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HUMAN RIGHTS FIRST

HEARING ON

**NORTHERN IRELAND HUMAN RIGHTS:
UPDATE ON THE CORY COLLUSION INQUIRY
REPORTS**

before the

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON INTERNATIONAL RELATIONS

**SUBCOMMITTEE ON AFRICA, GLOBAL HUMAN RIGHTS
AND INTERNATIONAL OPERATIONS**

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Introduction

Chairman Smith and members of the Subcommittee, thank you for convening this hearing and for inviting me to share the views of Human Rights First on this important issue. I would like to say a particular word of thanks to you, Chairman Smith, for your unshakable resolve to keep human rights on the agenda of the United States Congress. We are deeply grateful for your principled and persistent leadership on this and so many other critical human rights issues. People around the world who struggle against oppression and injustice have found time and again that they can count on you as a tenacious ally in that fight. They turn to you because they know you share both their conviction that every human being has inherent value and inalienable rights, and their determination to persist until those rights are secured. We are all grateful to you and your incredibly hard-working staff for your unwavering commitment to human rights.

Human Rights First's mission -- to protect and promote human rights -- is rooted in the premise that the world's security and stability depend on respect for human dignity and the rule of law in every part of the world. Since our inception in 1978, we have worked both in the United States and abroad to support human rights activists who fight for basic freedoms and peaceful change at the local level; to protect refugees in flight from persecution and repression; to help build strong national and international systems of justice and accountability; and to make sure human rights laws and principles are respected and enforced.

For the last fifteen years, Human Rights First has worked to advance human rights in Northern Ireland. Since 1990, we have undertaken numerous missions and published a series of reports focused on the intimidation and murder of defense lawyers in Northern Ireland, with particular focus on the cases of solicitors Patrick Finucane and Rosemary Nelson. These courageous lawyers were killed for doing their jobs. There is substantial evidence of official collusion in their murders. Human Rights First believes strongly that peace and reconciliation in conflicted societies like Northern Ireland will come only once there is official recognition of and accounting for the wrongs of the past. Unless citizens from all sectors of society believe that their rights are respected, peace in Northern Ireland will never take strong root.

Background on the Cory Investigations

The cases that Judge Cory examined pursuant to the Weston Park Agreement and recommended for public inquiry are, each in their own way, emblematic of the breakdown in the relationship between the state and its citizens during a time of crisis. Exposing the truth about what happened in these cases is essential to building a foundation for the culture of respect for rights and transparency in government on which the future of Northern Ireland depends. Progress, however slow, is finally being made in some of these cases, and we appreciate the opportunity to brief the Committee on the status of that progress today.

In addition to the Finucane case, about which we have heard such eloquent testimony from Geraldine Finucane, five other cases involving allegations of collusion were

investigated by Judge Peter Cory following agreement between the Irish and the British governments at Weston Park in 2001. In three of these cases – the murders of Robert Hamill, Billy Wright and Rosemary Nelson – there is evidence of collusion by British state agents in the killings. In the other two cases – the murders of Lord Justice and Lady Gibson, and of police officers Harry Breen and Bob Buchanan – collusion by the Irish police was alleged. The Weston Park Agreement referred to all of these cases as “a source of grave public concern.” The British and Irish Governments agreed that, “[i]n the event that a Public Inquiry is recommended in any case, the relevant Government will implement that recommendation.” The commitment made by the governments in the Weston Park Agreement could not have been more clear.

Judge Cory had completed his work by October 7th 2003 when he delivered two reports to the Irish government and four reports (including the Finucane report) to the UK government. On December 18th 2003, the Irish government published the two reports addressed to them. Judge Cory had recommended a Public Inquiry in the Buchanan and Breen case, and the Irish government announced that it would immediately establish such an inquiry.

