



**Testimony from Aideen Gilmore, Deputy Director of the
Committee on the Administration of Justice (CAJ) to**

**Congress of the United States: Foreign Affairs Committee, Sub-committee on International
Organizations, Human Rights and Oversight**

**Hearing on “Fulfilling the Promise of Peace: Human Rights, Peace and Reconciliation in
Northern Ireland and Bosnia”**

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Introduction

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental human rights organisation that works to promote justice and protect rights in Northern Ireland. CAJ’s activities include monitoring, conducting research, publishing reports, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are focussed on equality, policing, criminal justice and the protection of rights, including advocacy for a Bill of Rights for Northern Ireland. CAJ is and always has been firmly opposed to the use of violence for political ends.

The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the prestigious Council of Europe Human Rights Award which it was awarded in recognition of its “excellent contribution to the cause of human rights” in the context of its work in mainstreaming human rights in the peace process.

CAJ is extremely grateful to have the privilege to testify to the Committee, and would like to thank the Chair and the members for the invitation and the opportunity.

Background

It had always been CAJ’s analysis that inequality and human rights abuses fed and fuelled the conflict. The Belfast/Good Friday Agreement recognised this and put human rights and equality centre-stage to peace-building efforts. The opening paragraph of the Agreement affirmed the importance of “*protecting and vindicating the human rights of all*” and outlined an array of principles and mechanisms to achieve this. In many ways Northern Ireland provides a role model for elsewhere on how a deeply divided society and seemingly intractable conflict can be moved forward when human rights and equality are put centre stage.

The United States has played a hugely influential and important role in helping to build peace in Northern Ireland, and this support has been invaluable and greatly appreciated. Even a cursory examination of the record shows a continued interest being displayed by the Executive and the Congress in developments in Northern Ireland throughout the decades-long conflict. This interest in securing peace with justice became all the more heightened – and effective – in the lead-up to the eventual peace negotiations. In recent years, successive presidents encouraged the British and Irish governments to work closely together with local parties and civil society, and more than ten

Congressional Hearings were held on the topic of policing alone. It is fair to say that the peace agreement eventually negotiated might not have happened without knowledgeable and sympathetic efforts by the US.

In recognition of the changed environment in Northern Ireland, American oversight and involvement has inevitably changed. However, it is vital that the involvement continue. A former UN Secretary General on a visit to Northern Ireland a number of years ago noted that international experience frequently shows that “hard won agreements on human rights and the reform of justice are often eroded once domestic and international attention diminishes.”¹

While a lot of progress has undoubtedly been made in Northern Ireland, CAJ would caution against the rhetoric of recent times that the devolution of policing and justice is “the final piece of the jigsaw” in terms of implementation of the Agreement, thus implying that the peace process is now complete. Firstly this ignores other major aspects of the Agreement that have yet to reach fruition, such as the Bill of Rights. Secondly, it assumes that all those other pieces of the jigsaw that have been implemented are working according to plan and delivering the required change. We seek in this briefing to highlight that this is not necessarily the case. We would urge continued vigilance and support for the protection of human rights and equality in Northern Ireland as a means of embedding and sustaining peace. We believe that the US, as a close friend of both the United Kingdom and Ireland, the two sovereign guarantors of the Agreement, is uniquely placed to provide such vigilant support.

Current context

Much has been achieved in the peace process since the mid 1990s, and Northern Ireland is now a very different place. Most recently, the very important agreement on devolving responsibility for policing and criminal justice powers to the local power-sharing Assembly and Executive marks a significant development both politically and in terms of the potential for local interest in, ownership of and increased accountability for policing and criminal justice.

Recently, however, Northern Ireland has made the international headlines again for the wrong reasons. This summer, we saw renewed violence and public disorder around the annual parading season, with riots in one particular part of Belfast spanning three nights and costing in the region of £1million to police.

Not as widely reported internationally but a regular media headline domestically, is that bomb alerts are now an almost daily occurrence in life in Northern Ireland. At best these result in disruption and inconvenience, at worst they have led to injury (including of three children between the ages of 2 and 12). There have also been targeted injuries to and killings of police officers and army personnel.

