

# Current Human Rights Concerns Arising from the Conflict and Peace Process in Northern Ireland

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From the late 1960s through the 1990s, Northern Ireland has been ravaged by a series of political upheavals commonly referred to as “the Troubles.” The conflict originated as a territorial dispute, articulated along religious lines, over whether the land currently known as Northern Ireland should remain within the United Kingdom (UK) or become part of a “United Ireland.” This conflict has resulted in the deaths of approximately three and a half thousand people, and injuries to at least forty thousand others. Human rights violations have been at the heart of the conflict in Northern Ireland, consistently serving as flashpoints for violence and distrust, and undermining the rule of law for the past thirty years. Although human rights violations did not cause the conflict, their continual occurrence has prolonged and further entrenched the conflict.

On April 10, 1998, after thirty years of bloody discord, political parties from each side of the conflict signed a peace agreement known as the Good Friday Agreement (Agreement), pledging to dedicate themselves anew to “the achievement of reconciliation, tolerance, and mutual trust, and to the protection and vindication of the human rights of all.” The Agreement contained a number of human rights pledges, including, but not limited to a Bill of Rights for Northern Ireland, a Human Rights Commission, and reform of policing procedures.

Despite the numerous mechanisms for protecting human rights outlined in the Agreement, effective realization of human rights has been elusive. According to the 1999 Human Rights Watch World Report on the UK, the initial implementation of the Agreement “proved disappointing,” as the British government “consistently failed to translate the provisions into practical and effective human rights protections.” In the years since the Agreement, implementation of its provisions has proved unsatisfactory in overcoming years of bitter conflict and human rights violations.

## Background: The Origins of the Conflict

The roots of the conflict in Northern Ireland stem from the English colonization of predominantly Catholic Ireland in the sixteenth century. This period of colonization was followed in the seventeenth century by the movement of Protestant English and Scottish settlers into Ireland. Bolstered by repressive legislation, the Protestants soon established their

ascendancy over the Catholics. In 1800, Ireland became part of the United Kingdom of Britain and Ireland. In 1916, the Easter Rising by Irish republicans led to the War of Independence, which resulted in the partition of Ireland into what is today Northern Ireland and the Republic of Ireland.

The Troubles began with the struggle of the minority Catholic population of Northern Ireland for civil liberties in the late 1960s. On February 1, 1967, the Northern Ireland Civil Rights Association (NICRA) was founded, and its demands laid out at least some of the terrain over which the

conflict was to be fought for the next quarter of a century or more: a universal franchise; an end to electoral gerrymandering; the fair allocation of public housing; an end to discrimination in local government employment; the repeal of the Special Powers Act (the forerunner of today’s anti-terrorist legislation); and the disbanding of the exclusively Protestant reserve police force, the “B Specials.”

The civil rights movement that started in the 1960s demonstrated that Catholics were no longer prepared to accept discriminatory laws and practices set down by a Protestant Parliament and a Protestant state. The violent reaction of extremist Protestants to NICRA’s peaceful protest

marches and the failure of the mainly Protestant Royal Ulster Constabulary (RUC) to defend the protesters laid down the battle lines for the conflict that ensued.

In August 1969, British troops were deployed in Northern Ireland to defend the Catholics from increasing sectarian attacks. Yet by January 1972, when the British army shot and killed 13 unarmed demonstrators in the streets of Derry,



Credit: Jill N. Quinn

Billboard depicting the seventeen people, including eight children, killed by plastic bullets. Many international human rights organizations, and the U.S. Congress, have called for a ban on their use.

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Northern Ireland, in an event known as “Bloody Sunday,” no vestige remained of the initial welcome Catholics had extended to the soldiers. The British army’s role had changed

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from being part of the solution to being part of the problem, so far as Catholics were concerned. By the time a cease-fire was declared in August 1994, the British army had killed 294 people, 160 of them civilians, nearly all of whom were Catholics.

The array of emergency legislation and measures employed by the UK government in its attempts to contain and defeat terrorism, ranging from internment without trial to trial without jury, have also served to prolong and exacerbate the conflict. These measures have given rise to allegations of countless other human rights violations, including harassment of both Protestant and Catholic civilians, miscarriages of justice, and abuse of lethal force.

