

**REPORT ON THE MISSION OF THE SPECIAL  
RAPPORTEUR TO THE UNITED KINGDOM OF  
GREAT BRITAIN AND NORTHERN IRELAND**

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**MEETING**  
BEFORE THE  
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS  
AND HUMAN RIGHTS  
OF THE  
COMMITTEE ON  
INTERNATIONAL RELATIONS  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED FIFTH CONGRESS  
SECOND SESSION

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SEPTEMBER 29, 1998  
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# **REPORT ON THE MISSION OF THE SPECIAL RAPPORTEUR TO THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRE- LAND**

**TUESDAY, SEPTEMBER 29, 1998**

**HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS,  
COMMITTEE ON INTERNATIONAL RELATIONS,  
Washington, DC.**

The Subcommittee met, pursuant to notice, at 10:40 a.m., in room 2172, Rayburn House Office Building, Hon. Christopher H. Smith (chairman of the Subcommittee) presiding.

Mr. SMITH. [presiding] The Subcommittee will come to order for this very special meeting, and I want to thank our very, very distinguished guests for traveling so far to be with us this morning.

We will be joined very shortly, by chairman of the full International Relations Committee, Ben Gilman. A Member of the Full Committee, Cass Ballenger, is also here. Throughout the morning I'm sure many of our other colleagues will be coming by.

Let me just give a brief opening and then I'd like to present our witnesses and thank our guests for traveling and being here.

The purpose of this meeting is for the House Subcommittee with primary jurisdiction over international human rights to receive and review the recent U.N. report on harassment and intimidation of defense attorneys by police officers of the Royal Ulster Constabulary—the RUC—and other violations of the right to fair trial and the right to counsel in Northern Ireland.

Prior to today's public roundtable discussion, this Subcommittee has held two hearings on the status of human rights in Northern Ireland and conducted one fact-finding peace mission in Belfast in August 1997. On March 17 of this year, the full House of Representatives passed my bill, H. Con. Res. 152, which, among other provisions, expressed the sense of Congress that any peace agreement in Northern Ireland must recognize the State's obligation to protect human rights in all circumstances.

Since our last meeting, great strides have been made toward a lasting and just peace in Northern Ireland. In April, representatives of the multi-party peace talks signed the Good Friday Agreement. In May, the people of Northern Ireland and the people of the Republic of Ireland voted overwhelmingly in support of the peace referendum. And, in June, the people of both the Catholic and the Protestant communities took part in the election of representatives to the new 108-member Northern Ireland Assembly.

Regrettably, the progress has not been without some setbacks. For instance, the "marching season" in July was again marked by violence, including firebombing, which led to the tragic death of three young brothers, the Quinn boys, in Ballymoney. And, in August, the world was stung again by the horrific Omagh bombing which took the lives of 28 people and injured many more.

Because there are extremists on both sides who may continue to try to undermine the peace process and exploit the emotions and fears of both communities, it is all the more imperative that the Northern Ireland bill, the enabling legislation of the Good Friday Agreement, be predicated on and capable of extending human rights protections to all people in Northern Ireland. Ensuring a defendant's right to a fair trial and an unfettered access to appropriate counsel is crucial if Northern Ireland is to experience a just and a lasting peace.

Param Cumaraswamy, the U.N. Special Rapporteur on the independence of judges and lawyers, conducted his own fact-finding mission just less than 1 year ago and released his findings in April of this year. In reading the report, I was struck by the similarities between his inquiry and those undertaken by the Subcommittee on International Operations and Human Rights—not only in the list of government officials and others who are interviewed, but also in the stated items of concern and the recommendations for reform.

The Special Rapporteur's Report finds that the RUC officers have indeed engaged in "activities which constitute intimidation, hindrance, harassment or improper interference" with criminal defense attorneys. The Rapporteur therefore recommends that the authorities—preferably the new police ombudsman, whose office would be established by the proposed Northern Ireland Act—conduct an independent investigation of all threats to counsel in Northern Ireland.

Among other important recommendations, the report suggests an independent judicial inquiry into the case of Patrick Finucane, the defense attorney who was murdered in front of his wife and children in 1989, under circumstances suggesting possible collusion by officers of the RUC. It also recommends reforms in the training of police officers, protection of the right to have an attorney present during police interrogation, reinstatement of trial by jury and the right of a criminal defendant to remain silent, and strict safeguards against arbitrary wiretapping.

Finally, the Special Rapporteur recognizes the inadequacy of a complaint system in which the RUC essentially investigates itself, subject to a supervisory commission that can only make non-binding recommendations. He notes that "of the 16,375 complaints generally received by the ICPC through 1994, not one has resulted in any disciplinary sanction against any RUC officer," and that during 1996, there were 2,540 cases of which only one resulted in a finding that an RUC officer was guilty of abuse of authority. The Rapporteur therefore recommends that the office of the new police ombudsman be given the necessary human and financial resources to meaningfully carry out its mandate, which will go a long way toward restoring public confidence in the police complaints procedure.

The response thus far to the Rapporteur's Report by the British Government is frankly disappointing. Aside from taking credit for those areas in which the Rapporteur noted merit or progress, such as the integrity of judges and the scheduled introduction of video and audio recording in interrogation rooms, the government's response is largely dismissive, both in tone and in substance. For instance, the report points out that an independent judicial inquiry is justified only "if there is a need to look at a matter of urgent public importance." It inexplicably concludes that "this is not the case with the murder of Mr. Patrick Finucane" unless "new evidence is brought to light."

The government does not explain how new evidence will be brought to light in the absence of an independent inquiry, and seems not to understand the corrosive effects of not knowing the truth about whether law enforcement officials were guilty of collusion in murder.

The attitude on the part of the government officials is not an encouraging sign to those of us who believe that respect for human rights is a sine qua non for peace and reconciliation in Northern Ireland or anywhere else. Nevertheless, there is also reason for hope. The proposed police ombudsman can be a powerful force for police reform and for the restoration of public confidence, if the government follows the Rapporteur's recommendations and give the office sufficient resources.

The recently established Independent Commission for Policing for Northern Ireland, although its only legal power is the power to make recommendations, can also be a force for change in the right direction if it takes to heart the Special Rapporteur's recommendations and the detailed submissions of human rights organizations, such as the Committee for the Administration of Justice and British Irish Rights Watch. Drawing their sustenance from the reservoir of goodwill instilled by the Good Friday Agreement and the subsequent referenda, these government and non-government institutions can work together to restore public trust in the legal system, largely by helping to shape a system that is, in fact, trustworthy.

And, again, I want to thank our distinguished guests.

I'd like to yield to my good friend, Mr. Ballenger, for any opening comments he might—

Mr. BALLENGER. I'm here basically for an education. I have not read the report, have not even been involved one way or the other so, I'm here to listen.

Mr. SMITH. I thank my good friend, and when Mr. Gilman does arrive, we will ask him if he has any opening comments.

I'd like to ask the distinguished Special Rapporteur if he would begin his comments at this point.

#### **STATEMENT OF PARAM CUMARASWAMY, SPECIAL RAPPORTEUR TO THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND**

Mr. CUMARASWAMY. Thank you, Mr. Chairman. You have very succinctly and very admirably summarized my report to such an extent that I don't think I have very much left to say. May I, however, start off, Mr. Chairman, to say this: Since my appointment

to this mandate in 1994, I have been receiving periodic reports from concerned international NGO's, in particular, the British Irish Watch and the Lawyers' Committee for Human Rights on the issue of intimidation and harassment of defense lawyers in Northern Ireland. This issue was the subject of discussion way back in 1992 in the U.N. Sub-commission on the Prevention of Discrimination and Protection of Minorities.

Another matter of concern which kept appearing in reports to me was the allegation of security forces involvement in the murder of the prominent Belfast lawyer Patrick Finucane.

In February, last year, I sought a mission to the United Kingdom in Northern Ireland to inquire into these allegations. I also, Mr. Chairman, took the opportunity to inquire into a few other issues which were of relevance to the independence and the role of lawyers in these cases. A very favorable reply, and very promptly too, was received from the United Kingdom Government. My report focuses at length on the harassment and intimidation of defense lawyers by the Royal Ulster Constabulary (RUC), and the Patrick Finucane murder.

I was in Belfast for nearly 10 days. During this period, I listened to various personalities and it was really a very heavy schedule. And having studied the materials supplied to me, I was satisfied that there was truth in the allegations that the defense lawyers were harassed and intimidated, as described in the various reports I had received since 1992.

The denial by the RUC of these allegations was largely based on the fact that it did not receive complaints from these lawyers and if it did they were not substantiated. Their argument throughout has been that they didn't receive specific, written allegations as such or complaints.

The lawyers concerned, Mr. Chairman, only about 30 among the 1,700 solicitors in Northern Ireland, gave their reasons to me as to why they gave up submitting their complaints to the RUC. I have listed the five reasons in the report. These reasons also include as to why they did not lodge complaints to their own Law Society of Northern Ireland. The fact remains, Mr. Chairman, that the RUC was fully aware of these complaints through these international NGO's, and the domestic NGO's. It failed to take note and allowed the situation to deteriorate. There was, Mr. Chairman, in my view, a complete indifference shown by the RUC to the allegations contained in the reports from the NGO's.

I recall as to a specific question put to the Chief Constable as to whether he called in this small group of lawyers and inquired from them, "Why are you sending these complaints to the International NGO's and other NGO's? Why aren't you sending these complaints to the RUC?", he said, no, he didn't find a need to do so. Hence, I came to the conclusion there was a total indifference by the RUC.

The crisis of confidence on the RUC's investigative mechanism was highlighted, Mr. Chairman, in the recommendation of the Hayes Commission calling for the appointment of an independent police ombudsman to investigate complaints against the police. This recommendation was based on loss of confidence in the RUC's internal investigative complaints mechanism. The very figures which you mentioned, Mr. Chairman, which are in my report,

clearly show the kind of confidence the people had on the RUC's investigative mechanism. I have also expressed my concern over the manner in which the Law Society of Northern Ireland, the governing body of the solicitors, addressed this issue.

Harassment and intimidation of defense lawyers go to the core of independence of the legal profession and the administration of justice in any civil society. The Law Society was duty-bound to rush to the aid of its members in such situations. What greater objective or interest, Mr. Chairman, can the Law Society have than the protection of the independence of the profession and its individual members?

I've also expressed in my report my concern that, though the lawyers had no confidence in the RUC's investigative mechanism, yet, they should have, at least for record purposes, submitted their complaints to the RUC. By failing to do so, they gave the RUC a defense to say that they never received any specific complaints.

May I pause here, Mr. Chairman? I have, however, in my report listed a few complaints which really were not given much attention by the RUC. In this regard, I welcome the government's proposed reforms to introduce audio and video recordings of interrogations in holding centers in Northern Ireland. To my mind, and in my view, Mr. Chairman, this will go a long way to allay the fears one may have in the future as to whether a particular suspect, and through that suspect, whether a particular lawyer has been intimidated.

I understand as the situation stands, silent video recording has already been set in place in the holding centers, though there is legislation now for audio recording, but that has not been implemented. In my report, I have called upon the government to speedily implement that piece of legislation.

I also welcome the legislative proposal currently before Parliament, which you have alluded to, Mr. Chairman, for the appointment of an independent police ombudsman to take over investigations of complaints against the police. When these reforms are implemented, complaints of harassment and intimidation of defense lawyers would be minimized.

I'm also pleased to note that the Law Society in Northern Ireland has taken note of my concerns and my recommendations and has also set in place a machinery to play a more proactive role in the defense of the independence of these lawyers.

On the Patrick Finucane matter, the murder of Patrick Finucane in February 1989, having gone through the materials given to me, having studied the transcripts of the notes of evidence in the Brian Nelson mitigation plea, having studied the particular transcript of Colonel J's evidence (whose name was not disclosed) he was the handler of Brian Nelson, the double agent—and having discussed this matter with the Director of Public Prosecutions and also the RUC themselves, I was convinced, Mr. Chairman, that there were compelling reasons for an independent judicial inquiry.