Furthermore, a report in recent weeks from a Conservative Party linked think-tank, the Centre for Social Justice painted what it called “a grim picture of societal breakdown” in Northern Ireland.² Some key findings included that Northern Ireland has the highest level of economic inactivity in the UK; unemployment has more than doubled in two years; three in four single parent families live in poverty (63,000 children); and evidence of widespread mental illness and reliance on anti-depressant medication. While the report makes the point that many of these problems are no different from other parts of the UK, it also notes that many of the issues can be linked to the 30-year conflict.

¹ Address by UN Secretary General Kofi Annan to the annual Tip O’Neill lecture, University of Ulster, 11th October 2004

² http://www.centreforsocialjustice.org.uk/client/downloads/CSJ0032_Northern_Ireland_27.08_WEB.pdf

Northern Ireland is not a normal society. It is very much a post-conflict society and in the relatively early years of a delicate peace that is still based more on community segregation and passive co-existence rather than on rapprochement and any shared sense of identity. In such a small geographic location, and with such a small population (1.5 million) with close knit communities, the conflict impacted widely and in complex ways. Almost every facet of life in Northern Ireland can be linked in some way back to the impact of the conflict and people's lived experiences of it.

It is obviously important to aspire to, and develop, a "normal" society – but simply calling it a normal society sends a negative message to those who still experience the impact of the conflict, or who feel left behind in the peace process. Certainly, attempting to build a peaceful and normal society in a way that is blind to the conflict, and its impact, risks undermining the very peace we are seeking to build. The remainder of this paper will look at this theme in more detail and explain how important it is to maintain US interest and involvement.

Equality

Inequality and socio-economic disadvantage were major contributing factors to the conflict. The civil rights demands of the 1960s were threefold – housing, jobs and votes. As such, the Agreement recognised the importance of addressing inequality and social exclusion and made explicit references to tackling social inclusion, community development initiatives, a regional development strategy, Targeting Social Need, tackling the unemployment differential between Catholics and Protestants, addressing the needs of young people, particularly at interface areas, and developing a legal requirement on the public sector to respect equality.

As stated earlier, Northern Ireland is a very different place nowadays, and this is true both politically and physically. The peace process has seen much investment and development and Belfast city centre, for example, is unrecognisable compared to even ten years ago with visible wealth and development in the form of new hotels, restaurants, shopping centres, bars, and improved public spaces. However one does not have to travel far outside the city centre to see a very different picture.

There are too many statistics to present in detail here,³ but the most comprehensive official data is called the Northern Ireland Multiple Deprivation Measures (MDM). Sadly, the most recent MDM figures published in March 2010 show that the historically poorest areas in Northern Ireland are in many cases no better off, and in some cases are relatively worse off, than they were during the conflict.⁴

Also of note is the extent to which the deprivation is concentrated in north and west Belfast, Derry and parts of Lisburn which are adjacent to west Belfast. Moreover, it is no coincidence that many of these same areas also bore the brunt of the conflict. For example, out of 1647 deaths in Belfast during the conflict, 1240 (75%) occurred in north and west Belfast. Indeed this figure constitutes 34% of the total number of deaths in Northern Ireland during the conflict (3636).⁵

Inequality in deprivation between the two communities is also apparent. 16 out of the top 20 most deprived areas (80%) are predominantly Catholic. Also of concern is that the 5 new arrivals in the

³ For a recent comprehensive review of inequality statistics and policy responses see "Equality in Northern Ireland: the rhetoric and the reality", CAJ, September 2006

⁴ http://www.nisra.gov.uk/deprivation/archive/Updateof2005Measures/NIMDM_2010_Statistics_Press_Release.pdf

⁵ "Lost lives: the stories of the men, women and children who died as a result of the Northern Ireland troubles" 1999, McKittirck, Kelters, Feeney and Thornton.

top 20 listings in recent years are all predominantly Catholic in make-up. Thus, whereas in 2005, 13 out of the top 20 most deprived areas were predominantly Catholic, this has now risen to 16.