### Highlighting Past Human Rights Violations

#### *Bloody Sunday*

In a state where tensions still run high, reconciliation is essential. Past human rights violations, particularly those that remain unresolved, continue to play a central role in the fragile peace process. One example of such unresolved violations concerns the events of Bloody Sunday, during which the British army shot or wounded approximately twenty-six unarmed, Catholic demonstrators participating in the peaceful civil rights march in Derry. The actions of the British army drew both local and international condemnation, and have since been a great source of underlying tension.

In the wake of Bloody Sunday, the British government initiated a public judicial inquiry to investigate the incident. Public inquiries are established under the Tribunals of Inquiry (Evidence) Act of 1921, which allows for the investigation of “a definite matter of urgent public importance” by an independent tribunal. They are inquisitorial rather than adversarial in nature, and primarily aimed at establishing the truth about what happened and making recommendations for the avoidance of a repetition. This first official inquiry report, issued by the then Lord Chief Justice, Lord Widgery, only eleven weeks after the events, concluded that the British soldiers acted in self defense, and fired only in response to shots allegedly fired at them. This inquiry, however, was much discredited for inadequately considering all the relevant evidence in deciding the soldiers’ culpability for the civilian casualties. On January 29, 1998, the British government’s announcement of a second public inquiry into the events of Bloody Sunday some twenty-six years later, made legal history, as it effectively quashed the findings of Lord Widgery’s long-discredited inquiry.

The second Bloody Sunday inquiry has also been dogged by controversy. Due to the colossal amount of evidence involved, the substantive proceedings did not begin until November 2000, almost three years after the initial announcement. Furthermore, the proceedings have been slow, with the opening statements alone lasting over three months. The cost has already exceeded U.S.\$53 million, and with an anticipated two years of hearings ahead, this inquiry is set to be the most expensive one to date.

In addition to the cost, the inquiry has been faced with important evidentiary problems. For example, the soldiers who fired shots have succeeded in retaining their anonymity, much to the distress of the wounded and the relatives of those who died. Further, the Ministry of Defense has destroyed many of the weapons used, even after receiving orders to preserve the weapons as evidence. Finally, the difficulty of reconstructing events that took place almost thirty years ago presents difficulties for the second inquiry. Specifically, some witnesses are challenged by faulty memories, many witnesses have died in the intervening years, and the many articles and documentaries about Bloody Sunday have colored recollections.

#### *Targeting Civilians*

Among the many thousands of victims of the conflict during the last thirty years are two members of the legal profession. One of them was Belfast solicitor Patrick Finucane, who was murdered in 1989. Since his death, it has emerged that both British army intelligence and the RUC colluded in his killing. In March 1999, Rosemary Nelson, a solicitor who campaigned for a public inquiry into Patrick Finucane’s death, was killed in a car bomb. Like Finucane, RUC officers and soldiers had threatened her life before she died. Unlike Finucane, however, Nelson had complained about her situation to the United Nations Special Rapporteur on the Independence of Judges and Lawyers, Dato’ Param Cumaraswamy, and had spoken before the United States Congress about the difficulties she faced in her daily work. Thus far, the British government has ignored the continual call from the international human rights community and the U.S. Congress

for independent inquiries into their deaths.

Other casualties include the death of Robert Hamill, a young Catholic man who was kicked to death by a loyalist mob in 1997 in Portadown, Northern Ireland, because of his religion. Although his attackers did not know him, they assumed he was a Catholic because of the direction from which he came and where he was headed. Because of the fact that four armed RUC officers were present in a vehicle only yards away, Hamill thought it would be safe to walk past the loyalists. When the gang attacked him, however, the RUC officers did nothing to help him. This case is one of many highlighting the problem of sectarian attacks and harassment within Northern Ireland, where one group ascribes a pejorative set of attributes to the other based on its perceived religious, political, or community affiliations, and attacks based on those attributes.