I accept the reason given to me by the Director of Public Prosecutions that there was insufficient evidence to prosecute anyone for the murder even if the person who actually committed the murder was known. I understand, and I have mentioned this in my report, that even if there was evidence to show that the person actually carried out the murder, yet it may be that there was no admissible



and credible evidence for a conviction. I accept that fact. But a doubt which needs to be cleared is whether there were security forces collusion in the murder. That is what I was driving at in my report. I'm not suggesting for a minute, Mr. Chairman, that there be investigation to ascertain who committed the murder, I'm more concerned here, and from the materials I've seen, there seems to be at least prima facie evidence to show that there could be security forces collusion. How do we resolve this? The only way to resolve this and clear the doubt is to set up a royal commission, and that is what I've suggested.

When I finalized my report, Mr. Chairman, the ongoing peace talks in Northern Ireland were at its crucial stage. It was written in that context and I concluded and made the recommendations, as I did in my report, with a very strong conviction that the respect for the rule of law and human rights with greater confidence in public institutions, showing transparency and accountability, would enhance the prospects for a lasting peace settlement of the conflict in Northern Ireland.

I am very pleased that there is in place today the Good Friday peace settlement, and I'm convinced, Mr. Chairman, sir, if my recommendations, as set out in this report are implemented, it will enhance the prospects for a lasting peace settlement in Northern Ireland.

Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Cumaraswamy, not only for your excellent presentation, but for this very exhaustive report which really should be required reading. It is the ultimate primer, but it's also thorough. You have gone into areas people have wanted to ignore—especially the RUC, especially the British Government, especially some of the key players in Northern Ireland. I think it's extremely important that you look at several loose ends—many of the cases that were left unresolved—where, as you pointed out, there was indifference.

I experienced that same sense of bewilderment at "Why are you so concerned?" when I met with Ronnie Flanagan during my trip there. I mentioned the Casement Park issue and Sean Kelly's incarceration for life under the bizarre common purpose law and he said, "I don't even know what case you're talking about." I almost fell off my chair. Of course, he knew and he either had a case of amnesia or was being complicitous; I don't know which one it was. Certainly, he's not incompetent.

So, with the imprimatur of the world body—and you are the expert for the U.N. Commission on Human Rights for lawyers, the Special Rapporteur for the independence of judges and lawyers—I think you have taken all of these issues and put them in front not just of the British and Irish, but the whole world, including the Congress, and said, "Take this seriously." So, we are very much indebted to you for this report and for the credibility that you bring, both personally and by extension, because of the very important position you occupy. So, thank you for the enormous public service you have done.

I'd like to ask our other panelists if they would make their presentations, and before I do I'll introduce them, as well.

Peter Madden is a solicitor with the law firm of Madden and Finucane in Northern Ireland. He was a law partner of Patrick Finucane, the Belfast defense attorney, as we all know, who was murdered in 1989.

Rosemary Nelson has been a solicitor in Northern Ireland for the past 12 years. She has been subjected to harassment and numerous threats because of her representation of clients charged with politically motivated offenses.

And, Paul Mageean is the legal officer for the Committee on the Administration of Justice, a non-sectarian human rights organization, active in Northern Ireland.

Peter, if you could begin.

**STATEMENT OF PETER MADDEN, SOLICITOR, MADDEN AND FINUCANE ASSOCIATES, BELFAST**

Mr. MADDEN. Mr. Chairman, I want to thank you for the opportunity to present testimony in response to Mr. Cumaraswamy's report. I'd like to thank Mr. Cumaraswamy for carrying out his investigation and preparing and presenting his very full report. I know that this is a difficult time for him, and I hope that the unhappy situation in his own country will be resolved. It is a tribute to his resolve and his determination and his professionalism in the cause of the protection of human rights throughout the world that he is here today.

I particularly thank him for support for the growing call to the British Government to establish a full public judicial inquiry into the murder of Pat Finucane.

I want to thank Jane Winter of British Irish Rights Watch for her painstaking research and for her persistence in pursuing these issues. Without her persistence and dedication, these issues would not be before you today.

Although Pat Finucane was murdered by a loyalist death squad, there is evidence that the British Government and the RUC were involved in the murder. Prior to Pat Finucane's murder, the RUC threatened that he should be assassinated by loyalists. Three weeks before his murder, February 1989, British Government Minister, Douglas Hogg, stated that there were a number of solicitors who were unduly sympathetic to the IRA.

Brian Nelson was a British Army agent who was directly involved in the murder. Nelson's British Army commanders took their orders from the political masters in the British Government in London. Pat Finucane's family want to know what is the link between the RUC death threats, Hogg's statement—which he refused to elaborate upon—and the true role of Brian Nelson. They also want to know how he could have been shot with a British Army pistol.

The problem of threats and verbal abuse by the RUC to lawyers representing people held in interrogation centers has existed for many years. It has been well documented. It continues to this day. The threats to the lawyers cannot be separated from the verbal and physical abuse of the clients themselves. Mr. Cumaraswamy's remit does not extend to the complaints of ill treatment from people in custody, but, again, those complaints and medical evidence over the years have not only been well documented, but hundreds

of thousands of pounds have been paid in damages to people who were unlawfully arrested, falsely imprisoned, and assaulted in interrogation centers. And I have represented many of those people.

Pat Finucane's murder is a classic example of collusion between the British Army, the RUC, and loyalist death squads. That collusion is probably responsible for almost a thousand of those killed in our conflict.

Threats to lawyers and physical ill treatment of detainees in interrogation centers by the RUC go hand in hand. Other abuses are again well documented, such as the murder of both adults and children with plastic bullets, the implementation of a "shoot-to-kill" policy, the implementation of a supergrass system to secure convictions in Diplock courts, the harassment and verbal abuse of young Nationalists in their own streets—all this working in a legislative perversion of so-called emergency law which has lasted over 25 years. There have been few prosecutions of RUC members or dismissals for misconduct.

I have represented thousands of people over the past 20 years, mainly Nationalists, who have been the victims of the RUC. I've represented hundreds of people who have been subjected to brutality and ill treatment in the interrogation centers.

Mr. Chairman, I'd like to refer to the part of paragraph 21 of Mr. Cumaraswamy's report, if I may, because I think it is an important part of, and I think it shows, an analogy which I'll refer to in a moment. If I could just read part of that paragraph—it's paragraph 21 from the report.

Mr. SMITH. Yes. OK. Go ahead.

Mr. MADDEN. And I quote from the report: "The Chief Constable alluded to an agenda in which the paramilitary organizations ensured that detainees remain silent and alleged that solicitors may be involved in conveying this message to the detainees. Further, he stated that there is, in fact, a political divide in Northern Ireland and part of the political agenda is to portray the RUC as part of the Unionist tradition. These allegations concerning police intimidation and harassment of solicitors is part and parcel of this political agenda." And that's a quote, I think, from the Chief Constable. And, then he goes on, and I go on to quote the passage from the report: "The Assistant Chief Constable also admitted that during the course of an interrogation, an officer may express the view that the solicitor is providing bad advice to the client and not acting in his interest, for instance, by advising the client to remain silent."

That abstract is from the report, Mr. Chairman. We have the extraordinary statement from the Assistant Chief Constable, the second in command of the RUC, who thinks that it is perfectly legitimate for the RUC to undermine the lawyers who advise people in the interrogation centers. He thinks that it is perfectly legitimate for a police officer to tell a person under interrogation that his solicitor is giving him bad advice by advising him to remain silent. And it has to be borne in mind that the lawyer is not permitted to attend the interrogation; and that's a legal principle approved by the House of Lords, which is the highest court of appeal in the jurisdiction. It has to also be borne in mind that the client is also probably being subjected, in most cases, to verbal abuse himself in

the isolated conditions which are designed to frighten and intimidate him into making a confession.

There are very few situations where a lawyer would advise someone being questioned in those conditions to answer any questions. In those particular conditions, the best advice is probably to remain silent, despite what the Assistant Chief Constable thinks. And apart from that, the person being questioned still has a fundamental right to remain silent. It's an amazing statement from such a senior officer, which I think reflects an ignorance of the law, an ignorance of human rights, and hostility to the lawyers whose function is to protect those very rights.

It is not a matter of carrying messages to detainees to remain silent. It could even amount to professional negligence if a lawyer advises a client to answer questions in those circumstances. When you consider that such high-ranking officers see nothing wrong with holding those views, so much so that they're prepared to tell Mr. Cumaraswamy that—and Mr. Cumaraswamy, of all people, who has been there to conduct inquiry into human rights abuse and there to conduct an inquiry into the intimidation of defense lawyers. I think it makes it easier to understand why the threats continue to this day.

People are still arrested under the Prevention of Terrorism Act. They're still not permitted to have their lawyers present to advise during the questioning and they're still subjected to threat and verbal abuse.

If I can refer back to the same paragraph of the report, paragraph 21, the statement the Chief Constable of the RUC, he says that; presumably he means portrayed by the lawyers who are making the complaints, as part of the Unionist tradition, as part of some political agenda. This statement is puzzling. The RUC is 95 percent Unionist. Its members are drawn from the Unionist community. Nationalists represent somewhere between 40 to 45 percent of the population in the north of Ireland. I don't think it is part of any political agenda to portray the RUC as being Unionist. They are Unionist and that is a fact.

All this raises questions about the whole nature and future of policing in the north of Ireland. It has particular significance to the new policing commission set up by the Good Friday Agreement under the chairmanship of Chris Patton.

We are now in a time of relative peace in the north. We are on the verge of great change. It is a time of great hope for the future. But unless there is fundamental change, it'll be difficult to maintain that peace.

The people in the north of Ireland have been promised, in the Good Friday Agreement, a truly historic opportunity for a new beginning. A new beginning means new institutions. Just as there has to be a new approach to the administration of justice, to the judiciary, and to inclusion of Nationalists in government, there must be a new police service.

The RUC personnel who have been involved in the sort of abuses to which I have referred are still in the RUC. The RUC people who carry out threats and verbal abuse today are obviously still there. The RUC men who threatened Pat Finucane with death are probably still there.

The new policing commission, headed by Chris Patton, must understand that unless there is major change in policing, unless a new police service is established, which is representative of and accountable to the community that it services, unless immediate steps are taken to introduce recruitment and training programs to ensure that the membership of a new police service quickly reaches the required number of Nationalist members, it will be very difficult to achieve lasting peace. And mere cosmetic change will not be enough. There is no other way around it.

A new police service must include in its personnel between 40 to 45 percent Nationalists to reflect the proportion of Nationalists in the population, and that must be achieved quickly. Those members of the RUC who are currently guilty of human rights abuses must be brought to justice. Any delay will be seen as a refusal to implement the necessary change.

I cannot emphasize enough how important policing is in the new situation. I cannot emphasize how much the RUC is not accepted by Nationalists.

What has occurred in the past in the north of Ireland is the dominance of one community over the other, the dominance of Unionists over Nationalists and the exclusion of Nationalists from government. Nationalists who now make up between 40 to 45 percent of the population are not a minority. The RUC is Unionist because its members come from the Unionist community. One community's police force cannot dominate the other community. A new police service must serve all the people of the north of Ireland, and such a new police service must have the support of all the people.

Pat Finucane was murdered because he sought to protect the rights of Nationalists in a Unionist-dominated state. That domination has been supported and secured by the British Government. The British Government will have to take responsibility for ensuring that the terms of the Good Friday Agreement are implemented.

In order to achieve lasting peace and stability—and it is very possible to do so—both the British and the Irish Government must carry out the promises made to the people of Ireland and they must fulfill the commitment to the principles of partnership, equality, and mutual respect and to the protection of civil, political, social, economic, and cultural rights in their respective jurisdictions.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Madden appears in the appendix.]

Mr. SMITH. Thank you very much, Mr. Madden.

Mr. Gilman.

Chairman GILMAN. Thank you very much. I regret that I had a prior appointment and have been delayed in coming to our meeting. Chairman Smith, I want to thank you for arranging today's important session.

