I want?". As you can see - a very high level of debate generally! But in reality the change was big and I don't mean to trivialise it. Many people felt that these new laws represented an unjustifiable invasion of their liberties.

"It seemed to people that the best way for us to live together was to have some sort of an understanding of the rights of minorities and individuals in the context of this multi-cultural society"

However, over the years, I think a consensus developed that human rights protections were by-and-large a good thing. Canada is a country which was based originally on two colonies - one French and one English - with a subsequent overlay of immigration from all parts of the world: we are consequently a multicultural society with a great deal of religious, racial and cultural diversity. It

seemed to people that the best way for us to live together was to have some sort of an understanding of the rights of minorities and individuals in the context of this multi-cultural society. For a while we

⁴ Justice Beverley McLachlin:

was called to the Bar of Alberta in 1969, to the Bar of British Columbia in 1971, and practised with different law firms 1969-1975. Initially she worked as an academic - as a lecturer, associate professor and professor with tenure at the University of British Columbia 1974-1978. Thereafter, she was appointed to the County Court of Vancouver 1981, to the Supreme Court of B.C. 1981 and to the Court of Appeal in 1985. She was appointed Chief Justice of the Supreme Court of British Columbia in 1988 and was appointed to the Supreme Court of Canada in 1989. Justice McLachlin has numerous publications to her name.

continued on the basis of human rights statutes supplemented by a federal Bill of Rights which purported to have some kind of quasi-constitutional status - to which the courts took a very conservative approach.

In the '70s, the Prime Minister of the day - Pierre Elliott Trudeau - decided to crown his last term in office by "bringing back the constitution to Canada" and taking the amending process away from the Westminster Parliament, together with a constitutional Bill of Rights binding provincial and federal governments. He embarked on a process of discussion and debate aimed at achieving as much consensus as possible between the provinces and the federal government. He was largely successful, although in the end Quebec did not sign the document (this is one of the outstanding grievances lying behind some of the present difficulties that we are facing).

So after much discussion, debate, and hearings, a Charter of Rights was agreed to. I should say something about the process, since in retrospect it was very important in securing public acceptance of the document. We heard so much about it; there was so much debate; so many different interest groups which were funded to participate and present their viewpoints (aboriginal groups, womens groups, poverty groups and so on) - that in the end, practically everyone knew about the Charter and a lot of people felt that they had had a hand in developng it. It was their document. It was not something imposed on them from the outside.

"... the process...was very important in securing public acceptance of the document"

So, what is in the Charter? Basic protections for rights such as freedom of speech, freedom of religion, democratic freedoms, an equality and non-discrimination provision, a general liberty provision, and a number of provisions aimed at the criminal justice system. It is a unique document in that it did not follow the American model but rather posed rights and enumerated them in the language we are used to - some of which is nearer to the European charters of rights than to the American - and then made those rights subject to several conditions. These conditions - which ensured the primacy of majoritarian government - were necessary to secure approval; otherwise the Charter would never have been adopted.

There was a great fear, and rightly so, that the powers of the legislatures and Parliament would be too much reduced; that the judges would be given too much power; and it was felt that parliament and the legislatures must retain the right to override the courts in the case of a real dispute over the ambit of rights. So we have a number of compromises to ensure that the power of parliament continues.

The first is in section 1 which says every individual is guaranteed the rights enumerated except insofar as there are reasonable limits, which can be demonstrably justified in a free and democratic society. In effect you have your right but it can be limited or overridden, if a government law impinging on it is found to be reasonably justified in a "free and democratic society". This means that the rights are not absolute in an American sense, even on paper. They are subject to certain limits which are seen to be for the good of everyone.

In addition there is the override provision. Section 33 says that if a government wants to pass a law which violates Charter provisions (and even fails the test of section 1 because the law cannot demonstrate its reasonableness), it can do so if it is passed by a certain majority. It can then remain on the books for up to five years when it should be reviewed. This override provision applies to all the rights except democratic rights (voting rights and so on). It has not been used very much, and the only significant time it was used was by Quebec when they had a language law which was found to be unconstitutional in that it limited freedom of expression in an unjustifiable way. The legislative assembly in Quebec used the override provision but, at the end of five years, chose not to renew the law in favour of a law in conformity with the Charter. Our former prime minister, Mr Mulroney was very upset about the override: he thought that it should not be there. It certainly detracts from the logical symmetry

of the document but it was something that had to be conceded at the last minute to get the parliamentarians to agree to the Charter. And the provision has not been abused, so it has not posed a great problem.

