

**Testimony by Maggie Beirne
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Committee on the Administration of Justice (CAJ)
to the**

**House Committee on International Relations
Sub Committee on Africa, Global Human Rights
and International Operations**

15 March 2006

Thank you for the invitation to testify. Today, as you know, is the seventh anniversary of the murder of Rosemary Nelson who testified previously before Congress on the same topic of policing in Northern Ireland. The Committee on the Administration of Justice (CAJ) was proud to have Rosemary serve on its executive, and is delighted to record the continuing interest and commitment of this Committee in policing reform.

CAJ, as you know from previous submissions, is an independent human rights organisation that works in Northern Ireland on behalf of people from all sections of the community and was awarded the Council of Europe Human Rights Prize by the then 39 member states in recognition of the organisation's efforts to place human rights at the heart of the peace process.

One of the reasons for the success of our work to date has been the continued involvement and interest of the United States. In this context we would particularly like to thank the honourable members of this Sub-Committee for their continued interest in human rights developments in Northern Ireland, and in particular, the untiring efforts of its chair, Chris Smith.

My NGO colleagues have spoken of a range of issues of relevance to the topic of the **Peace Process and Police Reform in Northern Ireland**, and I will seek not to duplicate their submissions, which CAJ would wholeheartedly endorse. Instead, we thought that it might be helpful for the Committee if we sought to put the debate about "dealing with the past" – both by way of the Historical Enquiries Team and individual "Cory inquiries" -- into a somewhat broader policing and criminal justice context.

This submission will therefore address in turn the following issues:

- a. past allegations of police collusion;
- b. measures to address allegations of police collusion;
- c. the relevance of these concerns to the current debate about the devolution of criminal justice and policing powers;
- d. additional human rights safeguards.

a) **past allegations of police collusion**

In CAJ's submission to the Independent Commission into Policing for Northern Ireland (the Patten Commission), in 1998, we cited a series of reports into collusion which were prepared over the years.

Some of these reports were prepared by senior British police officers. The Stevens report in 1990 for example, reported *"it is clear that official information, originally produced by the Royal Ulster Constabulary, the army and the Prison Service, has passed, illicitly, into the hands of loyalist paramilitary groups. Documents, and information from documents, have been traced to the possession of these paramilitaries. They have been used by them to enhance their own intelligence systems and as an aide to the targeting of persons suspected of being republican terrorists"* (page 12 - "Summary of the Report of the Deputy Chief Constable of Cambridgeshire John Stevens, into allegations of collusion between members of the Security Forces and Loyalist Paramilitaries").

Other reports were prepared by well respected international human rights organisations. The Committee has frequently heard from Human Rights First directly on such matters, but Amnesty International in a report in 1994 entitled "Political Killings in Northern Ireland" reported that the organisation *"has not been convinced that the government has taken adequate steps to halt collusion, to investigate thoroughly and make known the full truth about political killings of suspected government opponents, to bring to justice the perpetrators and dismantle 'pro-state' organisations dedicated to political violence, or otherwise deter such killings"* (pages 29-30).

Human Rights Watch in its 1997 report entitled "To Serve without Favor: Policing, Human Rights and Accountability in Northern Ireland", noted that *"RUC management told Human Rights Watch that there have been 'remarkably few' cases of police officers passing information on to loyalist paramilitaries, but in those cases which have been spotted over the last 25 years, those individuals have been 'dealt with'. In fact, there has never been a criminal or disciplinary charge levelled against an RUC officer for acknowledged collusion; thus it remains unclear when, how, and under what circumstances officers involved in collusion have been 'dealt with'"* (p. 141).

Despite receiving testimony to this effect, the Patten Commission nevertheless determined that its task was not to *"make judgements about the extent to which the RUC may or may not have been culpable in the past of inattention to human rights or abuse of human rightsour approach is restorative rather than retributive"* (pages 18-19). It also however concluded that *"we are in no doubt that the RUC has had several officers within its ranks over the years who have abused their position. Many supporters of the RUC, and both serving and retired officers, have spoken to us about "bad apples". It is not satisfactory to suggest, as some people have, that one should somehow accept that every organisation has such "bad apples". They should be dealt with"* (page 26).

Patten also recognised that a number of specific allegations of past police misconduct were the focus of investigation in other fora. Subsequently, several of the cases that Patten alluded to were subjected to the forensic study of Judge Peter Cory and he reported to government in October 2003.

In the Robert Hamill case, the judge expressed concern about certain actions which, if confirmed, *“could be found to be carefully planned and premeditated actions taken to frustrate a murder investigation and to protect or to exonerate an individual who might have been guilty of murder”* and the failure to undertake certain basic investigative tasks *“may indicate a bias in the police force that could amount to institutional collusion”*.

