

**TESTIMONY OF ARCHANA PYATI  
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**HEARING ON**

**THE NORTHERN IRELAND PEACE PROCESS:  
POLICING ADVANCES AND REMAINING CHALLENGES**

**before the**

**UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON INTERNATIONAL RELATIONS**

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

**and the**

**SUBCOMMITTEE ON EUROPE AND EMERGING THREATS**

**March 15, 2006**

## **Introduction**

Chairman Smith, Chairman Gallegly, and members of the Subcommittee on Africa, Global Human Rights, and International Operations, and the Subcommittee on Europe and Emerging Threats, thank you for convening this hearing on the Northern Ireland Peace Process, and for inviting me to share the views of Human Rights First at this critical time.

I want to begin by expressing our gratitude, particularly to you, Chairman Smith, for your unwavering commitment to human rights and your persistence in ensuring that these issues remain on the agenda of the United States Congress. We are very grateful for your leadership.

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. Human Rights First believes strongly that peace and reconciliation in societies struggling to overcome a history of conflict -- like Northern Ireland -- will come only once there is official recognition of and accountability for the wrongs of the past. Unless citizens from all sectors of society believe that their rights are protected by their government, peace in Northern Ireland will never take strong root.

Policing reforms are a critical component in this transition. As you know, we have monitored closely and reported on efforts to transform the police service in Northern Ireland into a force representative of the population and bound by the rule of law. Progress in policing reform is crucial and welcome. But we believe that these efforts must be combined with a serious, honest, and transparent examination of government wrongdoing against its citizens. It is critical to the peace process that independent, public inquiries are carried out in cases where there is evidence of government collusion in serious violations of human rights. Only if such inquiries are fair and transparent will there be public faith in their conclusions.

That is the message that Rosemary Nelson delivered to this Committee in 1998. Facing threats and harassment herself, she urged this body to press the U.K. government for an independent inquiry into the murder of human rights lawyer Patrick Finucane. Seven years ago today, Rosemary Nelson was killed when a bomb set by the LVF exploded under her car. No one has yet been charged in her murder. I would like to take the opportunity presented by today's hearing to provide this Committee with an update on the establishment of a public inquiry into her murder, as well as that of Patrick Finucane, Robert Hamill and Billy Wright, all cases in which there are serious allegations of collusion by British agents.

The record of progress here is mixed. There has been some progress, albeit slow, in the Nelson and Hamill cases. In the case of Billy Wright, the British government has switched course in a way that is likely to undermine the investigation. After the establishment of the Wright inquiry under the Prison Act, the British government decided

that the 2005 Inquiries Act, should govern the inquiry instead, a move that threatens to undermine public faith in its conclusions. And there is still no inquiry at all into the murder of Patrick Finucane. The U.K. government has proposed that an inquiry in the Finucane case be held under the new Inquiries Act. As we have outlined in testimony before the Congress before, Human Rights First believes that an inquiry into Finucane's death under the Inquiries Act would lack the transparency needed to assure confidence in its result.

The importance of exposing the truth about what happened in these cases cannot be overstated. Each of these cases is emblematic of much broader problems involving institutionalized sectarianism and lack of faith of all communities in the criminal justice system. While some progress has been made in addressing these problems in Northern Ireland, a great deal of work remains to be done. A just and credible resolution to each of the four cases is essential to building a foundation of respect for human rights and the rule of law on which the future of Northern Ireland depends.

### **Background on the Cory Inquiries**

In 2001, the British and Irish governments agreed at Weston Park that preliminary investigations should take place into the killings of eight individuals where official collusion had been alleged. In four of these cases – the murders of Patrick Finucane, Robert Hamill, Billy Wright and Rosemary Nelson – there was 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 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 clearer.

Judge Peter Cory, appointed to conduct preliminary investigations, recommended in October 2003 that public inquiries be conducted into five of the six cases (not the Gibson case). The Irish government commenced its inquiry promptly. Unfortunately, the British government took a different approach, and only in November 2004 announced the terms of reference for the Public Inquiries in the Hamill, Wright and Nelson cases, along with the names of the panel members who would hold the hearings. At the time, the British government claimed that no inquiry into Finucane's death could be announced until the outcome of pending prosecutions in the case.

### **The Inquiries Act 2005**

As the opening hearings were being held in the Hamill, Wright, and Nelson inquiries in April and May 2005, the Inquiries Act 2005 was passed. Despite widespread objection by many advocates -- and by Members of this Committee -- the new law came into force on June 7, 2005.