Northern Ireland, of course, and the abuse of human rights in the north has long been a matter of great concern to many of us in the Congress, and especially to our Committee on International Relations. We thank Chairman Smith for focusing attention on the problems once again.

We're pleased to be able to report as a result of the Good Friday accord, that the people of Northern Ireland are today the closest

they've ever been to permanent peace and reconciliation, and we're proud that our nation has played a very important role in contributing to this new future.

Over the years, we've directed our efforts to obtaining equality for both traditions since without this there could be no confidence, and the hope that we now see on display in Northern Ireland which is something that we value.

Our role and interest in the north, of course, is far from over. We have to continue to expose any human rights abuses, and that's why the U.N. report today and your comments are particularly important. We have to continue to seek fundamental change when any abuse of human rights does occur. That applies to every country around the world. The U.N. Special Rapporteur's Report about harassment and intimidation of defense attorneys is an important and timely analysis. This has been described by many as probably the most critical report ever rendered on abuse of human rights in Northern Ireland, and we're pleased that it's been brought to light of recent date.

The undermining of the rule of law and the respect for human rights in Northern Ireland could no doubt contribute to the eventual collapse of the peace accord—something none of us want to see occur. The U.N. report's conclusion on activities directed against defense counsel are particularly troubling, and I quote, "The RUC is engaged in activities which constitute intimidation, hindrance, harassment, or improper interference. The Special Rapporteur is particularly concerned by the fact that the RUC has identified solicitors with their clients or the clients' causes as a result of discharging their functions."

The fresh start, I think, in Northern Ireland under the Good Friday accord, must bring an end to these traces of the past. Inequality and any undermining of fundamental rights must not be part of the future of the north. We need real change on the ground. Many independent bodies have also expressed concern similar to the U.N.'s findings on the abuse of defense counsel. These include the ABA, the New York Lawyers' Committee for Human Rights, and the British Irish Rights Watch.

So, we welcome, Mr. Chairman, this inquiry today. We're particularly grateful to the U.N. Special Rapporteur for bringing to light the serious problems in the north and in parts of their system of justice. I look forward to hearing the witnesses' recommendations today and I regret I missed the early part, but I'll catch up by reading some of the materials.

This report highlights the need for change and we're pleased that our International Relations Committee, early next year, will be conducting Full Committee hearings on the root causes of these problems at the RUC. The need for an acceptable policing body in the north of Ireland could not be clearer. So, thank you, Mr. Chairman, for the opportunity of participating with you in this hearing.

Mr. SMITH. Thank you very much, Chairman Gilman, and, as everyone knows, you have been a leader on behalf of human rights in Northern Ireland throughout the entirety of your career. So, we're all very much indebted to that as well.

I'd like to ask Ms. Rosemary Nelson if she would proceed at this point.

**STATEMENT OF ROSEMARY NELSON, SOLICITOR, COMMITTEE  
ON THE ADMINISTRATION OF JUSTICE, BELFAST**

Ms. NELSON. Thank you, Mr. Chairman. I have been a solicitor in private practice in the north of Ireland for the past 12 years. My practice includes a mixture of several areas of law, including crime, matrimonial, and personal injury cases. My clients are and always have been drawn from both sides of the community.

For the past 10 years, I have been representing suspects detained for questioning about politically motivated offenses. All of these clients have been arrested under emergency laws and held in specially designed holding centers. There are three such centers across Northern Ireland.

Since I began to represent such clients, and especially since I became involved in a very high-profile murder case, I have begun to experience some difficulties with the RUC.

Chairman GILMAN. Ms. Nelson, could I interrupt you? Could you put the mike a little closer so they could hear a little better in the back of the room?

Ms. NELSON. Certainly—sorry.

These difficulties have involved RUC officers questioning my professional integrity, making allegations that I am a member of a paramilitary group and, at their most serious, making threats against my personal safety, including death threats. All of these threats have been made to my clients in my absence because lawyers in Northern Ireland are routinely and always excluded from interviews with clients in the holding centers.

This behavior on the part of RUC officers has worsened over the past 3 years and, most particularly, since I began to represent the residents of the Garvaghy Road area in Portadone. These people objected to an Orange Order march passing through their area from the Drumcree Church. Last year I was present on the Garvaghy Road when the parade was forced through. I had been present on the road for a number of days because I had instructions from my clients to apply for emergency judicial review of any decision allowing the parade to pass through this area. When the police began to move into the area in force, in the early hours of July 5, 1997, I approached police lines, identified myself as the lawyer representing the residents. I asked to speak to the officer in charge. At that point I was physically assaulted by a number of RUC officers and subjected to sectarian verbal abuse. I sustained bruising on my arm and shoulder. The officers responsible were not wearing any identification numbers, and when I asked for their names, I was told to "Fuck off." I complained about the assault and abuse, but to date there's been no satisfactory response from the RUC.

Since then my clients have reported a number of incidents—one of being abused by police officers, including several death threats against myself or my family. I have three young children at home and, obviously, that's cause for some great concern. I've also received threatening letters and telephone calls. And although I've tried to ignore these threats, inevitably, I have to take account of the possible consequences to my family and also for the staff that I have in the office.

No lawyer in Northern Ireland can forget what happened to Pat Finucane, nor can they dismiss it from their minds. The allegations of official collusion into his murder are particularly disturbing and can only be resolved by an independent inquiry into his murder, as has been recommended by this Special Rapporteur.

I would be grateful if the Subcommittee could do all in its power to bring about such an inquiry, by communicating to the United Kingdom Government its belief that an inquiry in this case would, in fact, be a boost to the peace process as it has been in the Bloody Sunday case.

I have also complained about these threats, again, without any satisfactory response from the RUC itself. Although complaints against the RUC are supervised by the Independent Commission for Police Complaints, the complaints themselves are investigated by RUC officers. Recently, a senior police officer from England has been called in to investigate my complaints in view of the RUC's apparent inability to handle any complaints or mine impartially. This English officer is interviewing witnesses himself and has decided not to rely on any assistance from me or the RUC.

I believe that one of the reasons that the RUC officers have been able to indulge in such systematic abuse against me and other defense lawyers is that the conditions under which they operate allow them to interview clients detained under emergency law despite any scrutiny. My access to my clients can be, and has been, deferred for up to 48 hours. I'm never allowed to be present when the clients are being interviewed. Interviews are now subject to silent video recording, but are not yet being audio recorded, although this is due to be introduced. We are not sure when.

The U.N. Special Rapporteur has made a number of recommendations which would remedy the situation, but which to date have not been implemented. And, again, I would be grateful if the Subcommittee would lend a support to what he proposes.

Another reason why RUC officers abuse me in this way is because they are unable to identify me as a professional lawyer and distinguish me from the alleged crimes and causes of my clients. This tendency to identify me with my clients has led to accusations by RUC officers that I have been involved in parliamentary activity and I deeply and bitterly resent this. The Special Rapporteur has recommended that RUC officers be sensitized to important roles played by defense lawyers in the criminal justice system. To date, this recommendation has not been implemented, and again, I would be grateful if this Subcommittee would ask the United Kingdom Government what steps they intend to take to act on this recommendation.

Like many others, I was pleased to see the human rights provisions included in the recently signed agreement, and in particular, I was pleased that the agreement looked to the early removal of emergency provisions legislation, which has been in place in some shape or form since the inception of the state. The existence of this legislation has seriously undermined public confidence in the rule of law and has led to numerous miscarriages of justice, some of which have involved my clients. I was very disappointed when in the wake of the horrific Omagh bombing new and Draconian legislation was introduced which further erodes suspects' due process



rights. For example, this legislation provides for the opinion of a senior RUC officer if someone is a member for prescribed organization to be accepted as evidence by the courts. I and many of my colleagues fear that if these laws are used, they can only lead to further miscarriages of justice.

Although this legislation has already been passed, I hope that the Subcommittee will express its concern to the British Government that it will not be used. I believe that my role as a lawyer and defending the rights of my clients is vital. The test of a new society in Northern Ireland will be the extent to which it can recognize and respect our role and enable me to discharge without proper interference. And I look forward to that day.

In conclusion, I would like to thank Chairman Smith and this honorable Subcommittee for its continuing interest in these important matters for the future of my country.

[The prepared statement of Ms. Nelson appears in the appendix.]

Mr. SMITH. Ms. Nelson, thank you very much and I'd like to ask our final witness, Mr. Mageean, if he would begin.

#### **STATEMENT OF PAUL MAGEEAN, COMMITTEE ON THE ADMINISTRATION OF JUSTICE, BELFAST**

Mr. MAGEEAN. Thank you, Chairman, and I would like to thank you for the invitation to testify here today.

The Committee on the Administration of Justice, or CAJ, is an independent human rights organization which draws its membership from across the different communities in Northern Ireland. CAJ works on behalf of people from all sections of the community and takes no position on the constitutional status of Northern Ireland. We were recently awarded the Council of Europe Human Rights prize in recognition of our efforts to place human rights at the heart of the peace process.

It is on these continuing efforts that my comments will mainly focus, but before turning to these issues, I want to refer briefly to the comments made by Rosemary Nelson and Peter Madden. CAJ is profoundly concerned of the continued problems experienced by the small group of highly dedicated and courageous defense lawyers who act for suspects detained under the emergency laws. This has been an ongoing problem throughout the conflict, but particularly since the mid-1980's. The attention it is now receiving is due to the work of the Special Rapporteur on the Independence of Judges and lawyers, and the efforts of a number of NGO's, including, in particular, the Lawyers Committee for Human Rights and British-Irish Rights Watch.

We would urge the Committee to take whatever action it can to ensure that the United Kingdom Government comply with the recommendations from the U.N. Special Rapporteur, Mr. Param Cumaraswamy. Members had the opportunity to listen to Mr. Cumaraswamy earlier, and I would request that the contents of his report on these matters be entered into the record.

Mr. SMITH. They will be.

[The report referred to appears in the appendix.]

Mr. MAGEEAN. Thank you.

CAJ, like many others, welcomes the Good Friday Agreement and its commitments to the protection of the human rights of all.

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

CAJ endorses these sentiments entirely. We have consistently maintained that human rights issues were at the heart of the conflict and that the protection of human rights must be central to building a lasting peace. In this context, it is very welcome that human rights commitments have been given institutional form as an intrinsic element of the Agreement. This was then ratified by the vast majority of the people on the island of Ireland. The language of human rights has moved from the margins to the mainstream. However, while it is right to celebrate how far we have come, we have not yet reached our destination.

Now the path for all of us is to turn rhetoric into reality. This is particularly true of the new human rights structures established under the Agreement. These include a new human rights commission, a review of the criminal justice system, new arrangements to promote equality and the Commission on Policing.

The Commission on Policing has the crucial task, as President Clinton said on his recent visit to Belfast, of adapting the police service "so that it earns the confidence, respect, and support of all the people."

The extent of that task has been illustrated for the Committee by the testimony of Rosemary Nelson and Peter Madden. A key starting point for the work of the commission will obviously be the implementation of the recommendations of the Special Rapporteur to ensure that in future defense lawyers can discharge their professional duty to their clients without fear of interference from the police, a key component of any normal, democratic society.

It is crucial that the will for change and lasting peace is given full expression in the institutions yet to be established. It is the task of civil servants to deliver on commitments made. It is not acceptable that they should in any way obstruct or dilute those commitments. It is equally the responsibility of ministers and politicians to ensure that those commitments are honored. If we take, for example, the proposed Human Rights Commission, the current legislative proposals fall far short of that goal. Such a commission needs to be fully independent. It needs to be able to take cases of its own volition, and most importantly, it must be able to undertake investigations into alleged violations of human rights. The current proposals should, therefore, be amended to ensure a genuinely independent commission adequately equipped with the above powers to act as guarantor for the rights of everyone in Northern Ireland.

We are similarly concerned that the proposals on equality fail to measure up fully to the commitments made in the agreement. It is essential that the bill specifies in the clearest terms the exact nature of the mechanisms to implement the equality provisions made in the Agreement. Furthermore, the bill should ensure as en-

visaged in the Agreement that discrimination is outlawed on all grounds, not simply those of religious or political opinion.