The Charter has changed the legal landscape in Canada and I can briefly list those changes in a minute. This came as a surprise to many people, even to its supporters. The general expectation was that this document would be something of a dead letter and would be interpreted conservatively by the courts to reflect the status quo. Indeed some of the opponents of the Charter had suggested that the Charter would limit such rights as we already had. We all knew the history of the American Bill of Rights which in the first century of its use was used to uphold slavery and all sorts of things which would not be countenanced today, and we knew a Charter is only as good as the interpretation it receives. The expectation was, because Canadian courts had always been very conservative on rights issues, that the Charter would continue to be interpreted in a similar way. If that had been the case, the Charter would not have made much difference.

In fact, however, this has not proved to be the case. I think this is due partly to the process I referred to earlier - the extensive debate which had taken place and the fact that so many people had indicated that they were serious about the document. This meant also that the courts themselves did a lot of thinking about it. Whatever the reason, the Supreme Court of Canada in its first decision signalled very clearly that it was going to view this document in a broad and purposive way, and the rights should be interpreted generously, giving full respect to the citizen or the minority group alleging infringement. It

“The Charter has been much more significant than even its framers had anticipated”

was made clear that this approach should govern all future cases. This signalled to the lower courts how they should go about their jobs and the result, I think, has been that the Charter has been much more significant than even its framers had anticipated.

The factors in making the Charter effective were, to recapitulate, the process leading up to its passage, the fact that the judiciary took an open and purposive point of view and, additionally, the fact that after the adoption of the Charter there was continued public participation. The government provided funds to minority groups to make Charter arguments. So it didn't become an elitist document; it became a document used by ordinary people. I should mention in connection with the judiciary that at the same time that this was happening, we had an opening up of the ranks of the judiciary. There was a perception in society that it was not good enough to have a judiciary composed (pejoratively put) of "ageing males". People felt that, without going into tokenism, we needed a Bench representative of the society that we had. That too made the Charter effective.

What are the changes? We have had the Charter now for twelve years, so I could go on and on, but I will try to run through some of the changes briefly. The criminal justice system is obviously a very important area: we have guarantees regarding detention, right to silence, right to counsel, search and seizure, interrogation (and confessions indirectly, so that as a matter of practice we have videos used in all criminal case interrogations in most areas), and trial procedures (with guarantees for a prompt trial). In this latter respect, we had to speed up the work of certain courts. In one area of Canada, near Toronto airport, there were very many drug cases being tried, and people were not being brought to trial for 4 or 5 years. Though most of the accused were out on bail for much of the time and were not incarcerated, the delay was nevertheless a flagrant violation of Charter guarantees. The court had tried to find remedies but basically the government had done little in response. Ultimately our court issued a very controversial decision where we said that if there were flagrant and lengthy delays, it was appropriate for the trial judge to issue a stay of proceedings. This is very draconian: someone is charged with and quite possibly guilty of a very serious offence, and a stay is entered. The public was very upset about that but the courts did it as a last resort: it was the only way (other methods having been tried) of bringing the system of justice into line with the Charter. In the longer view, I believe that the decision

can be defended. Now one does not have these delays. If the price was stays on some cases, at least at the end the system of justice is moving much more in accordance with the Charter than before.