After this incident, the RUC issued statements alleging that its officers had come under attack, and had even been injured during the incident. In 2000 the coroner abandoned attempts to hold an inquest—a formal inquisitorial hearing held when a death has happened in suspicious or unknown circumstances—because witnesses were too afraid to testify. Although six men were charged with the murder, only one stood trial, and due to the lack of police evidence against him, he was merely convicted of affray, or disorderly conduct.

In 1997, Billy Wright, a dissident loyalist leader, was murdered in Northern Ireland’s Maze prison by dissident

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republican prisoners, whom the prison authorities had housed in the same wing. Wright was on his way to a visit from his girlfriend when the three dissident republican prisoners climbed over the prison roof and shot him inside the prison transport van. Not only were the republican prisoners able to smuggle weapons into the jail to accomplish this murder, but they also were able to cut through a wire fence completely undetected. Evidence collected shows that a prison officer was called away from a crucial watchtower just at the time of the murder and a vital security camera was out of action. Further, the evidence suggests that the murderers had advance warning that Wright was due to receive a visit on the morning of his death. Despite the uncertainty surrounding this situation, the government has been reluctant to answer the many outstanding questions surrounding this murder, and has refused to disclose the name of the governor in charge of the prison on the day of the murder.

### The Good Friday Peace Agreement: Reconciling Past Human Rights Violations

The Agreement set forth the parties' main aspirations for protecting human rights, including but not limited to the following rights: the right of free political thought; the right to freedom and expression of religion; the right to seek constitutional change by peaceful and legitimate means; the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender, or ethnicity; and the right to freedom from sectarian harassment. More importantly, the Agreement provided various mechanisms to secure and protect human rights, and outlined ways to reform the various state institutions.

#### *The Northern Ireland Human Rights Commission*

The Northern Ireland Human Rights Commission (NIHRC or Commission) was established on March 1, 1999. Created by the Northern Ireland Act of 1998 (Act), section 68, in compliance with a commitment made by the British Government in the Good Friday Agreement, the Commission was charged with drawing up a Bill of Rights for Northern Ireland. This development is unique because it is the first human rights commission established within the UK. As such, Northern Ireland will be the first part of the UK to have its own Bill of Rights.

The NIHRC is independent from the government but is accountable to Parliament through the secretary of state. The Commission's mandate includes the following duties: to review the adequacy and effectiveness of law and practice relating to the protection of human rights; to advise the secretary of state and the Executive Committee of the Northern Ireland Assembly of legislative and other measures, which ought to be taken to protect human rights; to advise

the Northern Ireland Assembly regarding compatibility of legislation with human rights obligations; to promote understanding and awareness of the importance of human rights in Northern Ireland; and to provide advice to the Secretary of State on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights (European Convention), which was incorporated into UK law in 2000. The NIHRC also has the power to assist individuals with proceedings involving law or practice concerning the protection of human rights; bring proceedings involving law or practice concerning the protection of human rights; conduct such investigations as it considers

Credit: Jill N. Quinn



Mural along the Falls Road in the Catholic section of Belfast, Northern Ireland

necessary or expedient for the purpose of exercising its other functions; and publish its advice and the outcome of its research and investigations.

Despite its ambitious beginnings, the NIHRC has come under attack, and its proper functioning has been inhibited in a number of ways. For one, the Commission's budget is insufficient to achieve its wide mandate. Further, the Commission's limited powers of investigation and limited right to make representations have undermined its function. These limitations were highlighted when the chief coroner in Northern Ire-

land, charged with initiating inquests, asked the NIHRC to advise him on the disclosure of information prior to the inquest on the Omagh bombing case—a bombing that caused the greatest number of casualties on Northern Ireland soil since the Troubles began—but then declined to allow the NIHRC to make representations at the inquest itself. The NIHRC sought judicial review of his refusal, but the Lord Chief Justice, Sir Robert Carswell, declined to support the Commission's right to intervene.

Important leaders within Northern Ireland have attacked the legality of the NIHRC and its mandate, placing the work of the Commission at severe risk. For example, David Trimble, the First Minister of the Northern Ireland Assembly, has attacked the NIHRC over the composition of their equality working group, claiming the group has no legal authority to draft a Bill of Rights, despite the fact that both the NIHRC and the Bill of Rights are organs of the Good Friday Agreement. An attack from the First Minister is particularly troubling because he has primary responsibility for human rights in Northern Ireland.

