

**Testimony from Martin O'Brien, Director,
Committee on the Administration of Justice, Belfast (March 2001)**

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

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

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

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

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

But now I would like to turn more directly to the main topic of my intervention. As many of you will know, the agreement established a Human Rights Commission and obliged the Commission to consult on the content of a Bill of Rights for Northern Ireland. That consultation is now underway. There has long been a consensus on the need for a Bill of Rights. All the political parties, and many other organisations, have consistently expressed support for the idea. CAJ has presented a submission to the Commission's consultation exercise, and I request that this be read into the record.

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

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

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

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

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

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

Concerns about attitudes in the current judiciary add to CAJ's belief that a new Human Rights Court should act as guardian of the Bill of Rights. Creating a separate court to enforce the Bill of Rights would have a tremendous psychological impact. New judges sitting on a new court,

entrusted as the guardians of the Bill of Rights, cannot help but take those rights seriously and endeavour to ensure that they are respected. A new court that functions as an appellate court will also influence current members of the Northern Ireland judiciary. They would know that their decisions relating to the Bill of Rights would be subject to review. Indeed, the Constitutional Court in South Africa has had precisely this effect. Judges who presided during the apartheid era are now effectively enforcing the new human rights standards.

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

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

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

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

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

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

doubts about either the importance, or the scale of the work, but if we are to secure change on the ground it is vital.

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

From the perspective of the US, we need a lot of help. US intervention around establishing ethical principles for investment in Northern Ireland was a key lever in ensuring that the UK government introduced increasingly strong anti-discrimination legislation. This interest in our employment practices, in investment strategy, and in government policies aimed at anti-discrimination and greater equality must be maintained. This Committee may for example want to request information from the government on the work of the newly-created reviews into appointments to the senior Civil Service (where there is a significant lack of women and Catholics) and the review into the government's public procurement policy which could very effectively target the endemic inequalities in our society. Moreover, there are a number of key public bodies that have not yet been required to comply with the new duties to promote equality of opportunity. The gaps in this protection include very important bodies such as the BBC, the Director of Public Prosecutions and the Ministry of Defence. These organisations must be brought within the ambit of the equality legislation without further delay.

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