The same with trial procedures. The Charter has affected the composition of juries, the use of stand-aside provisions to pack a jury one way or the other, and gave rise to a controversial decision on the right of cross examination in sexual assault cases. We had what is called a "rape shield" law in effect which imposed a blanket prohibition on cross examination by accused persons of anything to do with previous sexual history. Our courts said that that was too draconian because it demonstrably prevented an accused from raising certain defences which the law said were open to him. So, we struck it down but suggested that parliament improve it. I use this example because I think it shows how the Charter has worked. The immediate response to striking down a law like that is criticism of the court from the group that is affected: in this case women who are rightly concerned to secure convictions for sexual assault and to protect the privacy of complainants. But the striking down of the law is not the end of the day; it is simply one component in getting the law right, one step. What then happened was that the matter went back to parliament and within a few months, after rigorous debate, a new law was passed which hopefully this time (it has not been challenged yet) will withstand Charter scrutiny. This is a pattern which has emerged. If possible, we try to stike out only an offending portion of the law or read it up or read it down to save the law, but if we cannot, and must strike it out, the matter goes back to the parliament or the legislature, and usually one then has a new debate, and very quickly another law in place. So, rather than thwarting the will of parliament, the courts may be viewed as working in tandem with it. Obviously they are independent, but they work together in the sense that by determining the legislation is bad, hopefully new legislation, which passes constitutional muster and better respects the rights guaranteed by the Charter, is passed.

Quickly on other issues: in sentencing, there is a guarantee against cruel and unusual punishment. Under that provision, provisions for indeterminate sentences for dangerous criminals have been upheld. If we had a death penalty, it might well be challenged under this provision. Extradition has arguably been affected since liberty comes into play and if there is an extradition request to a country which does not meet minimal concerns it might well be challenged. Penal law is affected also: we have held that, notwithstanding a sentence of incarceration passed by a court, there is a residual liberty interest. There have not been many prisoner cases, and those which have been brought have not had a great deal of success because the courts are prepared to allow fairly wide discretion to prison authorities in handling difficult situations and so on. But a minimum of fair procedure - eg governing a move to solitary confinement for example - would be guaranteed, I would think, under these provisions.

So the criminal justice system has been affected very greatly by the Charter. I believe that, in general, police interrogations are much better conducted. I cannot say that we have eliminated all cases of police brutality - there have been a number of notorious examples in the last years - but I do believe, in talking with people who are lawyers in the field, that the interrogation system and the general way that people are treated is at a higher level than it was before. Police are obliged to take care before they search, before they seize, before they detain: they know they have to justify their actions and they do take care. It is not as easy and not as casual as it was before. I did not become prepared with all the statistics, but I read recently an article in one of our leading newspapers citing statistics saying serious crime has, if anything, diminished a bit in the last few years. People still are securing convictions. There are, it is true, stays because of a technical violation of rights, and there are cases where laws which are designed to create certain offences are struck down or limited, but generally the process is working reasonably well.

Equality and discrimination: we haven't had an enormous number of cases but I can cite some of them for you. Under the equality provision the right of a non-citizen to practise law was upheld; the mandatory retirement provisions were upheld (it was argued they violated equality provisions as well as liberty); limited parental rights to make decisions on behalf of children have been recognised; we now have some contentious cases before us concerning child support payments; we have challenges by

common-law couples and gay couples challenging certain benefit schemes they are not allowed to participate in; successful challenges for pregnancy benefits; and for fathers for paternity leave for adopting a child. As regards freedom of expression we have dealt with cases on hate literature, signposting cases and so on. We have adopted a middle road between the American absolutist position on freedom of expression and the more continental European approach which permits significant limits on freedom of expression, and I think the balance has been reasonably well received.

Freedom of religion: Sunday shopping laws have been struck down; parental instruction in education has been addressed. The limit here is that one's religious beliefs cannot justify imposing those beliefs on others against their wishes, or in a way that harms others. An interesting guarantee, mentioned already, is section 7 which guarantees every individual's liberty, subject to "principles of fundamental justice". This isn't fully defined yet, but the majority of the court has left it open to cover more than the criminal process. It may cover things like freedom of movement and parental rights and other basic freedoms which we take as inherently part of what our society takes as befitting the individual, and pertinent to how the individual is entitled to live his or her life.

In the criminal sphere the liberty section has been used to strike down absolute liability offences: there has to be a mens rea component. We have said however that it may be objective, which allows certain manslaughter and environmental offences. We have also allowed automatism as a defence, relying on the same provisions - the argument running that if you did not have a guilty mind, you should not be deprived of your liberty.

Democratic liberties, equality of voting powers and so on: the court has said that we will not insist on a one-person-one-vote in an absolute form but that there should be, subject to other considerations (eg the ability to service a very large riding or whatever), general voter parity.