We would like to inform the Committee that the upper chamber of the United Kingdom Parliament, the House of Lords, will be debating these legislative proposals on human rights and equality during October, and I would request that a critique of the current proposals, together with a full set of proposed amendments which CAJ has compiled, be placed on the record.

Mr. SMITH. Without objection, it will be made a part of the record.

[The information referred to appears in the appendix.]

Mr. MAGEEAN. Thank you.

We believe interventions by the Committee to urge that the legislation fully comply with the spirit of the Agreement may well assist in strengthening the legislative proposals on human rights and equality, and we would be grateful for whatever assistance the Committee can give in this regard.

We believe that the continued support and attention of the international community, and particularly the United States, will be key to ensuring that all of the human rights commitments contained in the agreement are implemented in full. In this context, we are particularly grateful to Chairman Smith and to the other Members of the Subcommittee for their continuing interest in human rights in Northern Ireland. We are also grateful for the continuing work of our colleagues in the international human rights groups, particularly, Human Rights Watch, the Lawyers Committee for Human Rights, and Amnesty International.

While the Agreement offers the hope of a bright future, it is also clear that it is all too easy to repeat the mistakes of the past. This was clearly demonstrated in the wake of the horrific Omagh bombing. The government recognized that the intention of those who planted the bomb had been to undermine the Agreement. However, rather than heeding the need acknowledged in the Agreement to move away from emergency legislation, the government chose instead to introduce, perhaps, the most draconian legislation that we have seen in the last 30 years. We would like to place on the record a briefing on this legislation compiled by ourselves and by British-Irish Rights Watch.

[The briefing referred to appears in the appendix.]

Mr. MAGEEAN. Similar legislation has in the past not simply failed to resolve the conflict, but has actually fueled it by undermining respect for the rule of law. We cannot allow our society to be dragged back into the tragedy from which we are beginning to emerge. A future for all of the people of Ireland underpinned by the human rights protection of the agreement is too precious a prize to risk by repeating the mistakes of the past. In so doing, we are playing into the hands of all those who would seek to wreck the agreement.

The task now for all of us is to secure that future and the best way that we can do it is, as President Clinton said, and I quote, "to build a more just society where human rights are birthrights and where every citizen receives equal protection and equal treatment under the law." These must be the benchmarks of the new Northern Ireland.

Thank you very much.

[The prepared statement of Mr. Mageean appears in the appendix.]

Mr. SMITH. Mr. Mageean, thank you very, very much for your testimony and for the great work, and congratulations on that very distinguished award that CAJ has won.

I'd like to ask some questions and then yield to my distinguished colleagues for any questions that they might have.

Mr. Cumaraswamy, in your report you talk about meetings with officials from the Law Society. You note that they said that they could have done more for their solicitors. What is the Law Society now doing and what do they suggest that they might be willing to undertake to show that common cause with that part of their legal profession which they had left out and exposed for so long?

Mr. CUMARASWAMY. Yes, Mr. Chairman. Immediately after I left Belfast, there was shown to me a little advertisement in the Society's periodical whereby they called upon all lawyers who were threatened to submit their complaints to the Law Society. It had set up a special committee to that extent. And that I noted in my report as a very positive followup from my discussions with the Law Society Executive Council.

One thing which surprised me, Mr. Chairman, if I may add at this juncture, is the kind of attitude taken by the Law Society itself. There was suggestions made to us that they considered these lawyers, the few 20 to 30 lawyers who were handling these cases, as a sort of second-class lawyers. That was most depressing. In any civil society based on the rule of law, these are the lawyers who should be looked upon as lawyers that have all the courage to stand up and take on these causes which may appear unpopular in society. The Law Society as the body to look after the interests of the profession should have come out in support. Instead, they were quite indifferent to that, and that, again, surprised me.

Even during the particular meeting which I had with the Executive Council, some members of the Law Society themselves told me that they themselves gave up hope in sending any complaints to their own society because they felt that there won't be any result coming out from that. It would be no better than the RUC and I've mentioned that in my own report. Hence, I concluded that the Law Society needs to be more proactive, needs to come out in defense of these lawyers when their rights are threatened. I also was told since when my report was released, that they had started a dialog with the RUC for training programs, but I do not really know exactly the parameters of these particular training programs they are trying to work out. And I would like to hear more from the Law Society itself and the RUC, about these programs. My call was to get the Law Society to undertake programs to sensitize the RUC officers and educate them on the role of defense laws in such cases.

Mr. SMITH. To the best of your knowledge—and any of the panelists might want to speak to this—has the Law Society in any way tried to intervene with the government, the Parliament, in order to pass legislation that would erect those protections so that it's not just arbitrary and left up to the will or capriciousness of the RUC? I noted in the government's response to your report they included a statement, and I quote, "We do not understand"—and they were

talking about the recommendation that where there is a threat to the physical integrity of a solicitor or barrister, the government should provide protection and vigorously investigate the matter. It seems to me that that's something that ought to be done and really put a solid anchor in law, and then proceed with policy and implementation from there. Has the society tried to affect the legislation in this regard?

Mr. CUMARASWAMY. I'm afraid, Mr. Chairman, I have no knowledge of that particular situation.

Mr. SMITH. You do believe that would be a wise idea?

Mr. CUMARASWAMY. Certainly.

Mr. SMITH. Would our panelists——

Mr. MAGEEAN. Well, insofar as I am aware, the Law Society hasn't made any interventions with government in relation to this matter.

Mr. SMITH. Has not?

Mr. MAGEEAN. Has not and I think they have met with the Chief Constable of the RUC. But as an example of the importance of what you just quoted from the government's response. Following a threat that was made to Rosemary Nelson, we wrote to the Minister of Security in Northern Ireland and asked him exactly what he would do to ensure her protection and to date have received simply an acknowledgement of the letter. And that was a number of months ago.

Mr. SMITH. It's one thing for the Law Society to admit, "Mea culpa, we didn't do enough." But as you mentioned a moment ago, there ought to be an effort to be more proactive. It seems to me that they have a brass ring staring them in the face. What do you think we could do to try to encourage that? Because it seems to me that this is an opportunity missed. In addition to that, has this lack of interest in the plight of defense attorneys had a chilling effect on those who undertake the legal protection of accused killers or terrorists?

Mr. MADDEN. If I can say, Mr. Chairman——

Mr. SMITH. Yes.

Mr. MAGEEAN. If I can say that the key to all of this is the fundamental right of a person who is being questioned by the RUC or anyone else, and the other police forces that they have their solicitor or their lawyer present during the questioning. Of course, in that way that would, in fact, solve two problems. The person, of course, would have access to advice. The solicitor or the lawyer there would ensure he is not ill treated, and it would ensure that there was no verbal abuse of either the client or the lawyer. And the position at the moment as under the emergency law, as I said earlier, the situation remains that the people who are held incarcerated are not entitled at the moment. And let us just say the House of Lords has supported that—not entitled to have their lawyers present during questioning.

Under the ordinary criminal law, of course, lawyers are entitled to be present during questioning. In most cases, lawyers are present under the ordinary criminal law. So I think the key to the whole thing really is that if there is any move or change for legislative change, then I think it should be that there should be an em-

phasis on the fact that the person incarcerated should be entitled to have his lawyer present during questioning.

Mr. SMITH. Mr. Cumaraswamy, you have provided a wise blueprint for the eight-member independent Commission on Policing for Northern Ireland. Are you aware as to how they have viewed the analysis in your recommendations?

Mr. CUMARASWAMY. No, Mr. Chairman, I've not got any information from them as to how they are proposing to implement this particular recommendation of mine.

Mr. SMITH. You know, just a parallel before the others speak to it: Very often, our General Accounting Office will do an analysis of a program or a policy that's broken, and recommend a course of action to fix it. And sometimes, to the chagrin of many, the report sits on a shelf somewhere, when it should be the blueprint for action. Certainly you have provided a blueprint. So, hopefully, they will take a look.

Mr. Madden, do you know if they are taking these recommendations into consideration or are they—and I mean this sincerely, but critically—are they managing this international analysis, this criticism, in a way that smacks of spin control, and doing the least in order to appear you are doing something?

Mr. MADDEN. I think that you are referring to the government?

Mr. SMITH. Yes, the government. Yes.

Mr. MADDEN. Well, I think—

Mr. SMITH. And the eight-member policing commission.

Mr. MADDEN. Well, the only thing I think that the House has put into place or certainly suggested is the ombudsman. I don't think that goes far enough, and I think really it boils down to a question of the fundamental change in policing. And these matters will be dealt with, hopefully, by the new policing commission. I think that the recommendations made in Mr. Cumaraswamy's report should be before the Policing Commission, and they should be able to make recommendations in relation to it. But so far there has been really no indication that any of the recommendations have been put into place.

Mr. MAGEEAN. Yes, I mean, I can certainly reassure you, Mr. Chairman, that we in our submission to the Policing Commission included a copy of the Special Rapporteur's Report and highlighted many of the recommendations that he had made. So they are fully aware of the report, and I think, as I indicated in my submission, it is clearly a starting point for them; that if they implemented fully the recommendations that he has reached, that would begin to address some of the problems that have existed with the RUC for many years.

Mr. SMITH. I have some additional questions. I would like to yield to the distinguished chairman, Mr. Gilman.

Chairman GILMAN. Thank you, Mr. Chairman, and again we welcome this opportunity of digging into some of these problems.

First, I would like to note that we're pleased to be joined here today by Martin Finucane, brother of the slain solicitor, Patrick Finucane, as well as Michael Finucane, Patrick's son and now a lawyer himself in Northern Ireland. Could they please stand a moment so we can recognize them?

[Applause.]

Mr. SMITH. If the gentleman would yield?

Chairman GILMAN. Yes, and be pleased to.

Mr. SMITH. Michael, when he presented the case on behalf of his father and for justice today, as you recall, Mr. Chairman, did an extraordinary job in laying out the issues in a way that surely would have made his father very proud. So, it's good to see him again.

Chairman GILMAN. Thank you, Mr. Chairman.

I'd like to ask our Rapporteur—forgive me if I'm mispronouncing it, Cumaraswamy—now that the report has been issued and filed with the United Nations, will there be some further proceedings by the United Nations? How will there be a followup?

Mr. CUMARASWAMY. The procedure would be that at the next commission session, the 55th session, which would be sometime in April next year, the United Kingdom Government would be reporting back as to the extent of the implementations they have undertaken—how many of the recommendations they had undertaken. In my report to the commission next year, I would be addressing some of the points raised by the RUC, the police authority and they may be called upon to reply to the points I raised. So that is the kind of process we have and also, Mr. Chairman, the next thing is the Human Rights Committee. When the United Kingdom Government submits their periodic report to the committee, the committee itself would ask the government as to why certain recommendations of the Special Rapporteur were not implemented. That is the kind of process we go through at the commission level.

Chairman GILMAN. Has the RUC or the United Kingdom consulted with you with regard to the report? Have they asked you to meet with them?

Mr. CUMARASWAMY. They've not sought a meeting with me. They have written to me. The two points—they have generally—they have accepted most of the recommendations. They were quite critical of my finding that there was truth in all these allegations of harassment. The RUC took the position which they all along since 1992 had taken. That is, the allegations were not substantiated. They took issue on that.

And insofar as my recommendation for a royal commission on the murder of Patrick Finucane, their position is that there is no fresh evidence. And as far as that is concerned, my response simply is this, that they may have misunderstood what I was trying to say in my report. I was not seeking any inquiry to charge anyone for the murder. So the question of fresh evidence doesn't come in. I was really seeking an inquiry to ascertain whether there was security forces collusion into the murder. If that is the case, if there is such an evidence, then as I pointed out in my report it is for the government to state why if the security forces knew that Patrick Finucane was a target of assassination, why didn't they provide adequate security which is a point which is provided for in the international instruments? Particularly, the Basic Principle on the Role of Lawyers provides that the State is obliged to provide adequate security to protect lawyers when they are threatened. Now, we had evidence in the materials supplied to me that even Gerry Adams was saved by the information supplied by Brian Nelson. There were others who were saved similarly from the kind of as-

sistance Brian Nelson gave. So my question was why wasn't Patrick Finucane protected, that is, if there was proven evidence of security forces involvement. And the evidence I had was up to then there was a very, very strong suspicion that there was such collusion.