#### *Policing*

No review of current human rights concerns in Northern Ireland would be complete without reference to the reform of policing. As a product of the historical and political forces that have been at the heart of the conflict in Northern Ireland, the RUC was a paramilitary organization, organized along quasi-military lines, armed, and tasked with combat-

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ing terrorism. Although the RUC's mandate was to uphold the rule of law, prevent crime, keep the peace, and perform all the other roles of ordinary police forces, its paramilitary role inevitably encroached on its ability to carry out normal policing. Individual officers within the RUC and their families have paid a very high price in terms of death and injury throughout the conflict, with over 300 deaths and 9,304 injuries to RUC officers in the last thirty years.

The RUC was not able to maintain a neutral position, separating republicans from loyalists, and keeping the peace. As part of the security forces of the UK, like those of any country, they were concerned not only with maintaining law and order, but also with upholding the union between Northern Ireland and Britain. Given the nature of the conflict in Northern Ireland, any police force, regardless of its composition, would have found itself in opposition to the nationalist community, whose aspiration is the abolition of Northern Ireland and the creation of a united Ireland. This situation has been gravely compounded by the fact that, for both historical and political reasons, approximately ninety-two percent of the members of the security forces were drawn from the Protestant community, and were inevitably unionist in their sympathies. This imbalance in composition was a factor in the conflict and led to many allegations of official collusion between the security forces and loyalist paramilitaries. As documented by human rights organizations such as Amnesty International and the Committee on the Administration of Justice in Belfast, RUC officers were responsible for causing deaths, sometimes in disputed circumstances, and there were many substantiated allegations of severe ill-treatment of those detained under emergency laws.

Nowhere was the inability of the RUC to carry out normal peace-time policing more sharply demonstrated than in the ghastly practice of so-called punishment beatings and shootings, usually carried out against young men suspected of anti-social behavior such as drug dealing and stealing cars. Victims of punishment beatings were guaranteed no form of due process, and such encounters often resulted in horrific injuries to the victims or even death. These unjust activities raised fundamental questions about policing in Northern Ireland. Perhaps the most significant thing about punishment beatings,

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when considering them in the context of policing, was that they occurred in both nationalist and loyalist communities. Although crude and inexcusable, such practices reflected a basic urge in both communities to curb and deter anti-social behavior. Also highly significant was the fact that these practices could not take place without at least the tacit support of the communities. This type of rough justice usurped the role of normal policing, to the disadvantage of its victims and the communities in which it occurred. The challenge facing



Mural on the façade of a building at Free Derry Corner, site of the Bloody Sunday Massacre, and flashpoint of continuing conflict.

police reform is to establish a police service to which both communities will relinquish the right to deal with anti-social elements fairly, with due process, and without violence.

The role of the RUC was further distorted from the norm by the fact that it operated under emergency laws from its inception. The laws disfigured the criminal justice system in virtually every aspect, as they deprived suspects of trial by jury, reduced the standard of admissibility of confession evidence, and allowed the drawing of adverse inferences from a defendant's remaining silent, to mention only the most serious of their inroads into defendants' rights. The RUC not only operated under these draconian laws, but did so under minimal scrutiny, until reforms were enacted to allow lawyers to be present during interrogations and allow the use of video- and audio-recording of police interviews. It is not surprising that human rights groups, such as British Irish RIGHTS WATCH, have received many allegations of abuse of defense lawyers, miscarriages of justice, and ill-treatment of those in RUC custody.

The case for reform of the RUC was overwhelming, and proved one of the most contentious of all the Good Friday Agreement proposals, despite the fact that both nationalists and unionists on the ground were eager for reform. The Patten Commission (Patten), set up under the Agreement to make recommendations for reforming policing, issued promising recommendations on police reform, and the government pledged to implement its proposals in full. Unionist politicians, however, turned policing into a political football, demanding concessions on policing in return for their continued participation in the Northern Ireland Assembly.