In summary, I think there have been great changes due to the Charter and that our society, in my own view at least, is probably a better society for that. There are critics of the Charter; there are people who say that the judges have too much power and laws should not be struck down. But one must take the long view of this: when one looks at where laws have been struck down, one usually finds that there is legislative action to replace them with something better in fairly short order. I think that, on the whole, the balance has been struck in a reasonable way. Indeed the argument can be made that the functioning of democracy has been enhanced by a constitutional bill of rights because it has given a voice to individuals and minorities which, if they are not given a voice, can threaten the functioning of democracy. Grievances can start to build up to a point where people start to lose confidence in the system and then we can expect forms of reaction which we would rather not have. It is much better to allow a minority group or a disgruntled individual to go to court to argue his/her case in court and have them win or lose it, than to have them resort to violence or try to take other anti-social measures.

"...the function of democracy has been enhanced by a constitutional bill of rights because it has given a voice to individuals and minorities which, if they are not given a voice, can threaten the functioning of democracy"

The Charter has really empowered people who before felt a sense of victimization and a lack of empowerment. The Charter, with the previous legislation, has really created a different climate in Canada. People take their human rights very seriously and hold them very dearly. To give you an example: talking to a cab driver in Quebec city last weekend, the issue of the emergency measures introduced in Canada in the early 70s came up. An organisation called the FLQ in Quebec was using

"People take their human rights very seriously and hold them very dearly"

violent means to advance the separatist agenda and they had bombed some buildings and taken some hostages (one of whom was killed). It was an alarming situation for a country that had never seen

“...there is an acceptance that the individual and the minority have certain constitutional expectations of society, and that the people who govern cannot overstep them”

anything like this before. The premier of the province of Quebec asked the federal government to impose the War Measures Act to dispense with the usual civil liberties. The Act was imposed and police arrested many people who had nothing to do with FLQ but had gone to the same cafes, or were friends of friends, or young radicals. They were however released quickly and the state of

emergency ended, so that one might not think of it as having great significance twenty years later. But the taxi driver was really angry and upset about it and complaining that "that was a terrible thing that Trudeau did when he arrested those 200 people: that was in violation of our fundamental liberties". People have long memories. Perhaps this story epitomises the value system and culture that has grown up in our country. Notwithstanding the anti-crime sentiment, and the right-wing view that the "police have to get tougher", there is an acceptance that the individual and the minority have certain constitutional expectations of society, and that the people who govern cannot overstep them.

I have gone on long enough. Let me just conclude by going back to the question I started with - the question of how you go about dealing with rights. There are a couple of models: you can constitutionalise them or you can choose not to. If you constitutionalise them, you have the sort of thing I have been describing in Canada. If you take the other route, two things can occur: you might have absolutist majoritarianism which would mean the elected government can do as it chooses. Or you may have what has happened in Australia recently, and what was happening to some extent in Canada before the Bill of Rights, that is judicial recognition of what are called implicit rights. I suspect that, in this day and age, when human rights are so accepted by so many countries on such a basic level, absolute majoritarianism is probably not tenable. So the real choice for people may be between a system where you set out your rights constitutionally or one where you allow the courts to develop them on an ad-hoc common-law basis, as is being done in Australia. That's perhaps where the debate should focus.

My personal view is that it might better to proceed by expressly entrenching these rights in the constitution. You then have a more general acceptance in society that these are the rights which govern; you have a better basis for developing a coherent jurisprudence; and, given that the judges are going to be legislating on these areas of conflict anyway, you cannot avoid some exercise of judicial power in determining the values of the nation and in resolving areas of conflict when the rights of the individual and the minority come into conflict with the majority. The Chief Justice of Australia once said to me, having weathered great criticism over their freedom of speech decision, that he wished they had had a written Bill of Rights. Then the courts would have a document to refer to, and it would make the task of judging easier, and make the decisions more acceptable to extreme right wing elements which find decisions upholding individual rights against majoritarian interests unacceptable. Such groups might find the decisions more acceptable if they were based on some document recognised by society as a whole.