In the case of Rosemary Nelson (whose anniversary, as I mentioned, we commemorate today), Judge Cory concluded *“I am satisfied that there is evidence of collusion by governmental agencies in the murder of Rosemary Nelson that warrants the holding of a public inquiry”* (page 71). In the Billy Wright case, the allegations of collusion related to the Prison Service, rather than to the police, but Judge Cory again concluded that there was *“sufficient evidence of acts or omissions that could...result in a finding that there had been acts of collusion by the Prison Service, their directors, officers or employees”* (page 89).

Of the four cases from Northern Ireland examined by Judge Cory, it is the Pat Finucane case that offers the most worrying insights into the possibility of collusive behaviour on the part of the security services. The case is also emblematic of the difficulty of treating allegations of collusion as something that is a matter of the past, with little or no current relevance.

In recent correspondence from the Northern Ireland Office to the family (20 February 2006) (already entered into the record formally) the Secretary of State for Northern Ireland, Peter Hain, states *“the inquiry will hear evidence that goes to the heart of national security in Northern Ireland. There will be some evidence which cannot be made public, because it could cause real damage to national security or put lives in danger”* (p. 2). Later in the same letter reference is made to the great “volume of sensitive material”, and the fact that the Bloody Sunday Inquiry involved a lot less sensitive evidence than an inquiry into the murder of Pat Finucane.

Pat Finucane was a defence attorney. He was killed by loyalist paramilitaries. What about his murder could be of such a sensitive nature, and be so intimately tied into concerns of national security, that government is unwilling to respond – 17 years after his death – to the family’s request for an open and transparent investigation? How can the public conclude anything other than that the state itself bears some direct responsibility for this murder? Surely the state has no national security interest in protecting loyalist paramilitaries? Its concern to protect national security can only be understood if the state itself acted – by commission or omission – in concert with loyalist paramilitaries.

b) **measures to address allegations of police collusion**

A number of crucial steps have been taken to address past – and potentially future – allegations of collusion. While many changes are still underway, and being bedded down, progress is still measurable.

Patten proposed/endorsed a series of major reforms that are steadily being put in place:

- the creation of a more effective oversight mechanism in the form of a Policing Board;
- the creation of an independent police complaints system (the Police Ombudsman);
- the drawing up of a Code of Ethics which is tied directly into disciplinary rules and regulations;
- the establishment of structures, training principles, legal frameworks that emphasise human rights, equality, and community outreach; and
- a series of recruitment and personnel initiatives aimed at diversifying the composition of policing.

At the same time, requests to Patten to recommend the disbandment of the old RUC or, much less radically, to vet all those who wanted to remain or become members of the new policing arrangements, were rejected.

But Patten had asked for action to be taken against ‘bad apples’ and had proposed that, as a minimum, in future all new and serving officers should take an oath to uphold human rights. Yet even this measure – intended to avoid the retention or recruitment of human rights abusers – was rejected by government. Government rejected any inference that the police might previously have been involved in human rights abuses, and this denial plagues continuing debates around policing. Victims of past collusion believe that those responsible are still possibly in positions of power in the police.

For example, many complaints had been made of the actions of the Special Branch and Patten reported that it was seen as a “force within a force”, and recommended a decrease in specialist officers, the merging of the unit in the wider Crime Branch under the command of a single Assistant Chief Constable, improved information flow to regular police commanders about security policing in their districts, and the routine rotation of officers.

Important changes are clearly underway, but concerns have been expressed at different times about the speed of change (or lack thereof), and these concerns have been exacerbated by major new developments.

In February 2005, the government announced that from 2007 “*the Security Service will assume for Northern Ireland the lead responsibility for national security intelligence work*”. This means that MI5 will take on work previously undertaken by Special Branch – presumably just as the final changes proposed by Patten come to fruition. The Secretary of State did go on to say in the statement that “*such change will in no way diminish the role of the PSNI*”

in intelligence gathering in areas other than national security'. But, clearly, the exact division of work between the police and the national security agency is still being negotiated, since more recently the Chief Constable is reported as announcing that in future the police would deal with loyalist paramilitarism, and MI5 would deal with republican paramilitarism.

Human rights organisations have serious concerns about all of these developments.

Firstly, in Northern Ireland there is often an extensive overlap between issues of "national security" and issues of "ordinary" crime. The Police Ombudsman is, for example, currently investigating allegations that a loyalist, convicted of twelve sectarian murders in 1993, continued to be paid regular large sums of money (£50,000 or \$80,000 a year) by Special Branch, even after his release from prison. One of the issues the Ombudsman will be exploring is the truth or otherwise of claims that Special Branch agents even moved two high powered rifles after local people notified the police of their existence. It is claimed that these were the very rifles later used in the infamous Greysteel massacre where to cries of "trick or treat" some 19 people were injured and 8 were killed as a public bar was sprayed with gunfire on Halloween night.

In another instance, only a very few months ago, at a meeting of a local District Policing Partnership, women from a number of loyalist working class estates expressed grave concern that local drug dealers were being allowed by the police to operate with impunity because they were also police informers.