The Inquiries Act brings about a fundamental shift in the manner in which the actions of government and public bodies can be subjected to scrutiny in the United Kingdom. The powers of independent chairs to control inquiries has been usurped and those powers have been placed in the hands of government ministers. Under the Act, the minister: decides whether there should be an inquiry; sets its terms of reference; can amend its terms of reference; appoints its members; can restrict public access to hearings; can prevent the publication of evidence placed before an inquiry; can prevent the publication of the inquiry's report; can suspend or terminate an inquiry; and can withhold the costs of any part of an inquiry which strays beyond the terms of reference set by the minister.

Compared to inquiries established under the 1921 Act, Parliament's role in overseeing public inquiries is now dramatically reduced. Under the new law, not only is there no guarantee that inquiries will be public, but because of the near complete control of inquiries by government ministers, it is hard to see how such inquiries can be viewed in any way as "independent." This is particularly troubling where the actions of a government minister or those of his or her department, or those of the government, are in question. In effect, this creates a situation in which the state will be investigating itself.

Simply put, an inquiry held under the Inquiries Act will not meet the standard set for independent public inquiries by Judge Cory in October 2003. Inquiries held under this law will therefore not satisfy the Weston Park Agreement between the British and Irish governments in 2001.

### **Patrick Finucane**

Just before the Inquiries Act came into force, the UK government made it clear that any inquiry into the 1989 murder of Belfast solicitor Patrick Finucane, who was shot to death in his home, would not be public. In an October 2004 letter to Human Rights First, the British Consulate-General in New York asserted that national security interests effectively preclude the possibility of a public inquiry, as operational techniques that will be discussed during the inquiry are currently being used in counterterrorism operations.

In February of this year, Secretary of State for Northern Ireland Peter Hain reiterated to Geraldine Finucane that the government's prime concern in any inquiry into her husband's death is preservation of "national security." It would appear that the government is placing a higher value on protecting the interests of the security and intelligence services – the very agents who stand accused of collusion in Finucane's murder – over and above the interests of the family, the public, and the provision of justice. A follow up letter from Hain's office to Ms. Finucane confirmed the same.

Ms. Finucane has written personally to every senior judge in England, Wales and Scotland urging them to decline participation in any inquiry into her husband's death held under the Inquiries Act. To date, the UK government has not been able to identify any judge willing to take on the inquiry under the flawed terms of the Inquiries Act.

The Finucane family likewise has made clear that it will not participate in any inquiry held under the Inquiries Act. There is now some doubt whether the government will invest the time and money to hold an Inquiries Act inquiry without the participation of the family.

Just a few weeks ago, on February 22, Judge Cory delivered the McDermott Lecture at Queen's University in Belfast. In a spirited defense of public inquiries based on Canadian experience, the judge said it was better never to hold an inquiry than to leave the public believing there had been a whitewash. Although he did not refer specifically to any of the inquiries he recommended as a result of the Weston Park Agreements, Judge Cory later stated that the government had "moved the goalposts" in the Finucane case.

Furthermore, during parliamentary debates on March 8, the Dail Eireann adopted a resolution calling for the British government to "reconsider its position" and establish a "full, independent, public judicial inquiry into the murder of Pat Finucane, as recommended by Judge Cory, which would enjoy the full cooperation of the family and the wider community throughout Ireland and abroad." The response from the Northern Ireland Office of the United Kingdom, issued the same day, called the debates "flawed and misleading," and contended that an inquiry under the Inquiries Act would be sufficiently public and independent to satisfy the recommendations of Judge Cory.

The UK government has fought for 17 years to escape accountability and keep the truth about its role in Finucane's murder from his family and from the public. Worse 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.

### **Billy Wright**

I regret to report disappointing developments regarding the inquiry into the 1997 murder in the Maze prison of dissident loyalist leader Billy Wright. Judge Cory found a great deal of evidence to suggest that 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.

In response to Judge Cory's recommendation, the UK government announced on November 16, 2004 that it would hold a Public Inquiry into Wright's murder. Lord MacLean, a recently retired senior Scottish judge, was appointed as chair.

The inquiry was established under section 7 of the Prison Act (Northern Ireland) 1953, a provision that was repealed by the Inquiries Act when it passed. Despite this, the inquiry could have gone ahead under section 7 of the Prison Act because it was formed under that provision. At the opening preliminary hearing of the inquiry, on June 22, 2005, Lord MacLean announced that he was seeking conversion of the inquiry from the Prison Act to the Inquiries Act 2005. The reason provided for the request was to increase the reach of the inquiry panel to government bodies not involved with prisons and therefore not

covered under the Prison Act. David Wright, Billy Wright's father, and a number of NGOs argued against this move, which would seriously jeopardize the independence of the inquiry, as the Secretary of State for Northern Ireland's office was an interested party. Over these objections, Secretary of State Peter Hain granted the Lord MacLean's request on November 23, 2005.