The British government took a different approach. It held up publication of Judge Cory’s reports into the Hamill, Wright, Nelson and Finucane cases for many months. Finally, on January 12th 2004, frustrated with the UK government’s delay, which kept the families in suspense about his conclusions, Judge Cory took the unusual step of independently notifying the four families concerned that he had recommended Public Inquiries in all

four cases. Judge Cory made his recommendations public as well. Still the UK government stalled. On April 1st 2004, the UK finally published Judge Cory's reports and announced that it would hold Public Inquiries in three of the cases – all except that of Patrick Finucane. But it was not until November 16th 2004, thirteen months after Judge Cory first delivered his reports to the UK government, that the government announced the terms of reference for the Public Inquiries in the Hamill, Wright and Nelson cases, along with the names of the chairmen and other panel members who would hold the hearings. The Finucane family is still waiting.

The handling of this process by the UK government is discouraging, but not surprising. The long delays -- between completion of the Cory reports and their publication, between the announcement that Public Inquiries would be held in three of the cases and any movement towards establishing those Inquiries -- underscores the low priority the UK government placed on this effort, as well as its ongoing resistance to uncovering the truth in these cases. The strategy seems to have been one designed to alleviate pressure on the government in small increments, while holding progress to a snail's pace.

Update on Progress Towards Public Inquiries in the Cory Cases

In addition to the Finucane case, the importance of the Hamill, Wright and Nelson cases in Northern Ireland cannot be overstated. Each of them is emblematic of much broader problems involving institutionalized sectarianism, lack of faith of all communities in the criminal justice system, and the vilification of defense lawyers. While some progress has been made in addressing these problems in Northern Ireland, a great deal of work

remains to be done. The establishment of public inquiries into the Hamill, Wright and Nelson cases is therefore of great significance, and the effective functioning and conclusion of these inquiries could contribute greatly to consolidating the rule of law and entrenching a climate of respect for basic human rights.

Robert Hamill

Robert Hamill was a young Catholic man who was kicked to death by a loyalist mob in 1987 in the center of Portadown, despite the presence of armed police officers in a police Land Rover nearby. His attackers did not know him, but they could tell by the direction in which he was walking that he was a Catholic. There is little dispute that this was a purely sectarian murder. After the murder, the RUC (Royal Ulster Constabulary, the former name for the police in Northern Ireland) put out misleading press statements suggesting that Robert Hamill had been involved in a fight between opposing factions and that police officers had been injured in the fray. Following an investigation by the Police Ombudsman, former police officers and others were charged with perverting the course of justice by alerting suspects and telling them how to dispose of forensic evidence. Only one of Hamill's assailants was ever convicted, and of only a minor offense in relation to the murder.

On November 16th, 2004, the Secretary of State for Northern Ireland announced the establishment of a Public Inquiry into the murder of Robert Hamill under section 44 of the Police (Northern Ireland) Act 1998. (This provision will be repealed by the new

Inquiries Bill when it is enacted, but will remain the basis for the Robert Hamill inquiry even after the Inquiries Bill comes into force). The terms of reference of the inquiry are: "To inquire into the death of Robert Hamill with a view to determining whether any wrongful act or omission by or within the Royal Ulster Constabulary facilitated his death or obstructed the investigation of it, or whether attempts were made to do so; whether any such act or omission was intentional or negligent; whether the investigation of his death was carried out with due diligence; and to make recommendations."

A retired High Court Judge, Sir Edwin Jowitt, will chair the inquiry and will be assisted by Sir John Evans, a former police chief constable, and Reverend Baroness Kathleen Richardson of Calow, a former moderator of the Free Churches' Council of England and Wales. Counsel to the inquiry has now been appointed, along with a solicitor, secretary and other staff. The inquiry has established offices in London and is in the process of setting up its website and determining the procedures that it will adopt.