These statistics tell us two worrying things – the first is that the prosperity that has been experienced by the wealthiest areas of Northern Ireland from the late 1990s has bypassed these poorest sections of our society. The second is that the areas which experienced the worst levels of violence are as badly off, or worse off, than they were during the conflict – and are thus not feeling the benefits of the peace process. This is clearly not a recipe for long term political stability.

However opportunities exist to do something about this. There has been much focus in recent times on economic investment in Northern Ireland. The United States has been particularly supportive in efforts to develop a stronger economy. But if this investment is to really effect the most change, it needs to be targeted at those areas in most need. The level and sophistication of the data currently available provides, at the very least, a highly scientific approach to measuring deprivation. But the key issue is how the information is used to inform economic and investment policy making and resource allocation.

There are for example numerous regeneration initiatives proposed throughout Northern Ireland, many placed right in the heart of some of the most socially and economically disadvantaged areas. But we have seen marked resistance to implementing projects in a way that would have a real impact on unemployment, create more social housing and provide better facilities for the long-term disadvantaged.

If the people in our most disadvantaged communities do not feel the economic benefit of the peace process, they will feel left behind. CAJ fears what the cost of that isolation could be.

Policing and criminal justice

Given the long-term problems that surrounded policing and criminal justice, and their exacerbation by violent conflict, an extensive part of the Agreement was devoted to fundamental reforms in this area. Since 1998, significant change has taken place. The most recent decision to devolve powers for criminal justice and policing from the Westminster authorities to Northern Irish ministerial control provides an opportunity to engender greater local ownership of and confidence in these systems.

Public confidence in the administration of justice is and always has been low. Many of the recommendations contained in the Criminal Justice Review that emanated from the Agreement that were designed to increase the transparency of, and thus public confidence in, the criminal justice system, have not been implemented. Thus, for example, there is still no system for monitoring who goes through the criminal justice system and whether the system is working fairly for all communities (“equity monitoring”), nor is there any strategy to ensure that criminal justice personnel reflect all the communities served. The Agreement’s Criminal Justice Review called for a reflective workforce strategy, but CAJ’s experience in the implementation of these and other recommendations has been of significant resistance and a lack of commitment to genuine cultural change. We hope that devolution and local responsibility will provide the required impetus to ensure that accountability, transparency and human rights compliance of the criminal justice system is achieved.

We also hope that devolution will allow more local ownership of policing and criminal justice, so as to allow local solutions to be developed for local issues. Initiatives ‘borrowed’ from England over recent years, such as a community safety strategy that criminalises young people (and their parents) for non-criminal behaviour, and policing partnership or crime reduction models, are very often

“conflict-blind”. They understandably do not recognise the very different history and dynamics at play in relation to police and community relations in Northern Ireland. This needs to be addressed by any local minister, and genuine and meaningful change embraced.

What may be more problematic is the future of Northern Ireland’s “emergency” or counter-terrorism powers. Northern Ireland has had some form of such powers in place since 1922. In the move to security normalisation, the British Secretary of State announced in 2005 his intention that the extant special provisions related to Northern Ireland would be repealed. In reality, the powers were merely reconstituted in another statute.

CAJ has always questioned both the need for and the value of emergency legislation; we have had to report on the way such powers feed and fuel political conflict and have proved counter-productive;⁶ and we believe that such powers only stand in the way of building broad community confidence in policing and the administration of justice. We are not oblivious of the current risks posed by both dissident republicans and dissident loyalists to political and economic stability. All past experience, however, convinces us that the greatest security is provided when policing and criminal justice systems are designed and operated in compliance with international human rights norms.