Notes on Guest Speakers

Frank LaRue:

is a Guatemalan labour lawyer who became active on human rights questions through his involvement in the ecumenical Committee for Justice and Peace and the Democratic Front Against Repression, of which he was a founding member. For some twelve years, Mr LaRue was in enforced exile in Washington where he was Director of the Centre for Human Rights Legal Action. The centre takes legal action against governments which abuse human rights, using international fora such as the UN, the Organisation of American States and the International Labour Organisation. Despite being at personal risk, he determined to continue this work on his recent return to Guatemala. In recent years he has specialised on questions of impunity and the Right to Truth; in early 1994 he was a panellist at the Truth Commission Forum in Guatemala.

Justice Beverley McLachlin:

was called to the Bar of Alberta in 1969, to the Bar of British Columbia in 1971, and practised with different law firms 1969-1975. Initially she worked as an academic - as a lecturer, associate professor and professor with tenure at the University of British Columbia 1974-1978. Thereafter, she was appointed to the County Court of Vancouver 1981, to the Supreme Court of B.C. 1981 and to the Court of Appeal in 1985. She was appointed Chief Justice of the Supreme Court of British Columbia in 1988 and was appointed to the Supreme Court of Canada in 1989. Justice McLachlin has numerous publications to her name.

Gareth Pierce:

became involved in human rights questions through exposure to the civil rights movement in the United States; on her return to England she qualified as a solicitor and build up an extensive criminal practice as a defence lawyer. She has been involved in most of the major miscarriage of justice cases which have gone through the English legal system (including the Birmingham 6, Guildford 4, Judith Ward, and Cardiff 3 cases).

Assistant Secretary of State John Shattuck:

was sworn in as Assistant Secretary of the US government's Bureau of Democracy, Human Rights and Labor in June 1993. Immediately preceding this appointment, he was Vice President of Harvard University where he taught human rights and civil liberties law. A long time human rights advocate, Mr Shattuck was the Executive Director of the American Civil Liberties Union (ACLU), Washington Office, from 1976-1984, having previously (1971-1976) served as ACLU National Counsel, litigating in the areas of privacy, government secrecy and political surveillance. In a voluntary capacity, he was vice-chair of the US section of Amnesty International and was on the executive of the Leadership Conference on Human Rights.

Notes on organising groups



Several members of the organising groups sharing a panel with John Shattuck, Assistant Secretary of State

British Irish Rights Watch

is an independent non-governmental organisation that researches and monitors the human rights dimensions of the conflict in Northern Ireland. Although most of its work is focused on Britain and Ireland, Rights Watch will investigate alleged human rights violations arising from any aspect of the conflict wherever they occur. Rights Watch also provides training for lawyers and others on international human rights law.

Committee on the Administration of Justice

is a voluntary cross-community organisation founded in 1981 to work for the protection and promotion of human rights in Northern Ireland. Its remit is broad: addressing issues both directly related to the emergency laws and more general civil liberties concerns regarding freedom of expression, discrimination, language rights and juvenile justice. The CAJ takes no position on the constitutional status of the region and works to ensure human rights for all without distinction.

Irish Council for Civil Liberties

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continued overleaf

Liberty

was formed in 1934 as the National Council for Civil Liberties. Liberty is an independent, non-party political campaigning organisation which works to defend and extend civil liberties. The organisation believes in a society built on the democratic participation of all its members and based upon the principles of justice, openness, the right to dissent and respect for diversity. Since its beginnings, Liberty has been concerned about the situation in Northern Ireland. Its first major inquiry in 1935 called for the repeal of the Special Powers Acts. Since then it has consistently opposed emergency measures which, whilst failing to defeat terrorism, have effectively institutionalised the suspension of fundamental civil and political rights.

Scottish Council for Civil Liberties

is an independent organisation campaigning for the defence and promotion of civil liberties in Scotland. Its work includes lobbying MPs, responding to government consultation documents, writing briefing papers, producing 'rights' guides and researching a variety of issues of concern to civil libertarians. It has a library of information which is freely available to the public and answers enquiries from the public, from professionals and from other organisations.