The Policing Act of 2000, which is intended to implement Patten, includes a succession of weak provisions that have failed to break the political link between the Secretary of State for Northern Ireland and the Chief Constable of the RUC, and have robbed the new Policing Board and the Police Ombudsman of powers recommended by Patten for curbing the unaccountable scope of operational decisions. Many unionists were reluctant to see even the name or the uniform of the RUC changed, let alone its composition or its ability

legitimacy of South Africa's partial amnesty (that will likely protect perpetrators from international prosecution), Burma's future democratic transition will require a formal reckoning with responsibility for past human rights violations.

### Conclusion

Burma has much to gain from formally engaging with the ideas and policy options of transitional justice as a means of ensuring the legitimacy of future political change. To grasp the significance of these issues, it is important to consider that transitional justice in both theory and practice is structured by two basic principles: first, a recognition that each nation's transitional experience is unique and molded by distinct social, cultural, and historical factors; and second, that there are basic moral understandings, legal principles, and logistical issues common to all democratic transitions. By formally acknowledging the second principle—evoking the language

of transitional justice, seeking to learn from the experiences of other nations, and openly accepting basic international human rights standards—Burma may well increase the international community's willingness to respect the first principle—Burma's need to find its own solutions to its problems.

By addressing its violent past, Burma can ensure that a future transition is accepted at an international level while retaining a relatively high degree of autonomy regarding specific policy decisions. In negotiating its future political transition, Burma need not engage in full-scale prosecutions and may or may not choose to grant some form of amnesty to past perpetrators. To achieve the international legitimacy necessary for a successful transition, however, Burma must formally reckon with its legacy of gross violations of human rights and the related questions of responsibility. 🌐

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to serve all of the community equally. The nationalist political parties retaliated to the weakening of Patten's proposals by refusing to take their seats on the new Policing Board. In their August 2001 package of proposals for the implementation of the Good Friday Agreement, the British and Irish governments undertook to publish a revised Implementation Plan for policing reform, which has persuaded one of the nationalist parties, the Social Democratic and Labor Party, to take up its seats on the Policing Board.

Among others, the U.S. Congress is concerned about the failure to implement properly the Patten recommendations. Other groups, such as British Irish RIGHTS WATCH, view the greatest concern about policing in Northern Ireland as Patten's refusal to address the question of how to root out those who were serial human rights abusers under the old system. Policing will change in Northern Ireland only if Catholic nationalists are sufficiently confident to join and remain in the new police service in numbers. This is unlikely to happen while RUC officers who used violence, lies, and collusion as their daily working methods are allowed to remain in place, without ever being brought to justice and without having to take the new oath. Unless Catholics can be persuaded to join and remain in the new police service, the rule of law will continue to be problematic in Northern Ireland.

### Conclusion

Many argue that Northern Ireland needs a truth and reconciliation commission to deal with its past human rights abuses, but the possibility of Northern Ireland's establishing a truth commission is highly unlikely. Truth commissions have tended to be established in states in which regimes have changed and the incoming governments have been prepared to allow investigators to subject the former government's activities to scrutiny. Such conditions do not exist in Northern Ireland, and resistance to any development on the part of the "securocrats," *i.e.*, intelligence services and others who are responsible for state security, is likely to ensure that a truth commission never develops. Without a truth

commission, there will be continued domestic and international pressure for costly public inquiries that may go on for years and possibly hinder the peace process itself.

In hindsight, the human rights provisions of the Good Friday Agreement have been more well-intentioned than well-implemented. The Agreement offers a unique opportunity to consider the human rights deficit in Northern Ireland holistically. British Irish RIGHTS WATCH and other NGOs advocated for the wholesale reform of the system of criminal justice, looking at the issues of policing, emergency laws and the system itself as arms of a single entity. Instead, the government has allowed the criminal justice system to be reviewed piecemeal, resulting in an incoherent strategy that will not ensure the integrated and radical reforms that are essential to the development of stability and peace in Northern Ireland. The conflict is by no means over. According to British Irish RIGHTS WATCH's calculations, over 170 people have died since the 1994 cease-fires. The fear for most is that missing the opportunity for more coherent human rights reforms in Northern Ireland, together with the absence of any effective mechanism for dealing with past abuses, may one day be seen as having been a fatal error. 🌐

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