Yet instead, there has been a marked increase in recent years in the use of some of these powers, e.g. police powers to stop and search (without reasonable grounds for suspicion).⁷ There have been growing reports of harassment and media stories of individuals being stopped and searched up to 20 times in one day. As noted earlier, the equity monitoring systems are not in place to allow us to determine who is being stopped and searched and whether there is any reason to believe that the powers are being used in an indiscriminate or disproportionate fashion. It would, however, be surprising if these efforts were not targeted at those working class communities seen by the authorities to pose most danger to the peace process. And so the cycle of real or perceived grievance and harassment among some of Northern Ireland’s most disadvantaged communities is fuelled. If we are to firmly embed the peace, and withstand any attempt of a return to violence, we must learn from the mistakes of the past in this regard.

Dealing with the past

To ensure a better future, we have as a society to have some common understanding of the past if we are to avoid a repetition of it.

On the positive side, it is vital to note that this has been a momentous year for the Bloody Sunday families and for human rights. The apology tendered by Prime Minister David Cameron, and the tenor of his response overall in the UK parliament, were widely appreciated. But the publication of the Bloody Sunday report, and the subsequent debate, has made it clear that Northern Ireland’s past hangs heavily over us all and must be effectively addressed.

The debate on how Northern Ireland should deal with over 40 years of conflict is highly contested. It is a debate between those who believe that the past should be allowed to rest undisturbed and those who believe that unless the past is examined then Northern Ireland will never be fully at peace with itself. The Agreement sought to draw a line under the past, by saying that:

⁶ “War on Terror: Lessons from Northern Ireland”, CAJ, 2008

⁷ [http://www.nipolicingboard.org.uk/article/?id=9857;](http://www.nipolicingboard.org.uk/article/?id=9857)
http://news.bbc.co.uk/1/hi/northern_ireland/8471548.stm
http://www.psni.police.uk/pace_tact_jsa_-_nipb_q3_200910-2.pdf

“The tragedies of the past have left a deep and profoundly regrettable legacy of suffering. We must never forget those who have died or been injured, and their families. But we can best honour them through a fresh start, in which we firmly dedicate ourselves to the achievement of reconciliation, tolerance, and mutual trust, and to the protection and vindication of the human rights of all.”⁸

However, it has become clear that a line cannot be drawn under the past - too many people have been affected by it and too many have unanswered questions. Post agreement, the approach taken has been a piecemeal one, until the UK government established the Consultative Group on the Past (CGP). The group’s task was to consult across the community on “how Northern Ireland society can best approach the legacy of the events of the past 40 years; make recommendations, as appropriate, on any steps that might be taken to support Northern Ireland society in building a shared future that is not overshadowed by the events of the past.” The CGP, jointly chaired by Archbishop Robin Eames and Denis Bradley, was given only one year to carry out their work; however, the public response to their work was overwhelming.

The CGP’s key proposal in its 2009 report was for a five-year Legacy Commission, which would examine historical cases, carry out thematic investigations and engage in a process of information recovery.⁹ Unfortunately, despite the CGP’s detailed work and recommendations, the almost unique focus of the media and politicians was on one single controversial recommendation in the report, namely the proposal for a recognition payment to all victims of the conflict. After much delay, in July of this year, the incoming government published a summary of the responses to an earlier consultation around the CGP report.¹⁰ They appear, on the basis of limited objective evidence to have concluded that the CGP report was “universally rejected.”¹¹ This is not a conclusion with which we would agree, since it is not based on a reflective, weighted and meaningful analysis of views received. To discard the report without such analysis does a disservice to those who engaged in the process in good faith. The UK government has now announced that it intends “to listen to a range of views on how best [they] can contribute to dealing with this issue” and to “conduct a number of meetings with people from all parts of the community over the next few months.”¹²

Who they will meet and what the scope of the conversation will be remains unclear. We believe that government has raised victims’ expectations that something would happen. It is deeply misguided to keep asking victims the same questions, and expect a different response. It is neither fair to the victims and it certainly will not assist in achieving reconciliation. In CAJ’s view, the report of the Consultative Group on the Past represented an honourable attempt to come up with creative answers to difficult questions. We believe that it generated controversy precisely because it was so inclusive. Such controversy has to be worked through, not set aside.