List of conference participants
(11-12 March 1995)

Abbott, Marie	Northern Ireland Voluntary Trust
Adams, Alan	Northern Ireland Office
Atack, Iain	
Attwood, Alex	Social Democratic Labour Party
Attwood, Tim	Citizen Advice Bureaux, Belfast
Beirne, Maggie	
Bell, Christine	CAJ (vice-chair)
Bourdon, Me Wm	International Federation of Human Rights
Bradley, Conleth	
Brogan, Terence	
Brown, Ken	
Bucherer, Janine	
Burke, Vincent	
Caher, Tony	Law Society of Northern Ireland
Caleyron, Nathalie	
Campbell, Kate	
Campbell, Taylor	
Caraher, Margaret	Cullyhanna Justice Group
Casserley, Cathy	Haldane Society
Cassidy, Fiona	
Clark-Glass, Mary	Alliance Party
Clarke, Beth	
Connolly, Johnny	
Cooper, Kevin	
Corrigan, Elisabeth	
Couvert, Catherine	
Craig, Siobhan	Lesbians Organising Together
Cullen, Kate	
Cullen, Padraig	
Darnton, Ciara	
Delaney, Kevin	West Belfast Economic Forum
Dickson, Brice	
Donovan, Paul	Britain & Ireland HR Project
Drinan, Pdraigin	
Dudgeon, Jeff	
Eggert, Anna	
Ellman, Michael	Liberty/IFHR
Farrell, Michael	Irish Council of Civil Liberties
Finucane, Michael	
Flanagan, Niamh	West Belfast Economic Forum
Foley, Conor	Liberty
Foley, Tara	
Fryers, Maureen	
Fulton, Brendan	
Gadd, Breidge	
Gilmore, Tony	Probation Board for NI

Godfrey, Donal
Gormally, Cathal
Gowan, Halya
Green, Lynda
Groves, Emma
Hainsworth, Paul
Haire, Will
Hannon, Rev. Patrick
Harrington, Donal
Harris, Helen
Healy, Rachel
Hegarty, Angela
Hickey, Angela
Higgins, Nuala
Hill, Mike
Huggins, Geoffrey
Hutchinson, Billy

Irwin, Colin
Jennings, Joanne
Kane, Bernard
Keehn, Douglas
Kelleher, Declan
Kelly, Nuala
Kelly, Kate
Kelly, Paddy
Kilmurray, Avila
Kruckels, Anselm
Lannigan, Olwyn
LaRue, Frank
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Leeson, Pauline
Lennon, Brian
Lennon, Jenny
Leon, Clare
Livingstone, Stephen
MacDermott, John
MacDermott, Pearse
Magill, Denise
Maguire, Mairead
Mallon, Christie
Marron, O.
Martin, Liz
Martinez, Val
Maxwell, Patricia
McAnespie, Eilis
McAnespie, J.
McCabe, Eilis
McCann, Ciaran
McCarthy, Brendan
McCormack, Inez
McCormack, Vinnie
McCrary, Deana

Amnesty International

United Campaign Against Plastic Bullets
Amnesty International, Belfast
Department of Economic Development
Irish Commission for Prisoners Overseas

CAJ (chair)
British Irish Rights Watch

Northern Ireland Prison Service
Springfield Inter-Community
Development Project

Casement Accused

Department of Foreign Affairs
Irish Commission for Prisoners Overseas

Save the Children
Northern Ireland Voluntary Trust
Cornerstone Community

Speaker

Barnardos
Conference of Religious

Irish Council of Civil Liberties

Community of the Peace People

Falls Women's Centre
CAJ (staff)
US Consul

UNISON
UNISON

Pax Christi International

McCrory, M.
McDevitt, Mary
McDowell, D.
McElduff, Barry
McGovern, Dr Sean
McGrory, Barra
McGrory, Clodach
McKearney, Tommy
McKeown, Anne
McLaughlin, Duncan
McLaughlin, Eithne
McLean, Paddy Joe
McLenaghan, Robert
McMahon, Fiona
McMahon, Mary
McManus, Francis
McVeigh, Robbie
Melaugh, Martin
Moffat, Chris
Morgan, Martin
Murphy, Donal
Murphy, Paul
Murphy, Pauline
Murray, Melissa
Ni Bhrogain, Sandra
Ni Raifertaigh, Una
Nijwening, Jannie
Nolke, Sabine
Noonan, Paul
O'Brien, Martin
O'Connor, Paul
O'Hare, Pauline
O'Rawe, Mary
O'Rourke, Derek
Ord, Anne
Orr, Neil
Ostermeyer, Malcolm
Patterson, Ruth
Perry, Rose
Pierce, Gareth
Pike, Mary Boresz
Quilley, Alan
Quinlivan, Karen
Quinlivan, Shivaun
Quinn, Ciaran
Quinn, Edel
Rafferty, Martie
Reilly, Clare
Ritchie, Michael
Rodgers, Damian
Rodgers, Hugh Martin
Ruane, Caitriona
Schertz, Kate