While all of these developments are welcome, there remain some concerns about the terms of reference for the inquiry and the lack of consultation with the Hamill family prior to the finalization of those terms of reference. At a meeting in July 2004, senior Northern Ireland Office officials assured the Hamill family that they would have the opportunity to meet the chair of the inquiry and discuss the terms of reference before they were finalized. This meeting never took place. There is some suggestion that this failure to meet with the family may have been the result of a conclusion by officials in the Northern Ireland Office that family members were to be seen somehow as "parties" in the

Inquiry and that it would be improper for the chair to meet privately with them in advance to discuss the terms of reference. There seemed to be no such compunction, however, about Inquiry officials interacting directly with the Northern Ireland Office, arguably more a “party” to the Inquiry into official collusion than the victim’s family.

Despite the fact that the inquiry is a direct result of Judge Cory’s Collusion Investigation, the terms of reference make no explicit mention of collusion. Judge Cory viewed his primary task as determining whether there was evidence of official collusion. In Robert Hamill’s case, he found such evidence. It is, therefore, crucial that the public inquiry has the remit to look into the question of collusion. Despite the failure to use the term “collusion,” there can be no doubt that the terms of reference are broad enough and should be construed to encompass what is, after all, at the heart of the inquiry: collusion.

Billy Wright

Dissident loyalist leader Billy Wright was murdered in the Maze prison in 1997. He was a leader of the Loyalist Volunteer Force (LVF) and was regarded as an impediment to the peace process. While on his way to a prison visit, he was shot and killed by republican INLA prisoners whom the prison authorities had housed in the same wing of the prison. They were able to smuggle weapons into the jail, cut through a wire fence and climb on to the prison roof completely undetected. A prison officer was called away from a crucial watch tower just at the time of the murder, and there is evidence to suggest that the murderers had advance warning that Billy Wright was due to receive a visit that morning. The prison authorities received repeated warnings from prison staff and from intelligence

officials that Billy Wright was a target for murder; they even knew the names of the murderers and the methods they would employ. But these officials did nothing to protect Billy Wright, a prisoner whose safety was in their charge.

The UK government announced on November 16, 2004 that it would hold a Public Inquiry into the murder of Billy Wright. This inquiry was established under section 7 of the Prison Act (Northern Ireland) 1953 (a provision that will be repealed by the Inquiries Bill when passed). Its terms of reference are: "To inquire into the death of Billy Wright with a view to determining whether any wrongful act or omission by or within the prison authorities or other state agencies facilitated his death, or whether attempts were made to do so; whether any such act or omission was intentional or negligent; and to make recommendations."

The inquiry will be chaired by Lord MacLean, a recently retired senior Scottish judge. Other panel members will be Professor Andrew Coyle, director of the International Centre for Prisons Studies at King's College, London, and the Right Reverend John Oliver, a retired English bishop. The inquiry is in the process of setting up its offices in Edinburgh and appointing the necessary staff.

As with the Hamill inquiry, the terms of reference for the Billy Wright inquiry are somewhat deficient and, despite government assurances to the victim's father, David Wright, that he would have the opportunity to meet the inquiry chair and discuss the terms of reference before they were finalized, this meeting did not transpire. Like the

Robert Hamill inquiry, the terms of reference for the Billy Wright inquiry make no explicit mention of collusion. Nor do they make any mention of the various investigations that took place after Wright's death, including the police investigation, the inquest, and internal prison investigations. And, the terms of reference do not specifically permit an examination of the basis for Billy Wright's arrest in the context of Northern Ireland's Peace Process. As Judge Cory identified, there is a great deal of evidence to suggest that Billy Wright's murder could have been prevented, which points to many acts of potential collusion before his death, as well as evidence to suggest an attempted cover-up after the murder. Failure to examine the events leading up to Billy Wright's murder, as well as what transpired afterwards, will mean that only a partial truth will emerge.