The issue of dealing with the past does not have an easy resolution. However, some mechanism will have to be developed to deal with Northern Ireland’s past if its horrors are not to undermine our future; the debate simply cannot be abandoned. Leadership is required - by government, by political

⁸ <http://www.nio.gov.uk/agreement.pdf>

⁹ A link would have been provided to this report, except that the Group’s website now appears to have been closed down. There exists an independent blog comment site on which the group’s report can be accessed at <http://www.consultationonthepast.org/>

¹⁰ For CAJ’s response to this consultation see:

http://www.caj.org.uk/files/2000/01/03/S240_Response_to_the_consultation_on_The_Report_on_the_Consultative_Group_on_the_Past_September_2009.pdf

¹¹ As stated in a meeting between CAJ and the Minister of State for the Northern Ireland Office of the UK government on 27th July 2010.

¹² <http://www.nio.gov.uk/paterson-engages-on-the-past/media-detail.htm?newsID=16570>

parties, by those who work with and represent victims, by lawyers, by NGOs, by all of us in Northern Ireland, to grasp the nettle of the past if we are truly to build a better future. External support in encouraging this leadership would be invaluable, and the US, having played such a positive role to date in the peace building efforts, can have a particularly influential role in helping us move forward constructively.

Building the future – a Bill of Rights for Northern Ireland

As Americans will appreciate, a Bill of Rights is a foundational and constitutional document that embodies those key principles that society holds dear. They have particular resonance post-conflict as a means of ensuring that the horrors that have gone before are not repeated.

The Agreement was a constitutional document in Northern Ireland terms. It was supported and endorsed as such by a majority of people in a referendum north and south of the island of Ireland. As with many constitutional documents, human rights and equality were central to the Agreement, they were part of what brought peace to NI and what made the Agreement possible. The protection of human rights and the concept of a Bill of Rights to reflect the “particular circumstances of Northern Ireland” were fundamental to the Agreement and central to efforts of building a shared and peaceful future in Northern Ireland.

Regular polling shows consistently high levels of support among ordinary people, and from across the two main communities for a strong and inclusive Bill of Rights for Northern Ireland. Most recently in a July 2010 poll, 80% of people indicated their support for a specific BoR for NI. This combined with the level of engagement in the debate over the last ten years– including hundreds of detailed submissions to consultations on the issue, and more recently tens of thousands of letters of support – show the importance that is attached to a strong and inclusive Bill of Rights for Northern Ireland by ordinary people. In the history of our divided society, rarely have there been such high levels of agreement rights across the community, and this is an opportunity that needs to be seized.

After many years of engagement and consultation, the last government produced extremely limited recommendations on a Bill of Rights for Northern Ireland which were widely rejected by civil society, leading academics and experts, and the NI Human Rights Commission.¹³ The new UK government has said that they will not legislate for a specific Bill of Rights for Northern Ireland; rather they will consider incorporating additional rights for NI within a section of a wider British Bill of Rights. This approach is deeply problematic for a number of reasons.

Firstly, it disregards the unique context of the Bill of Rights debate in Northern Ireland, and instead wants to append it to a very different debate on a UK-wide Bill of Rights. The latter debate has had a very different genesis - motivated by differing political ideologies around constitution-building, making rights more British, and even the proposed weakening of existing rights protections. The debate in Britain has been top down and led by political parties, and moreover by political parties that have no electoral base or mandate from Northern Ireland. By contrast, the debate about a Bill of Rights for Northern Ireland has been bottom-up, led by the people themselves in an effort to identify those rights that they feel are important in moving from conflict to a more peaceful society. The conflict was particular to Northern Ireland, its legacy has been and continues to be widely felt in Northern Ireland, and as such it has little if any resonance on a wider-UK level. It is therefore not acceptable to relegate rights that have been identified as particular to Northern Ireland to a “national” debate that has little history, relevance or meaning in Northern Ireland.