Chairman GILMAN. Now what provision is it that sets forth this security assistance?

Mr. CUMARASWAMY. I couldn't hear that.

Chairman GILMAN. What provision in the U.N. charter specifies that there should be security for defense council?

Mr. CUMARASWAMY. Well yes, it is provided for in my report. It is in the U.N. Basic Principles on the Role of Lawyers. This is 16, Principle 16.

Chairman GILMAN. Principle 16 of what?

Mr. CUMARASWAMY. The U.N. Basic Principles on the Role of Lawyers which says "government shall ensure that lawyers are able to perform all of their professional functions without intimidation, inference, harassment, or improper interference, are able to travel and to consult with their clients freely, both within their own country and abroad, and shall not suffer or be threatened with prosecution, administrative, economic, or other sanctions, or any action taken in accordance with recognized professional duties, and standards, and ethics." There is in that particular provision an obligation on the part of the State that the minute they hear that the particular lawyer's life is threatened, that they should provide security.

I've also pointed out in my report that the U.N. basic principles was endorsed by the U.N. General Assembly in 1990 just after this particular murder in 1989. However, I qualified my report that there was an implied duty on the part of the United Kingdom Government to provide such security to defense lawyers when their lives are threatened without even the need for a principle of that kind. Because after all, the United Kingdom is the birthplace of the very thing we are talking about; judicial independence and lawyer independence for the protection of the rule of law.

Hence, that is the approach I have taken in this particular report, and I think the United Kingdom Government appreciates their role insofar as that is concerned. They are taking the stand that there was really no fresh evidence. That is all they are saying. No fresh evidence to consider special commission of inquiry.

May I add one other point on this particular case? Just one other point. After this allegation was made of security forces involvement in a TV program—a program on BBC program in 1992, John Stevens, the Chief Constable of Cambridgeshire, somebody from outside was brought in to investigate this particular allegation. That particular report is not published. Its findings are not published. Not even a summary published. I've mentioned this and I've tried to seek the particulars I wanted from John Stevens. I wrote him a letter and I've set out the questions I asked and his reply simply was a little disappointing. Though Ronnie Flanagan, the Chief Constable, told me that he had access to John Stevens, but subsequently from the reply I got from John Stevens, it was most disappointing. In a sense, he said that this particular document is the property of the Secretary of State from Northern Ireland and the



Chief Constable and, therefore, he needs to consult him before he discussed anything with me, but there was no further followup from that. And that was also in my report.

Chairman GILMAN. Had you made a request for that report?

Mr. CUMARASWAMY. Yes, I asked for discussions with John Stevens on the particular report.

Chairman GILMAN. I'm pleased to yield.

Mr. SMITH. Just very briefly, I think it's very telling, the way you handled this and the way that they handled it. You made a very specific request. You asked A, B, C, and D. Did the military know that Patrick Finucane was a target of the UDA? If so, did the military notify the RUC? If the military did not notify the RUC, why not? In any event, why did the military not alert Patrick Finucane and provide adequate protection? If the military did notify the RUC, why did the RUC not alert Patrick Finucane and provide security? And prior to his murder, Patrick Finucane was subjected to threats and intimidation by RUC officers. Were these allegations investigated by the RUC?

I don't know how they could have misconstrued that as your asking to look for fresh evidence as to who was the murderer. Clearly, you were asking about the RUC and complicity, and duplicity by the government and by the RUC. I don't see how they can misunderstand that. I mean, this is where the credibility problem rises to, perhaps, the highest level. And then, after Mr. Flanagan said "Go talk to Mr. John Stevens," he writes back, "I am therefore not in the position to release these reports or indeed divulge any of the contents. The reports are highly classified in the authority of the above persons, which is the Secretary of State and the Chief Constable." They give us circular reasons, you go talk to him. He says, "I can't give it to you." I think their credibility is certainly strained, if not gravely injured by this kind of disinformation. So, we thank you again for being so clear in your report and this is all the more reason why we need to follow up.

Sir, I thank you for yielding.

Chairman GILMAN. Thank you, Mr. Chairman.

Let me ask, Ms. Nelson, you recited the fact that there have been threats against your life. Have you made any requests for security protection?

Ms. NELSON. No, I didn't make any specific requests for security, but the RUC was notified about these threats. They have continued to be notified about them. In fact, I have continued, as recently as July of this year, I had a similar threat. That complaint was made know to the RUC as well, but the question of security just hasn't been raised.

Chairman GILMAN. Wouldn't it be appropriate for you under these circumstances to make such a request for security since your life has been threatened?

Ms. NELSON. Possibly, but to be perfectly honest, I'm not sure I would use a firearm. I mean I have taken certain precautions around the home.

Chairman GILMAN. But I'm talking about the U.N. provision that we discussed where the government has responsibility to provide you with security if your life has been threatened.

Mr. NELSON. Yes, indeed. The government does have responsibility, but the procedure there is, if you request security from the RUC, your house or your premises are assessed by the RUC for these security installations. And I wouldn't have any great faith in the RUC coming in to assess that.

Chairman GILMAN. I see.

Mr. CUMARASWAMY. May I just say—

Chairman GILMAN. Yes, please.

Mr. CUMARASWAMY. Well, of Congressman Gilman, may I just correct the particular principle which I cited just now. It is not Principle 16. A very clear principle is Principle 17 of the U.N. Basic Principles which states, "where the security of lawyers is threatened as a result of their discharging their functions, they shall be adequately safeguarded by the authorities." That is very crystal clear, the role of the authorities when they know that the security of the lawyer is threatened.

Chairman GILMAN. Of course, there is a problem here about the authorities being the people that may be involved in the threat initially, and is there any distinction made in that provision to make certain that it is an independent security?

Mr. CUMARASWAMY. No, the U.N. Basic Principles still remains very basic and we interpret these authorities to mean every apparatus of the State.

Chairman GILMAN. I hope that as you pursue with the commission that you may want to make a distinction about who this security will be. It's like sending the fox to protect the chickens.

Let me ask again, Rapporteur, the British Government has been arguing, as you state, that there is no credible evidence of RUC intimidation of defense counsel. With your report now, do they still make that same contention?

Mr. CUMARASWAMY. They do. They do. This is the position they are still taking and we were surprised, as I mentioned earlier, when I put the specific question to the chief constable that in the light of the various reports received from the international NGO's and the domestic NGO's didn't he feel the need to call this small group of lawyers—just 20 to 30 of them. They could have had a roundtable conference with them. If I had been the chief constable, I would have asked these lawyers what was going on? Why are you reporting all of this to the international NGO's? Why not come to us? And there could have been a dialog, and the problem could have been resolved. But his answer simply was, look, he didn't see the need for such an intervention by him as there were no specific instances of incidence given to him as such.

Chairman GILMAN. You made that suggestion to the chief constable?

Mr. CUMARASWAMY. I did. I did. He categorically gave me that answer. It is in the notes.

Chairman GILMAN. Let me address this question to the entire panel. What has the British Government done about adequately investigating Pat Finucane's brutal murder? What steps have they undertaken to investigate? Any of the panelists could respond. Mr. Madden.

Mr. MADDEN. Well, we don't really know what steps they have taken. The initial investigation was, of course, a forensic examina-

tion of the scene and after they left their forensic examination, there were bits of bullet fragments left lying on the kitchen floor. So, they didn't even do that properly.

Chairman GILMAN. And that was the extent of the investigation as far as you know?

Mr. MAGEEAN. As far as we know. That's all we know apart from the fact that we were told by a senior RUC officer at one stage that a number of people had been arrested and questioned and released without charge. But that's really all we know.

Chairman GILMAN. Does the Rapporteur have any information about that investigation?

Mr. CUMARASWAMY. The meeting I had with the Director of Public Prosecutions over this particular murder, we had a real lengthy meeting that afternoon and his response was that he had thoroughly investigated the murder and all evidence which was available then was looked into very carefully, and that he felt and he found that there was insufficient evidence to prosecute. Well, I accepted the fact. I accepted that fact coming from the Director of Public Prosecutions. He also told me that the file was still open. If there was fresh evidence, he would be quite happy to reopen.

But I made it very clear to him I was also very concerned about security forces involvement. That is a point he didn't go into. He didn't go into that point. His duty was really the investigation of the particular murder; who was responsible?

John Stevens, who took over the inquiry into allegations, is reported to have said to the Lawyers Committee, which is in my report, that he had been informed that he knew exactly who committed the murder. Again, I accept the fact from the Director of Public Prosecutions, even if they knew the particular person who actually committed the murder, there was a possibility that he didn't have the requisite evidence to bring a prosecution where there would be a conviction. But, all along I was concerned from the materials I had whether there was really security forces collusion. I was very concerned about that because that falls within my mandate because there was a failure in that case on the part of the State to secure and protect the particular lawyers concerned.

One other point they made: What was so different in this particular case? There were so many other murders. And my response was, this particular murder had a special, peculiar significance to the lawyer, the legal profession, the rule of law itself, left a very chilling effect on the lawyers. All were very frightened. Some even told me that they had to give up their criminal practice. Some changed the style of their practice; some went on to arm themselves. Some even put on gadgets in their homes as a protective mechanism to protect themselves. It really left a very chilling effect in the legal profession.

And particularly Patrick Finucane, himself, was a very high-profile lawyer, very competent lawyer, and all the allegations made against him, and they're mounting just before up to the time he was murdered, the allegations that he was part of the IRA; he was virtually IRA and all these. But in the Brian Nelson trial, evidence was adduced from the RUC itself that there was no such evidence that he was IRA. And they, themselves, said that he was a very able, competent lawyer. That was in the transcript which I read.

Chairman GILMAN. It's an appalling situation.

Mr. Madden, you mentioned that there was a British Army revolver used in the killing of Mr. Finucane. Was that revolver ever traced?

Mr. MADDEN. Yes, That was apparently a gun that was stolen—stolen from an Army barracks in Belfast, right outside Belfast.

Chairman GILMAN. Doesn't all of this—and I address this to the panel—point out the critical need for an entire new police force or the replacement of the RUC? I have an initial report of some human rights groups with regard to the submission to the Independent Commission on Policing for Northern Ireland, and I'm just curious of the Rapporteur, have you presented your report to the commission that's examining the RUC police force?

Mr. CUMARASWAMY. In fact, they had seen my report, and they were the first to come and acknowledge that all the statistics which I had given were all absolutely correct. They virtually acknowledged that the materials and the conclusions I had drawn were quite fair conclusions. This was from this commission itself. But they had not written to me officially in response to my report. But this was the information I gathered from those who had discussed this matter with them. Because the press, I heard, when my report was out, did consult them about the figures I had mentioned, and they had confirmed the correctness of the figures.

Chairman GILMAN. When did you submit your report to the RUC Independent Policing Commission?

Mr. CUMARASWAMY. What happened was a draft, this was my methodology, it all needs to be sent, the final draft will be sent to the government concerned, in this case, the United Kingdom Government did receive and they must have passed it on to the RUC itself. And there were some concerns expressed, but my report went through, as such. But they had knowledge of the contents of my report, even before it was officially submitted and presented to the commission on April 1 of this year, sir.

Chairman GILMAN. Is there any restriction on you sending a report directly to the RUC Independent Policing Commission?

Mr. CUMARASWAMY. Not to the RUC. We normally send it to the State concerned, the government concerned, and they would, of course, send it to the RUC.

Chairman GILMAN. Do you know whether they did that?

Mr. CUMARASWAMY. I do not know when it was done, but all I knew was that RUC did have a look at the—

Chairman GILMAN. At the report?

Mr. CUMARASWAMY. —draft.

Chairman GILMAN. Based on your investigation, do you feel the RUC should be replaced?