Secondly, who decides what constitutes "national security"? An interesting distinction now seems to be being drawn between republican violence and loyalist violence – the former being considered as a threat to the state where the latter is more criminal in nature. If this argumentation is accepted, it suggests that the state is only under threat from people directly seeking to overthrow it. But this implies that the state is much less exercised about the damage created to the fabric of society by the persistent and deliberate use of violence aimed at Catholic civilians?

CAJ believes that great efforts have been made – thanks to Patten - to ensure that policing in Northern Ireland will be held effectively to account in future and that any risk of collusion should be dramatically minimised. Legal, democratic, procedural, personnel, institutional and cultural changes should all combine together to render collusion truly a thing of the past. To suggest now that the most sensitive element of policing – the policing of loyalist and/or republican violence, or both – should be removed from the primacy of policing and delivered to a much less legally and democratically accountable body – MI5 – is to risk seriously undermining the many advances currently underway.

c. the relevance of these concerns to the current debate about the devolution of criminal justice and policing powers

CAJ believes that this move to remove certain key functions from the police to hand them over to other branches of the security services has a great potential for impacting on public confidence in the rule of law, and indeed on the democratic system more generally. The Secretary of State in announcing the transfer of security intelligence work from the police to MI5 said that *“such a change will facilitate the devolution of justice and policing when a robust and workable basis for that is agreed”*. The implication appears to be that criminal justice and policing powers can be devolved to local authority and control only once the more contentious elements – national security intelligence work – is removed from the equation.

This Committee may be aware that a public debate on the “when” and “how” of devolving authority for criminal justice and policing to locally elected and locally accountable Northern Ireland ministers has recently been launched. You will certainly know that authority for policing and criminal justice has been exercised by Direct Rule ministers since 1972. Even when the Northern Ireland Executive & Assembly, created by the Agreement, were in operation, local ministers had no responsibility for criminal justice and policing.

Certainly no one under-estimates the difficulty in securing agreement across the community as to the most appropriate local political structures. Does Northern Ireland create one ministry responsible for criminal justice and policing and, if so, how do we ensure that the minister will not operate this very powerful ministry for his/her own partisan political ends? When policing is as politically contentious as in Northern Ireland, the party political sympathies of the minister in overall charge of criminal justice and policing will be seen as indicative of governmental policy in this domain. However, creating two ministries, each allocated to one of the two major political traditions, could be just as, or perhaps more, problematic.

People need to feel confidence that policing and the rule of law is operating under proper legal and democratic control, but is immune from the kind of political partisanship which would see people arrested, questioned, or charged because of their political or other beliefs/affiliations.

At the same time, regardless of the structures introduced, it is vital that the powers of the local minister are transparent and unambiguous. No local minister will command the necessary public confidence if he/she cannot answer for the actions and inactions of the services overseen. The police use of force, their reliance on plastic bullets (not used in Britain), and the policing of public disorder have all been highly contentious in Northern Ireland – what role would a future Minister for Policing play in relation to the Chief Constable in such matters? When republicans and loyalists are arrested and are made amenable to the criminal justice agencies in future – what authority will be vested in a Minister of Justice to inquire into the legal basis for such arrests, or the laying of charges? Devolution will undermine rather than increase

public confidence in the system in the rule of law if the minister's powers and authority are not clear.

d. additional human rights safeguards

From a human rights perspective, however, the key issue is how to ensure that the minister (of whatever party, whether devolved or Direct Rule) exercises his/her power impartially and for the good of all. Collusion and other human rights violations need to become and remain a thing of the past.

CAJ has recently completed a major piece of comparative international research into the possible models for devolving criminal justice and policing. (With your permission, Mr Chair, could we ask for an executive summary of the report to be read into the record?) One of the major findings of the research was that the institutional model is important, but that there are many other safeguards required if Northern Ireland is to ensure the rule of law, democratic oversight, and the protection of the human rights of all.

In the forthcoming debates, we will for example be arguing that Northern Ireland needs a series of human rights safeguards. We need -

- constitutional safeguards, and most particularly a Bill of Rights which would ensure written guarantees of fairness for all;
- parliamentary safeguards to ensure cross-party oversight of ministerial policing and criminal justice powers;
- oversight & inspectorate mechanisms of a short and long term nature;
- effective criminal justice complaints systems to complement the important function performed for policing by the Police Ombudsman;
- and, obviously, a highly professional, effective, impartial and independent judiciary.

The experience from elsewhere suggests that the most important safeguard of all is engendering a culture of human rights in policing and criminal justice institutions. Principles of accountability, transparency, and diversity must infuse whatever institutional arrangements are eventually negotiated. Only then, can Northern Ireland hope to overcome the terrible legacy of its past, and ensure a society of justice and fairness for all.

May I conclude with thanking you once again, Chairman Smith, on behalf of all three groups represented on this panel, for this Committee's continuing interest in policing change in Northern Ireland.

All three of us have talked about the past but with a view to ensuring a better future. We believe that Northern Ireland is yet again, at a crucial moment in its transition from conflict to peace. Your continued vigilance and support will hopefully help us move towards greater local accountability, and more human rights compliant policing and justice.

Thank you.