Rosemary Nelson

Six years ago yesterday, Lurgan lawyer Rosemary Nelson was killed when a bomb set by the LVF exploded under her car. She was 40 years old, the mother of three young children. Six months before her death, she sat before you in this hearing room and recounted the harassment, intimidation and death threats she was receiving, including an assault on her by RUC police officers. Despite these threats, Rosemary Nelson continued to do her job as a lawyer, seeking justice for her clients, including the family of Robert Hamill, as best she could under increasingly difficult circumstances. As you know, Mr. Chairman, representatives of the United Nations, NGOs and Members of the United States Congress raised concerns with the UK government about her safety, but she was offered no protection. Six years after her death, despite a lengthy police investigation

overseen by officers from outside Northern Ireland, no one has been charged with her murder. Some of those suspected of involvement in the crime were police agents, and one was a serving soldier.

Following the announcement of the terms of reference of the inquiry on November 16th 2004, and of the chair and other panel members, the inquiry established its office in London, appointed counsel, a solicitor, secretary and other staff, and now has its own website (www.rosemarynelsoninquiry.org). The inquiry is chaired by Sir Michael Morland, a retired member of the High Court of England and Wales. The other panel members are Sir Anthony Burden, a former Chief Constable of South Wales police and Dame Valerie Strachan, vice chair of a big lottery fund and former chairman of the Board of Customs and Excise.

The inquiry will hold an opening hearing on April 19th, at which the chair will introduce the panel and set out details about how he intends to conduct the inquiry. Following the opening hearing, the inquiry will begin gathering evidence for the full hearings, which are not expected to commence until early next year. These hearings will be public and are likely to take place in Belfast or Lurgan. Should the inquiry consider it necessary to hold some sessions in private or to protect the identities of some witnesses, it will disclose its reasons for such decisions.

The inquiry will accord the status of “full participant” to a small group of individuals and organizations, including Rosemary Nelson’s husband, her mother, the Police Service of

Northern Ireland and the Northern Ireland office. These individuals and groups will be entitled to legal representation throughout the course of the inquiry, and their legal costs may be met from public funds. They will also be granted access to written copies of all witness statements given to the inquiry.

The Nelson inquiry is established under section 44 of the Police (Northern Ireland) Act 1998. Its terms of reference are: "To inquire into the death of Rosemary Nelson with a view to determining whether any wrongful act or omission by or within the Royal Ulster Constabulary or Northern Ireland Office facilitated her death or obstructed the investigation of it, or whether attempts were made to do so; whether any such act or omission was intentional or negligent; whether the investigation of her death was carried out with due diligence; and to make recommendations."

Members of Rosemary Nelson's family met in July 2004 with senior Northern Ireland Office officials who assured them that they would be given the opportunity to meet with Sir Morland before the terms of reference were finalized. As with the Hamill and Wright cases, however, this meeting never took place. The terms of reference for the Nelson inquiry are likewise deficient in that they make no explicit reference to collusion, nor do they reference the possible involvement of the army in the murder. While Judge Cory did not find evidence of collusion on the part of the army in this case, his investigation concentrated largely on the failure of the police and the Northern Ireland office to act on death threats against Rosemary Nelson before she was murdered, and did not examine the

potential role of two serving soldiers in the murder. We urge the chair of the inquiry to interpret its terms of reference broadly enough to encompass these concerns.

After so many years of obstruction and delay, progress being made in all three of these inquiries is welcome. Human Rights First, British Irish Rights Watch, CAJ and other NGOs will continue to monitor their development closely. We encourage members of Congress to scrutinize these inquiries as they progress and to raise our concerns about the terms of reference with the British government. The UK Government has assured us that none of the three inquiries will be in any way governed by the new Inquiries Bill once it is passed into law. Given the significant deficiencies in this bill, holding the government to this commitment is critical.

Buchanan and Breen

Finally, a word about the Irish cases. Harry Breen and Bob Buchanan were RUC officers who were ambushed and shot by the IRA as they returned to Northern Ireland from a meeting in the Republic in 1989. Collusion by the Irish police in the killings was suspected, and evidence of such collusion was found by Judge Cory, who recommended to the Irish government that it establish a public inquiry to examine the case. The Irish government announced that it would hold an inquiry, but it was not until earlier this month that it announced that the chair of the Inquiry will be Justice Peter Smithwick, the President of the District Court. The inquiry will be held under the Irish Tribunal of Inquiries (Evidence) Acts 1921-2002, although its terms of reference have not yet been

published. The Inquiry will be discussed in the Irish Parliament beginning next week, and the terms of reference are to be published at that time.