Mr. CUMARASWAMY. I would not go to the extent that the RUC should be replaced. I think it needed considerable reform. Ninety percent of the RUC is composed of one particular community. That, in itself, gives the impression that it may not be impartial; hence, it required some considerable reforms.

And I was very concerned, insofar as my mandate was concerned and my mission to Northern Ireland was concerned, with regard to the investigative mechanism within the RUC to investigate complaints against them.

My conclusion is that they have very sadly failed in the manner in which they investigated complaints, not only allegations of harassment of lawyers. From the statistics I have given, it's also in connection with all other complaints they had received. From the figures, it looks as though they've miserably failed.

Chairman GILMAN. Let me address the rest of the panelists—do you feel the RUC should be replaced, Mr. Madden?

Mr. MADDEN. Well, in a word, yes. I think that the RUC has failed over the years to properly act impartially, and I think it's just a question of how you go about that. I think that's the difficulty. But I think it should be grasped. I think that it should be examined as to how the—as certain as far as the Nationalist community is concerned, how the Nationalist community has an input into policing, and to policing not only their own community, but the whole community.

So I think that there has to be some way in which the RUC can be examined at this stage and broken down and replaced in such a way that people are not left with any policing in the meantime. You know, it's certainly a difficult task, but I think it's one that should be examined, sooner than later.

Chairman GILMAN. The perception is that the Policing Commission, Reform Commission, is placing greater emphasis on the downsizing of the RUC, rather than on the real meaningful reform. Does that sound like an accurate description of what's happening?

Mr. MAGEEAN. Well, I think that's right. I think that's an accurate description of what's happening. I mean I think that there's no doubt that in a peaceful situation, then the numbers would have to be considerably reduced. The numbers of police personnel would have to be considerably reduced. So there is a certain element of downsizing that will have to take place.

But that of what's left, then, I think has to be replaced by a service that includes the proportion of Nationalists that are actually in the population. And I think that's a difficult one, but I think it has to be carried out, and I think it has to be implemented very, very quickly. And I think it's possible to do that.

Chairman GILMAN. Mr. Mageean, how do you feel about what we should be doing with the RUC? Or what the British Government should be doing with the RUC?

Mr. MAGEEAN. Well, I think clearly there is a fundamental lack of confidence in the RUC on behalf of the public in Northern Ireland, particularly among the Nationalist community, but also increasingly I think among elements of the Protestant community.

And just as an example of that, we were going through figures in relation to police complaints recently and found that in 1997, 3 years after the beginning of the peace process, one complaint made by a member of the public out of 5.5 thousand was upheld during the course of 1997. So there's clearly no effective system of accountability for the police.

I think there is some concern that the new Commission on Policing is engaging in a management exercise to downsize the RUC, and to an extent, that has been the first line of defense for the RUC that they have said that they recognize that there is need to reduce the numbers in their ranks. But I think what we need is a much more fundamental change than that.

The stance that CAJ has had on this issue in the past is that what we need is a policing service that reaches certain standards and certain guaranteed international human rights standards. If that can be done by changing the RUC, well and good. And if it takes the RUC to be replaced to reach those standards, then that is what has to be done.

But I think there is some concern that the Commission on Policing is not sufficiently listening to the complaints that people have about the police. And certainly in some instances, we are aware that they have said that they are interested only in recommendations about the future direction of the police, and not in relation to what has happened in the past. I think our view of that is that we need to look at the extent of the problem that we have before we can really determine where we need to go. And to ignore what the police have done in the past is, I think, to risk repeating the mistakes of the past.

Chairman GILMAN. And how do you feel about the RUC replacement or the reforms, Ms. Nelson?

Ms. NELSON. Well, I think the issue of policing is very, very fundamental to the aspirations in the agreement and is inextricably linked to justice and equality issues. And as it exists, I don't think the RUC can answer the demands posed by the agreement. I don't think downsizing is an answer. I think their ethos has to be changed. I think their entire culture has to be changed.

They are totally unacceptable, certainly, to most of my clients and I'm not very happy with them either.

Chairman GILMAN. This is my last question—over what period of time were those thousands of complaints filed?

Mr. MAGEEAN. The complaints that I was discussing, the 5.5 thousand, were all filed within a year. And, as I said, one complaint lodged by a member of the public was upheld, while I think in the region of 100 complaints, or over that, lodged by members of the RUC against fellow officers were upheld.

Chairman GILMAN. That 5.5 thousand complaints within 1 year, which year was that?

Mr. MAGEEAN. 1997.

Chairman GILMAN. 1997.

Mr. MAGEEAN. Well, post-cease-fire; you know, there was no campaign of violence ongoing at the time.

Chairman GILMAN. Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Chairman Gilman.

I just have a few final questions, and we're very appreciative for not only the work that you've continued to do day-in and day-out, but for taking the time to be here to brief us and to make us more knowledgeable.

Mr. Cumaraswamy, I have a question. You mentioned meeting with Ronnie Flanagan, and in reading the report it would seem that he takes somewhat of a jaundiced view toward human rights organizations. This is purely anecdotal, but when I met with him, there was a case of mistaken identity on his part. He thought I was from Helsinki Watch, which not too long before that had done a scathing report about the rule of law or lack of it. And when I met with him, even though I believe he knew I was a Member of Congress, I happened to chair the Helsinki Commission, which obvi-

ously is different. It's a government organization; Helsinki Watch is an NGO. And he started out, right out of the box, being very antagonistic, very deprecating of the work in that report. I had read the report, so I was able to defend it, but pointed out to him we didn't write it. It's a non-governmental organization.

So it seems to me, in addition to policies, we're also dealing with personnel who can become major obstructionists to reform. And they're in key positions. I understand to some he's seen as being very engaging; he's a very good interview, very smart. But in this case, he had the wrong fellow.

The whole process of reform, and the question that Mr. Gilman asked about—is it time for the RUC to go?—it's not an insignificant question, because reform can either mean that or some major changes so that those who have been part of the problem can simultaneously be part of the solution.

If all of you would give your views on Ronnie Flanagan, himself? And I know you may want to defer that as an international public servant who has to work with all people, but it seems to me that part of the problem rests with the very people who are in those key strategic gatekeeper positions. They not only implement policy; they help create it, and they could also retard its implementation, even when you have a good law. And I couldn't believe it wasn't until 10 minutes, 15 minutes into our conversation, that a light bulb went off with him and he realized, even though I had said it, that I was not Helsinki Watch. You know, if that's the way he treats the NGO's, I'd like to be a fly on the wall when he meets with APOL and the other groups, because it just seems to me that it's a different standard. He may meet with government people or with journalists and be the toast of the town. But I got a glimpse of his modus operandi. I did not like it.

Mr. CUMARASWAMY. Now in fairness to him, to Ronnie Flanagan, he was extremely cordial. He was very cooperative.

My methodology when I go on missions to countries, I always meet the government people first, the relevant people, and he was the first one, and he had his assistants with him—extremely cordial, extremely cooperative. And he also extended his facilities. I wanted to meet him again before I left and that was when I discovered fresh information which were not put to him previously on my first meeting with him.

Before I left Belfast, I thought I should put this fresh information to him and get a response from him. And I went back to him, and again he was cordial, but he admitted that he couldn't help me there, and that is why he suggested that I should meet John Stephens. He was not in a position to assist me. Throughout he was, unlike what you had described, Mr. Chairman, how he treated you as an NGO, but of course he knew I was coming under the U.N. umbrella, and he knew from the word "go" I was the Special Rapporteur; hence, I didn't have any difficulties with him.

And insofar as the concern, my investigation was with regard to the investigative mechanism, and my conclusion was that, in so far as the mechanism is concerned, they have failed.

Mr. SMITH. Thank you.

Mr. MAGEEAN. Yes, could I just say I think that the key test for Ronnie Flanagan is whether he can deliver the required amount of

change in the RUC. If he can deliver that required amount of change—and does deliver it—then I think that we may well change our view of him.

I think there are some difficulties because he has presided over a police service which, over the course of his leadership, has engaged in egregious violations of human rights. And there have been specific occasions in which he has defended, for instance, the use of plastic bullets and the decision by the police to move in to Garvaghy Road last year in the incident in which Rosemarie was assaulted.

So I think what we need to see from him is an indication as to whether or not he is serious about bringing about change. He must know that the RUC will have to see—at the very least, a process, a very fundamental change, and that will be the test of his leadership.

Mr. SMITH. Has there been any progress in recruiting Catholics? And I don't mean just nominal Catholics, but people who have some kind of real stake in the community so that they understand the Catholic community.

Mr. MAGEEAN. No, not effectively. During the course of the first IRA cease-fire, there was an increase in applications from members of the Catholic community, but no increase in the actual numbers who were recruited. And that's one of the issues that I think the new Commission on Policing needs to look at. Why did that happen? If we did have an increase in the numbers of Catholics applying, why were more Catholics not actually recruited into the force? But to date, there has been no change in the statistics.

Mr. SMITH. Let me ask about the ombudsman. In your views, does the ombudsman have sufficient resources, the power, the kind of office that is up to the task that is before him?

Mr. CUMARASWAMY. Mr. Chairman, what was expressed to me during my discussion in Belfast, there was concern expressed that they may not be provided sufficient resources. And that is why I made a special point to mention in my report that if the ombudsman, as an independent organ, is to function, they should have their own investigative machinery and also sufficient resources so that they could really discharge their functions independently.

And my concern, then, was really whether these two points would be met when the structure is created.

Mr. MAGEEAN. I think the current position in relation to the ombudsman is that the office has yet to be established. The act which makes provision for his office has been just recently passed, and I think his position will be set up early next year.

There are still some concerns. One specific concern is in relation to the fact that it appears that from the legislation he will not be able to instigate an investigation where he sees a pattern of human rights violations. So, for instance, the very thing that we are here testifying about today, if he was getting reports about intimidation of defense lawyers, the ombudsman would not be able to say to himself, "Well, I will investigate this matter." He would have to wait for specific complaints from individual lawyers, and of course that has been a problem because of the lack of confidence in the complaint system.



So I think at the very least what needs to be done is to allow him the power to investigate patterns of human rights abuses if and when he comes across them.

Mr. SMITH. You mean the language precludes that?

Mr. MAGEEAN. Yes. The way that it has been set up means that, effectively, a complaint needs to be made by an individual, and, as I said, that is one problem that you need to find an individual to make a complaint.

And, additionally, I think that there are some policy matters which will be excluded from that. So, for instance, the issue that Peter referred to earlier on in relation to the presence of solicitors at the interrogation of their clients, that would not be an issue that he could specifically look at. He would simply look at whether or not a police officer made certain comments.

So I think we need a system where these broader policy matters can be examined and explored in order to effectively protect the rights of people who come into contact with the police.

Mr. MADDEN. Well, I think there's a danger of being fogged off sometimes with an ombudsman or one man who is called to work miracles—and certainly in this case, in relation to policing.

I remember in 1991 that we lodged almost 400 cases of people who were questioned or interrogated at the interrogation centers in Castlereagh. We lodged those cases in Geneva in 1991, and one of the responses from the British Government at that time was that they were about to appoint an independent commissioner for the interrogation center. So then, in fact, that's what happened. An independent commissioner was appointed, and the first thing that he did when he wrote his first report, he recommended that a team of government lawyers be appointed to advise the people who are in the interrogation centers.

So, I have no great confidence in appointing one man—I mean it's always a question of who he is and his background.

I think it's difficult, in a case like this when there's such a fundamental change needed in policing, and certainly the complaints about the RUC in the Nationalist community are widespread across the Nationalist community. As I said earlier, that's 40 or 45 percent of the population. An ombudsman is not going to solve that. There has to be fundamental and immediate change.

Mr. MAGEEAN. I think just on that point, Chairman, if I could make a further point. The Hayes Report, which laid the foundation for the office of the new ombudsman, specifically said that this was only one aspect of the change that was needed and that there was no point in instituting a new system of complaints if other matters were left out like representation in the police force generally.

So I think there needs to be a holistic approach to this problem, and I think some of the difficulty up until now is that we do seem to have had a piecemeal approach by the British Government.