Falls Women's Centre

Labour Party TD
Sinn Fein

Northern Ireland Office (Prisons)
SACHR
Democratic Left

NUS/USI
Democratic Left/Peace Train

Centre for Research & Documentation
Centre for Study of Conflict (UUC)

SDLP

Labour Party, MP

Irish Council for Civil Liberties
Columbanus Community of Reconciliation
Canadian High Commission
BTEDG
CAJ (staff)
Pat Finucane Centre

Shelter NI

Speaker
Brehon Law Society
Quaker House

Falls Community Council

United Campaign Against Plastic Bullets
CAJ (staff)

Belfast Community Forum on Policing
Europe Desk, US State Department

Schoen, Ricki
Scott, D.M.
Shanks, Rachel
Shattuck, John
Sheehan, Garrett
Sherry, Irene
Sloan, Paddy
Smith, Graham
Smith, Jim
Smyth, Maliosa
Smyth, Sr Elisabeth
Sterling, David
Thompson, Mark
Thomson, Brian
Titterton, Mirium
Tunney, Claire
Ui hAdhmaill, Mairead
Wadham, John
White, Ciaran
Whysall, Alan
Wilkinson, Oliver
Wilson, Una
Wilson, Robin
Winter, Jane
Wolfe, Martin
Zentay, Susan

Speaker, US Assistant Secretary of State

Dominicans Concerned for Justice
Northern Ireland Office
Campaign for Truth

Children's Rights Development Unit

Campaign for the Transfer of Prisoners
Liberty

Northern Ireland Office
Victim Support NI

British Irish Rights Watch

**Organisations represented at the March conference
and/or at ancillary events**

**Amnesty International
Barnardos
Belfast Community Forum on Policing
Belfast group of Citizen Advice Bureaux
Belfast Trades Council
Belfast Travellers Education Development Group
Brehon Law Society
Britain & Ireland Human Rights Centre
Campaign for the Transfer of Prisoners
Campaign for Truth
Casement Accused
Centre for Research and Documentation
Columbanus Community of Reconciliation
Community of the Peace People
Conference of Religious
Cornerstone Community
Cullyhanna Justice Group
Danny McNamee campaign
Dominicans Concerned for Justice
Falls Community Council
Thomas Green campaign
Haldane Society
International Federation for Human Rights
Irish Commission for Prisoners Overseas
Law Society
Lesbians Organising Together
National Union of Students/Union of Students in Ireland
Neil Latimer campaign
Northern Ireland Voluntary Trust
Pat Finucane Centre
Pax Christi
Pax Christi International
Peace Train Organisation
Police Authority
Probation Board for Northern Ireland
Relatives for Justice
Save the Children
Standing Advisory Commission on Human Rights
UNISON
United Campaign Against Plastic Bullets
Victim Support N.I.
West Belfast Economic Forum**

plus official representation from the British, Irish and US governments, and representatives from several political parties. See list of participants for full record.