The Case of Patrick Finucane and the New UK Public Inquiries Bill

The hope engendered by signs of progress in these cases, unfortunately, is largely overshadowed by the UK Government's ongoing failure to move ahead with a Public Inquiry into official collusion in the murder of Patrick Finucane. Worse even than inaction, the UK government is poised to foreclose the possibility of a credible inquiry in this case altogether. This would be devastating, not only for the Finucane family, but for the cause of peace and reconciliation in Northern Ireland for years to come.

Specifically, we are alarmed by the UK Government's plans to conduct an inquiry in the Finucane case under new rules that seem designed to ensure that the truth remains hidden. Under the bill currently pending in the Parliament:

- The power to commence and supervise an inquiry is taken away from Parliament and placed solely in the hands of a single Minister.
- Only the Minister who initiates the inquiry can set the terms of reference and appoint a chairperson. This gives the Minister control over which facts and issues will be investigated. The appointed chairperson of the inquiry will have no power to change these terms of reference even if doing so is necessary to fully investigate the facts and produce a balanced report.

- The Minister who initiates the inquiry can prevent public access to some or all of the hearings and can also decide to stop evidence and information, including the final report, from reaching the public.
- The Minister can exercise this right to restrict public access to hearings and information when it is deemed that such restriction is “necessary in the public interest.” The public interest could include such elastic terms as “damage to the economic interests of the United Kingdom”, “damage to national security”, or “additional cost.”
- The Minister can order an end to an inquiry without providing any reason for doing so.

An inquiry conducted under these rules could be neither public nor independent, and the amendments to existing law go far beyond any legitimate concern to protect classified information. Our concerns about these new rules, which will apply across the board to all future public inquiries, are magnified greatly in relation to the Finucane case. An inquiry into official collusion in Patrick Finucane’s murder conducted under these rules would have virtually no chance of uncovering the truth and, in our view, would not be worth doing.

Conclusion

The peace process in Northern Ireland is often beset with political crises which have tended to stall progress on important human rights reforms. This in turn has tended to undermine support for the peace agreement itself from those who are waiting to

experience real change in their daily lives. We believe strongly that progress on human rights will sustain support for peace in Northern Ireland, even during periods of political turmoil. But invariably, during these times of turmoil, we hear the refrain from many in the political process that the time is not right to talk about human rights. We join you Chairman Smith, in rejecting this short-sighted approach. The United States has an important role to play in encouraging its close friend and ally, the United Kingdom, to live up to its commitments under the Weston Park Agreement and announce immediately that it will hold a public inquiry into government collusion in the murder of Patrick Finucane under the inquiry rules that were in existence when these commitments were made.

There are always those who argue that focusing on redress for past wrongs will simply reopen old wounds and mire society in the bitterness of a conflict that is now essentially over. But this view ignores the violence done to the fabric of society by leaving such wounds to fester. As so many societies transitioning from conflict to peace have learned, building a culture of human rights and accountability depends on having a credible process for addressing past violations. Public inquiries into government collusion in these emblematic cases are quite simply a pre-requisite to breaking the cycle of impunity that persists in Northern Ireland. Until the government demonstrates a commitment to uncovering and acknowledging the wrongs done in these cases, there will be a fundamental withholding of faith on the part of many in Northern Ireland that no amount of policing or criminal justice reforms will remedy. The time in which the UK government can finally demonstrate a commitment to transparency and accountability

with respect to the murder of Patrick Finucane is running out. We thank you and your colleagues in the House for your efforts to convey this sense of urgency to Prime Minister Blair. We urge you to do all you can now to ensure that President Bush sends the same message.

Thank you for the opportunity to share our views with the Committee.