¹³For CAJ’s position on those proposals see:

http://www.caj.org.uk/files/2000/01/03/S250_Submission_to_the_NIO_on_A_Bill_of_Rights_for_Northern_Ireland_-_Next_Steps_Feb_2010.pdf

Secondly, by talking of protecting rights in a British context, the government is ignoring the context of a specific Bill of Rights for Northern Ireland as mandated in the Agreement. The Agreement was directly concerned with *“rights to reflect the principles of mutual respect for the identity and ethos of both main communities and parity of esteem.”* However, the UK government approach of developing rights in a British context directly undermines respect for the identity and ethos of both main communities. It also ignores the fact that the very issue of nationality and identity is, and always has been, an issue of division and inequality in Northern Ireland.

Furthermore, the Agreement had consciously sought to transcend some of these political divisions by talking of the importance of international law in protecting the human rights of all those living in Northern Ireland – regardless of whether they are British, Irish, both or neither.

Overall the approach is seen by many as a retrograde step to attempt to kill the debate about a NI BoR and more worryingly, in doing so to undermine existing and hard-fought protections from the Agreement. This concern is enhanced by the knowledge that neither of the two Coalition parties now forming the UK government were in power at the time of the Agreement, and therefore may have less awareness of, or commitment to, its inter-locking elements. As the other state party to the negotiation, the position of the Irish government has been clearly stated recently by the Irish Minister for Foreign Affairs: *“the Irish government is strongly of the view that a specific and substantial Bill of Rights for Northern Ireland is a central and crucial element of the Good Friday Agreement.”*¹⁴

This is an absolutely crucial time in the debate about the protection of rights in Northern Ireland. CAJ and many others fear that particularly in the context of the new UK government, there is a real danger of roll-back on important and hard-fought human rights and equality commitments in the peace agreement which requires urgent intervention. The objective of peace must be to improve the lives of people in Northern Ireland, but as already outlined, the evidence shows continuing and systemic disadvantage and inequality. We would argue that failure to deliver on those elements of the Agreement designed to address this inequality and protect rights has the potential to further destabilise the, at times, fragile peace process.

Conclusions and recommendations

As stated at the outset, Northern Ireland is a very different place than it was fifteen, ten or even five years ago. Enormous progress has been made. That so much has been achieved cannot be questioned, and the support and encouragement of the United States has been a crucial factor in getting us to where we are today. However, the jigsaw that is the implementation of the Good Friday Agreement is not yet complete, and pieces are in danger of being removed and falling off the table. In particular, the potential impact of a new UK government with a different ideological approach to these issues and attempts to unravel key human rights and equality protections are extremely worrying.

In conclusion, my plea to you today is as follows:

- a) Please ensure that US interest in Northern Ireland is maintained. The US contribution to our peace process is worthy of emulation in other jurisdictions where you have the potential of influence, and it may be useful for you to monitor closely the results of your efforts. It is also in your self-interest to ensure that there is no deliberate or involuntary rolling back from the Agreement that your efforts did so much to bring about. This could be done

¹⁴ Irish News, 15th March 2010

perhaps by holding Hearings such as this at regular intervals, or requesting regular reports from the Administration as to their efforts. Whatever the method, I can only emphasise how important an external “friendly critic” has been to all forward movement on the ground.

- b) The US has a particular possibility to ensure that its involvement in economic investment efforts is constructive. Investment can undermine deep-rooted problems of inequality and socio-economic deprivation, and thereby undermine the breeding ground for alienation and disaffection. Or it can do the opposite. The Committee should explore what it can do to make sure that all US investment not only benefits the US but also seeks to embed further our precarious transition to a peaceful future.
- c) This Committee should encourage all the political parties in Northern Ireland, and the British and Irish governments, to show the necessary leadership by developing a dedicated and holistic process that will help Northern Ireland deal with its past. Addressing the legacy of past conflict is a necessary building block to a better future.
- d) The Agreement recognises that a better future can only be built on respect for everyone’s rights. To help move on from the past, and build a shared and peaceful future, I would finally urge vigilance in ensuring that the last remaining elements of the Good Friday Agreement are not neglected. The Committee should in particular highlight to the UK government the importance of embedding a strong and inclusive specific Bill of Rights for Northern Ireland.

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September 2010