CAJ Publication List

- No. 1 **The Administration of Justice in Northern Ireland: the proceedings of a conference held in Belfast on June 13th, 1981 (no longer in print)**
- No. 2 **Emergency Laws in Northern Ireland: a conference report, 1982 (no longer in print)**
- No. 3 **Complaints Against the Police in Northern Ireland, 1982. (price £2.50)**
- No. 4 **Procedures for Handling Complaints Against the Police, 1983 (updated by pamphlet No.16)**
- No. 5 **Emergency Laws: suggestions for reform in Northern Ireland, 1983 (£1.50)**
- No. 6 **Consultation between the Police and the Public, 1985 (price £3.00)**
- No. 7 **Ways of Protecting Minority Rights in Northern Ireland, 1985 (price £4.00)**
- No. 8 **Plastic Bullets and the Law, 1985 (updated by pamphlet No. 15)**
- No. 9 **"The Blessings of Liberty": An American Perspective on a Bill of Rights for Northern Ireland, 1986 (price £2.50)**
- No. 10 **The Stalker Affair: More questions than answers, 1988 (price £3.00)**
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- No. 12 **Life Sentence and SOSP Prisoners in Northern Ireland, 1989 (price £1.50)**
- No. 13 **Debt - An Emergency Situation? A history of the Payments for Debt Act in Northern Ireland and its effects on public employees and people on state benefits, 1989 (price £2.00)**
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- No. 16 **Cause for Complaint: The system for dealing with complaints against the police in Northern Ireland, 1990 (price £2.00)**
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- No. 21 **A Bill of Rights for Northern Ireland, 1993 (price £2.00)**
- No. 22 **Staid agus Stadas Gaeilge i dTuaisceart na hEireann - The Irish Language in Northern Ireland: The UK Government's approach to the Irish Language in light of the European Charter for Regional or Minority Languages, 1993 (price £3.50/IR£3.50)**
- No. 23 **A Fresh look at Complaints against the Police, 1993 (price £3.50/IR£3.50)**
- No. 24 **Adding Insult to Injury? Allegations of Harassment and the use of Lethal Force by the Security Forces in Northern Ireland, 1994 (price £3.50/IR£3.50)**
- No. 25 **The States We are In: Civil Rights in Ireland, North and South - proceedings of a conference held in Dublin by the Irish Council of Civil Liberties and the CAJ, 1993 (price £3.50)**
- No. 26 **Civil Liberties in Northern Ireland: The CAJ Handbook (2nd edition), June 1993 (price £6.00)**
- No. 27 **"Harassment: It's part of life here..." Survey of young people's attitudes to and experience of harassment by the security forces, December 1994 (price £5.00)**
- No. 28 **No Emergency, No Emergency Law: Emergency Legislation related to Northern Ireland the case for repeal, March 1995 (price £4.00)**
- No. 29 **Right to Silence debate, the Northern Ireland Experience (May 1994) (price £3.00)**

Submissions

- S1 **Submission to the UN Human Rights Committee "Human Rights in Northern Ireland", 1991 (price £1.00)**
- S2 **Submission to the United Nations Committee Against Torture, November 1991 (price £1.50)**
- S3 **Submission to the Royal Commission on Criminal Justice, November 1991 (price £1.00)**
- S4 **Submission to United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, August 1992 (price £1.00)**
- S5 **Submission to United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, August 1993 (price £1.00)**
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- S12 Response to the Draft Children (Northern Ireland) Order 1993, December 1993 (price £1.00)
- S13 Submission to President Clinton "Civil Liberties in Northern Ireland", 1993 (price £1)
- S14 Submission to President Clinton "Civil Liberties in Northern Ireland", 1994 (price £1)
- S15 Response to the NIO Consultation Document "Policing in the Community", May 1994 (£1.00)
- S16 Response to the Draft Prison and Young Offender Centre Rules (Northern Ireland) 1994, June 1994 (price £2.00)
- S17 Comments on the Proposal for Draft Local Government (Miscellaneous Provisions) (NI) Order (Irish Language Street Signs), June 1994 (price £1.00)
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- S30 Submission to the United Nations Human Rights Committee, June 1995 (price £4.00)
- S31 Submission to the Police Authority for Northern Ireland (PANI) Consultation on the future of policing in Northern Ireland, August 1995 (price £2.00)
- S32 Submission to the United Nations Committee Against Torture, Oct. 1995 (price £3.00)

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* Please note these prices do not include the cost of posting

'Human Rights: The Agenda for Change'

Consultation sponsored by five of the major civil liberties groups in Ireland and Britain:

British Irish Rights Watch

is an independent non-governmental organisation that researches and monitors the human rights dimensions of the conflict in Northern Ireland. Although most of its work is focused on Britain and Ireland, Rights Watch will investigate alleged human rights violations arising from any aspect of the conflict wherever they occur.

Committee on the Administration of Justice

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Price: £3.50