David Wright is seeking judicial review of this decision and a declaration that the Inquiries Act is incompatible with the European Convention on Human Rights (specifically, Article 2, which protects the right to life and includes by implication the right to an effective investigation into deaths). In response, on February 17, Lord MacLean issued an affidavit to the court providing alternate reasons for his request to convert the inquiry than those he gave originally. This dispute is likely to proceed to the House of Lords and will considerably delay the opening of the inquiry, which is scheduled to begin in September 2006.

### **Robert Hamill**

The inquiry into the murder of Robert Hamill is scheduled to commence in September 2006. 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. Only one of Hamill's assailants was ever convicted, and of only a minor offense in relation to the murder. The Hamill family was represented by Rosemary Nelson until her death.

On November 16th, 2004, the Secretary of State for Northern Ireland announced the establishment of a Public Inquiry into this murder under section 44 of the Police (Northern Ireland) Act 1998. We believed that the Police Act would remain the basis for the Hamill inquiry regardless, as it was begun before the passage of the Inquiries Act. But the chair of the inquiry – Sir Edwin Jowitt – has requested a conversion to the Inquiries Act. The stated reason for his request is that under the Inquiries Act suspects or eyewitnesses who refuse to come forward can be jailed until they comply with the requests of the inquiry panel, whereas under the Prison Act, only a fine or short prison sentence can be issued as punishment for acting in contempt. Although the decision is pending, there is little doubt that Sir Jowitt's request will be granted.

In addition, 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.

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. While the same is true for the terms of reference in the Wright case, in Hamill's case, Judge Cory explicitly found such evidence of collusion. It is therefore crucial that the public inquiry is tasked with

investigating the question of collusion. The broad terms of reference should be construed to encompass collusion, which is, after all, at the heart of the inquiry.

### **Rosemary Nelson**

Progress has been exceedingly slow, but there is finally some movement in the inquiry into the murder of Rosemary Nelson. The terms of reference of the inquiry were announced on November 16, 2004, and Sir Michael Morland, a retired member of the High Court of England and Wales, was appointed Chair. The Nelson inquiry is established under section 44 of the Police (Northern Ireland) Act 1998, and no conversion to the Inquiries Act has been made.

The inquiry held its opening hearing on April 19, 2005, at which the chair introduced the panel and set out details about how he intends to conduct the inquiry. Following the opening hearing, the inquiry began gathering evidence for the full, public hearings, which are expected to commence on January 16, 2007, in Belfast. Should the inquiry consider it necessary to hold some sessions in private or to protect the identities of some witnesses, the panel has indicated that 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.

After many years of delay, progress in the inquiry into this terrible crime is welcome.

### **Conclusion**

Human Rights First, British Irish Rights Watch, CAJ and other NGOs will continue to monitor the development of these investigations closely. We encourage members of Congress to scrutinize these inquiries as they progress and to raise concerns about their fairness, effectiveness, and terms of reference with the British government. Your oversight is critical: last year at this time we were assured by the British government that none of these inquiries would be in any way governed by the new Inquiries Act. Those assurances were false. Given the significant deficiencies in the Inquiries Act, there is reason for grave concern that the United Kingdom will never live up to its commitments under the Weston Park Agreement, and public confidence in the results of the inquiries will be compromised.

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. Judge Cory stated in Belfast on February 22, public inquiries can meet the continuing need for accountability in post-conflict situations if they meet four criteria. First, they must be held openly so that the public can see the evidence, hear the witnesses,

and be satisfied that the truth had been established. Second, they must be timely, so that matters do not fester. Third, any recommendations made by them must be acted on by the government. And fourth, the public must be able to trust and rely on the tribunal to act fairly and to get at the truth. Inquiries held under the new law will meet none of these criteria.

Public inquiries into government collusion in the four emblematic cases I discussed today are quite simply a pre-requisite to breaking the cycle of impunity that persists in Northern Ireland. Until the UK 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 most urgent request we have is that you do everything you can to persuade the British government to initiate an independent and public inquiry – one that complies with the recommendations made by Judge Cory – into government collusion in the murder of Patrick Finucane.**

We thank you, Chairman Smith, Chairman Gallegly, and your colleagues in the House for your efforts to convey our concerns to Prime Minister Blair. We urge you to do all you can to ensure that President Bush sends the same message.

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