Mr. SMITH. Mr. Cumaraswamy, you make mention of audio and visual recording in the interrogation process. When I was in Castlereagh or the Maze, there was a video—not even video tape—monitoring capability that lacked audio, with no apparent hard copy or cassette that could be made from it. It appeared to me that this was, again, trying to manage the criticism rather than reform the system. It seems further to me that even if you had a video cas-

sette, it is quite easy to turn it on and off; you just hit the stop button, hit the resume button or the record button. And added to that, the very person charged with monitoring this in no way could be construed to be an independent ombudsman—with a small "o". He's a uniformed police officer.

So you have the police monitoring the police with an arguably inadequate system to protect the rights of the accused.

What can be done and what should we be doing to make this better—so that abuses are less likely to take place? Because it seemed to me we were given a Potemkin village-type of tour where they were saying, "See, there's the camera. See, See, here's the uniformed policeman sitting here and he would never lie." And obviously given the past, serious doubts arise.

Ms. Nelson.

Ms. NELSON. Well, as Peter Madden said, the thing which would rectify this situation would be if the legislation were to provide for a lawyer to be present during interrogation. I think that's inescapable. I don't think any peacemaker can work.

Mr. CUMARASWAMY. I think, Mr. Chairman, from experience, no system can be 100 percent perfect. There will always be abuses of any system. It all depends ultimately on the people, and the character and the quality of the people, who are appointed to run the particular system. If they are honest and they are committed to the principles, to the causes, which are fundamental to civil society, the system can be made to work. Hence, I've seen from experience, no system can really be 100 percent perfect.

Mr. SMITH. Can I just ask you about the Robert Hamill case? What is the status of that investigation? Has the family pursued an inquiry through the Independent Commission for Policing?

Ms. NELSON. Yes. I represent the Hamill family. This is a very unfortunate case in which a 26-year-old man was kicked to death in the streets of Portadone in the presence of a police land rover which was just a number of yards away. There were four police personnel in the land rover. To date, the police investigation, again, has been much less than adequate. Forensic evidence was allowed to walk away from that scene, until some days after Robert Hamill died. Obviously, questions have been raised regarding the role of the police. They seem unwilling to answer that and, in fact, as legal representative for that family, I have had absolutely no joy in ascertaining what did happen on that night. Again, I think this reflects the ethos of the police, despite the fact that complaints have been lodged. And, yes, the family is compiling a dossier for the commission. Absolutely no inroads have been made.

Mr. SMITH. Let me ask just one final question and then ask Chairman Gilman if he has any further comments or questions.

Do you have any comments on the new emergency legislation about the United Kingdom and the Republic of Ireland?

Mr. MAGEEAN. Yes. I ~~think~~ possibly all of us will have some—

[Laughter.]

—comments on this legislation. I think, as I've said in my testimony, it was very depressing, I think, for all of us involved in the protection of rights in Ireland, North and South, to see the response to the Omagh bombing. And while all of us shared in the horror of what happened, I think that both governments were un-

duly hasty in repeating the mistakes of the past and then bringing forward legislation which is perhaps the most draconian that we have seen in the course of the last 30 years. And you may well be aware that the legislation actually allows for the opinion of a senior police officer to be taken as evidence that someone is a member of a proscribed organization, an illegal organization, and if a suspect stays silent in the face of such an accusation, then the evidence of the police officer and the silence will be enough to convict that person without any other evidence.

Now, in so far as we are aware, the legislation has not been used to date, although it has been passed in both jurisdictions. And I think that what all of us would request of the Subcommittee is that a strong message be sent to the United Kingdom Government that this legislation not be used, at the very least it not be used, because we will undoubtedly have further miscarriages of justice if the legislation is used.

Ms. NELSON. I certainly feel that it's legislation that should never have gotten as far as this. The history of the six-county state is permeated with miscarriages of justice. And, in fact, I think it's very telling that during the height of Lords Debave and Bridges, who tried the Birmingham Six, actually opposed the legislation in view of the fact that previous emergency legislation had led to such miscarriages of justice. And I think it's absolutely imperative that this legislation be repealed as quickly as possible.

Mr. SMITH. Chairman Gilman.

Chairman GILMAN. Again, I want to thank our panelists, and particularly the Rapporteur for his special report and the good work he's done. We would hope that when the commission comes together again in the spring, that you would let us know any further report that you may be making.

And to all of our panelists, we appreciate the work you've done.

And, Mr. Chairman, I'd like to make part of the record, because of the significance of RUC reform, I ask that the report of the British Irish Rights Watch, dated September 1998, and that CAJ's submission to the commission, dated August 19, 1998, be included in the record of the hearing.

Mr. SMITH. Without objection, so ordered.

[The information referred to appears in the appendix.]

Chairman GILMAN. Thank you, Mr. Chairman. I'll submit it to the reporter.

And one last comment; I just would hope that we could all work with the Irish Republic and Westminster to try to repeal these recent draconian evidentiary laws as peace and reconciliation moves forward and takes firm hold in the north. I think whatever we can do together can be extremely helpful.

Thank you very much, and thank you, Mr. Chairman.

Mr. SMITH. Mr. Cumaraswamy, Mr. Madden, Mr. Mageean, and Ms. Nelson, thank you so much for the sacrifice that you put yourselves through to get here and, obviously, for the tremendous work you've done on behalf of human rights.

The meeting is adjourned, and, again, thank you.

[Whereupon, at 12:33 p.m., the Subcommittee adjourned subject to the call of the Chair.]

# APPENDIX

**CHRISTOPHER H. SMITH**

6th DISTRICT NEW JERSEY

WASHINGTON OFFICE

2575 BARTON BUILDING OFFICE BUILDING  
WASHINGTON, DC 20515-2525  
(202) 225-5725

CONSTITUENT SERVICE CENTER

1542 LINDEN ROAD  
SUITE 402  
ROSELAND, NJ 07068-1542  
(202) 262-7470  
TTY (202) 262-2222

180 LACEY ROAD  
SUITE 25A  
MIDDLETOWN, NJ 07730-1201  
(202) 262-2222



**Congress of the United States**  
**House of Representatives**  
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**Statement of Representative Christopher H. Smith**  
**Chairman, Subcommittee on International Operations and Human Rights**  
**September 29, 1998**  
**Northern Ireland Meeting**

The purpose of this meeting is for the House subcommittee with primary jurisdiction over international human rights to receive and review the recent United Nations report on harassment and intimidation of defense attorneys by police officers of the Royal Ulster Constabulary (RUC) and other violations of the right to fair trial and the right to counsel in Northern Ireland.

Prior to today's public round-table discussion, this subcommittee has held two hearings on the status of human rights in Northern Ireland and conducted one fact-finding peace mission to Belfast in August of 1997. On March 17th of this year, the full House of Representatives passed my bill, H.Con.Res. 152, which, among other provisions, expressed the sense of Congress that any peace agreement in Northern Ireland must recognize the state's obligation to protect human rights in all circumstances.

Since our last meeting, great strides have been made toward a lasting and just peace in Northern Ireland. In April representatives at the multi-party peace talks signed the Good Friday Agreement. In May the people of Northern Ireland and of the Republic of Ireland voted overwhelmingly in support of the peace referendum. And in June the people of both the Catholic and Protestant communities took part in the election of representatives to the new 108-member Northern Ireland Assembly.

Regrettably, the progress has not been without some setbacks. For instance, the "marching season" in July was again marked by violence including firebombing which led to the tragic death of three young brothers, the Quinn boys, in Ballymoney. And in August the world was stung again by the horrific Omagh bombing which took the lives of 28 people and injured many more.

Because there are extremists on both sides who may continue to try to undermine the peace process and exploit the emotions and fears of both communities, it is all the more imperative that the Northern Ireland Bill, the enacting legislation of the Good Friday Agreement, be predicated on and capable of extending human rights protections to all people in Northern

Ireland. Ensuring a defendant's rights to a fair trial and to unfettered access to appropriate counsel is crucial if Northern Ireland is to experience a just and lasting peace.

Param Cumaraswamy, the UN Special Rapporteur on the independence of judges and lawyers, conducted his own fact-finding mission just less than one year ago and released his findings in April of this year. In reading the report, I was struck by the similarities between his inquiry and those undertaken by the Subcommittee on International Operations and Human Rights --- not only in the list of government officials and others who were interviewed, but also in the stated items of concern and the recommendations for reform.

The Special Rapporteur's report finds that RUC officers have indeed engaged in "activities which constitute intimidation, hindrance, harassment or improper interference" with criminal defense attorneys. The Rapporteur therefore recommends that the authorities --- preferably the new Police Ombudsman whose office would be established by the proposed Northern Ireland Act --- conduct an independent investigation of all threats to counsel in Northern Ireland. Among other important recommendations, the report suggests an independent judicial inquiry into the case of Patrick Finucane, the defense attorney who was murdered in front of his wife and children in 1989, under circumstances suggesting possible collusion by officers of the RUC. It also recommends reforms in the training of police officers, protection of the right to have an attorney present during police interrogation, reinstatement of trial by jury and of the right of a criminal defendant to remain silent, and strict safeguards against arbitrary wiretapping. Finally, the Special Rapporteur recognizes the inadequacy of a complaint system in which the RUC essentially investigates itself, subject to a supervisory commission that can only make non-binding recommendations. He notes that "of the 16,375 complaints generally received by the ICPC through 1994, not one has resulted in any disciplinary sanction against any RUC officer," and that during 1996 there were 2540 cases of which only one resulted in a finding that an RUC officer was guilty of abuse of authority. The Rapporteur therefore recommends that the office of the new Police Ombudsman "be given the necessary human and financial resources to meaningfully carry out its mandate, which will go a long way towards restoring public confidence in the police complaints procedure."

The response thus far to the Rapporteur's report by the British government is frankly disappointing. Aside from taking credit for those areas in which the Rapporteur noted merit or progress --- such as the integrity of judges and the scheduled introduction of video and audio recording in interrogation rooms --- the government's response is largely dismissive both in tone and in substance. For instance, the report points out that an independent judicial inquiry is justified only "if there is [a] need to look at a matter of urgent public importance." It inexplicably concludes that "[t]his is not the case with the murder of Mr. Patrick Finucane" unless "new evidence is brought to light." The government does not explain how new evidence will be brought to light in the absence of an independent inquiry, and seems not to understand the corrosive effects of not knowing the truth about whether law enforcement officials were guilty of collusion in murder.

This attitude on the part of government officials is not an encouraging sign to those of us who believe that respect for human rights is the *sine qua non* for peace and reconciliation in Northern Ireland or anywhere else. Nevertheless, there is also reason for hope. The proposed Police Ombudsman can be a powerful force both for police reform and for the restoration of public confidence, if the government follows the Rapporteur's recommendation to give the office sufficient resources. The recently established Independent Commission for Policing for Northern Ireland, although its only legal power is the power to make recommendations, can also be a force for change in the right direction if it takes to heart the Special Rapporteur's recommendations and the detailed submissions of human rights organizations such as the Committee for the Administration of Justice and British Irish Watch. Drawing their sustenance from the reservoir of good will instilled by the Good Friday agreement and the subsequent referenda, these governmental and non-governmental institutions can work together to restore public trust in the legal system — largely by helping to shape a system that is in fact trustworthy.

I look forward to hearing from each of our distinguished participants.

Statement of Chairman Gilman  
Meeting on Northern Ireland -- UN Special Rapporteur Report  
September 29, 1998

Chairman Smith thank you for arranging today's important session. Northern Ireland and the abuse of human rights there have long been a matter of grave concern to us here in the Congress, and especially this committee.

I am pleased to be able to say as a result of the Good Friday accord that the people of Northern Ireland are today the closest they have ever been to permanent peace and reconciliation. I am also proud that the U.S. has played a major role in contributing to this bright new future. Over the years we have directed our effort to obtaining equality for both traditions, since without this, there could not be the confidence and hope we now see on display in Northern Ireland.

Our role and interest in the north are not over. We must continue to expose abuses and seek fundamental change when abuse of human rights occur. The United Nations Special Rapporteur's report on the harassment and intimidation of defense lawyers, is an important and timely analysis. This has been described by many as the most critical report ever rendered on the abuse of human rights in Northern Ireland. I am glad that it has been brought to light now.

The undermining of the Rule of Law and respect for human rights in Northern Ireland could no doubt contribute to the eventual collapse of the Peace Accord.

The UN report's conclusion on activities directed against defense counsel are very troubling (quote) : ".....the RUC has engaged in activities which constitute intimidation , hindrance, harassment or improper interference. The Special Rapporteur is particularly concerned by the fact that the RUC has identified solicitors with their clients or their clients' causes as a result of discharging their functions". (end quote)

The fresh start in Northern Ireland under the Good Friday most bring an end to these traces of the past. Inequality and any undermining of fundamental rights must not be part of the new future of the north of Ireland. We need real change on the ground.

Many independent bodies have also expressed concerns similar to the UN's finding on the abuse of defense counsel. These include the ABA, the New York Lawyer's committee for human rights, and the British- Irish Rights Watch.

I welcome today's inquiry. We are particularly grateful to the UN Special Rapporteur for bringing to light these serious problems in the Northern Ireland system of justice . We look forward to hearing his and our other witnesses' recommendations, as to a resolution of this serious problem.

The report highlights the need for change. I am pleased that the International Relations Committee early next year will be holding full committee hearings on the root cause of some of these problems, the RUC. The need for an acceptable policing force in the north of Ireland, could not be clearer. Thank you.

**CONGRESS OF THE UNITED STATES  
COMMITTEE ON INTERNATIONAL RELATIONS  
HOUSE OF REPRESENTATIVES  
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS**

**29 SEPTEMBER 1998**

**STATEMENT OF PETER MADDEN SOLICITOR OF MADDEN AND  
FINUCANE SOLICITORS 88 CASTLE STREET BELFAST**

**Mr Chairman and distinguished members of the Congress I want to  
thank you for the opportunity to present testimony in response to Mr.  
Cumaraswamy's report.**

**I would like to thank Mr. Cumaraswamy for carrying out his investigation  
and preparing and presenting his very full report. I know that this is a  
difficult time for him and I hope that the unhappy situation in his  
homeland will be resolved. It is a tribute to his resolve and his  
determination and his professionalism in the cause of the protection of  
human rights throughout the world that he is here today.**

**I particularly thank him for his support for the growing call to the British  
government to establish a full public judicial inquiry into the murder of  
Pat Finucane .**



I want to thank Jane Winter of British Irish Rights Watch for her painstaking research and for her persistence in pursuing these issues. Without her persistence and dedication, these issues would not be before you today.

Although Pat Finucane was murdered by a loyalist death squad, there is evidence that the British government and the RUC were involved in the murder.

Prior to Pat Finucane's murder, the RUC threatened that he should be assassinated by loyalists. Three weeks before his murder in February 1989, the British government minister Douglas Hogg, stated that there were a number of solicitors who were unduly sympathetic to the IRA. Brian Nelson was a British army agent who was directly involved in the murder. Nelson's British army commanders took their orders from their political masters in the British government in London. Pat Finucane's family want to know what is the link between the RUC death threats, Hogg's statement ( which he refused to elaborate upon ), and the true role of Brian Nelson. They also want to know how he could have been shot with a British army pistol.

The problem of threats and verbal abuse by the RUC to lawyers representing people held in interrogation centres has existed for many years. It has been well documented. It continues to this day. The threats to the lawyers cannot be separated from the verbal and physical abuse

of the clients themselves. Mr. Kumaraswamy's remit does not extend to the complaints of ill-treatment from people in custody, but again those complaints and medical evidence over the years have not only been well documented but hundreds of thousands of pounds have been paid in damages to people unlawfully arrested, falsely imprisoned, and assaulted in interrogation centres. I have represented many of those people.

The Pat Finucane murder is a classic example of collusion between the British army, the RUC and loyalist death squads. That collusion is probably responsible for almost 1000 of those killed in our conflict.

Threats to lawyers and physical ill treatment of detainees in interrogation centres by the RUC go hand in hand. Other abuses are again well documented such as the murder of both adults and children with plastic bullets, the implementation of a shoot-to-kill policy, the implementation of a supergrass system to secure convictions in Diplock courts, the harassment and verbal abuse of young nationalists in their own streets. All this working in a legislative perversion of so called emergency law which has lasted over 25 years. There have been few prosecutions of RUC members or dismissals for misconduct.

I have represented thousands of people over the past 20 years, mainly nationalists, who have been victims of the RUC. I have represented

hundreds of people who have been subjected to brutality and ill treatment in the interrogation centres.

I would like to refer to part of Paragraph 21 of Mr. Cumaraswamy's report if I may.

**PARAGRAPH 21 \***

Here we have the extraordinary statement from the Assistant Chief Constable, who is second in command, who thinks that it is perfectly legitimate for the RUC to undermine the lawyers who advise people in the interrogation centres . He thinks that it is perfectly legitimate for a police officer to tell a person under interrogation that his solicitor is giving him bad advice by advising him to remain silent. It has to be borne in mind that the lawyer is not permitted to attend the interrogation ( a legal principle approved by the House of Lords, the highest court of appeal in the jurisdiction) and that the client is also being subjected in most cases to verbal abuse himself in isolated conditions designed to frighten and intimidate him into making a confession.

There are very few situations where a lawyer would advise someone being questioned in those conditions to answer any questions. In those particular conditions, the best advice is probably to remain silent despite what the Assistant Chief Constable thinks. And apart from that, the person being questioned still has a fundamental right to remain silent . It is an amazing statement from such a senior officer which I think reflects an ignorance of the law, an ignorance of human rights,

and a hostility to the lawyers whose function is to protect those very rights. It is not a matter of carrying messages to detainees to remain silent - It could amount to professional negligence if a lawyer advises a client to answer questions in those circumstances . When you consider that such high ranking officers see nothing wrong with holding those views so much so that they are prepared to tell Mr.Cumaraswamy, of all people, it makes easier to understand why the threats continue to this day.

People are still arrested under the Prevention of Terrorism Act, they are still not permitted to have their lawyers present to advise during the questioning, and they are still subjected to threat and verbal abuse.

If I can refer back to the same paragraph of the report , paragraph 21, to the statement by the Chief Constable that the RUC are being portrayed ( presumably by the lawyers who are making the complaints ) as part of the unionist tradition as part of some political agenda. This statement is puzzling. The RUC is 95% unionist. Its members are drawn from the unionist community. Nationalists represent somewhere between 40 - 45% of the population. I dont think it is part of any political agenda to portray the RUC as being unionist. They are unionist. It is a fact.

All this raises questions about the whole nature and future of policing in the north of Ireland. It has particular significance to the new Policing

**Commission set up by the Good Friday agreement under the chairmanship of Chris Patton.**

**We are now in time of relative peace in the north. We are on the verge of great change. It is a time of great hope for the future. But unless there is fundamental change it will be difficult to maintain that peace.**

**The people of the north of Ireland have been promised in the Good Friday agreement "... a truly historic opportunity for a new beginning. A new beginning means new institutions. Just as there has to be a new approach to the administration of justice, to the judiciary, and to inclusion of nationalists in government. There must be a new police service.**

**The RUC personnel who have been involved in the sort of abuses to which I have referred are still in the RUC. The RUC people who carry out the threats and verbal abuse today are obviously still there. The RUC men who threatened Pat Finucane with death are probably still there.**

**The new Policing Commission headed by Chris Patton must understand that unless there is major change in policing, unless a new police service is established, which is representative of and accountable to the community that it serves, unless immediate steps are taken to introduce recruitment and training programmes to ensure that the membership of a new police service quickly reaches the required**

number of nationalist members, it will be very difficult to achieve lasting peace. Mere cosmetic change will not be enough. There is no other way around it. A new police service must include in its personnel between 40 and 45% nationalists to reflect the proportion of nationalists in the population, and that must be achieved quickly. Those members of the RUC who are currently guilty of human rights abuses must be brought to justice. Any delay will be seen as a refusal to implement the necessary change.

I cannot emphasise enough how important policing is in the new situation. I cannot emphasise how much the RUC is not accepted by nationalists.

What has occurred in the past in the north of Ireland is the dominance of one community over the other, the dominance of unionists over nationalists and the exclusion of nationalists from government. Nationalists who now make up between 40 - 45% of the population are not a minority. The RUC is unionist because its members come from the unionist community. One community's police force cannot dominate the other community. A new police service must serve all the people of the north of Ireland and such a new police service must have the support of all the people.

Pat Finucane was murdered because he sought to protect the rights of nationalists in a unionist dominated state. That domination has been

**supported and secured by the British government. The British government will have to take responsibility for ensuring that the terms of the Good Friday agreement are implemented.**

**In order to achieve lasting peace and stability , and it is very possible to do so, both the British and the Irish government must carry out the promises made to the people of Ireland and they must fulfill the *commitment to the principles of partnership, equality and mutual respect and to the protection of civil, political, social, economic and cultural rights in their respective jurisdictions.***

**Statement of Rosemary Nelson****Committee on the Administration of Justice, Belfast****Before the International Operations and Human Rights Subcommittee  
of the House International Relations Committee  
Hearing on Human Rights in Northern Ireland****29th September 1998**

I have been a solicitor in private practice in Northern Ireland for the past twelve years. My practice includes a mixture of several areas of law including crime, matrimonial and personal injury cases. My clients are drawn from both sides of the community. For the last ten years I have been representing suspects detained for questioning about politically motivated offences. All of these clients have been arrested under emergency laws and held in specially designed holding centres. There are three such centres across Northern Ireland. Since I began to represent such clients and especially since I became involved in a high profile murder case, I have begun to experience difficulties with the RUC.

These difficulties have involved RUC officers questioning my professional integrity, making allegations that I am a member of a paramilitary group and, at their most serious, making threats against my personal safety including death threats. All of these remarks have been made to my clients in my absence because lawyers in Northern Ireland are routinely excluded from interviews with clients detained in the holding centres.

This behaviour on the part of RUC officers has worsened during the last two years and particularly since I began to represent the residents of the Garvaghy Road, who have objected to an Orange Order march passing through their area from Drumcree Church. Last year I was present on the Garvaghy Road when the parade was forced through. I had been present on the road for a number of days because I had instructions from my clients to apply for an emergency judicial review of any decision allowing the parade to pass through the area. When the police began to move into the area in force in the early hours of 5<sup>th</sup> July. I went to the police lines and identified myself as a lawyer representing the residents. I asked to speak to the officer in charge. At that point I was physically assaulted by a number of RUC officers and subjected to sectarian



verbal abuse. I sustained bruising to my arm and shoulder. The officers responsible were not wearing any identification numbers and when I asked for their names I was told to "fuck off".

I complained about the assault and abuse but to date have obtained no satisfactory response from the RUC.

Since then my clients have reported an increasing number of incidents when I have been abused by RUC officers, including several death threats against myself and members of my family. I have also received threatening telephone calls and letters. Although I have tried to ignore these threats inevitably I have had to take account of the possible consequences for my family and for my staff. No lawyer in Northern Ireland can forget what happened to Patrick Finucane nor dismiss it from their minds. The allegations of official collusion in his murder are particularly disturbing and can only be resolved by an independent inquiry into his murder, as has been recommended by the UN Special Rapporteur. I would be grateful if the Subcommittee could do all in its power to bring about such an inquiry, by communicating to the United Kingdom government its belief that an inquiry in this case would in fact be a boost to the peace process, as it has been in the Bloody Sunday case.

I have also complained about these threats, again without any satisfactory response. Although complaints against the RUC are supervised by the Independent Commission for Police Complaints, the complaints themselves are investigated by RUC officers. Recently, a senior police officer from England has been called in to investigate my complaints in view of the RUC's apparent inability to handle my complaints impartially. This English police officer is interviewing witnesses himself and has decided not to rely on any assistance from the RUC.

I believe that one of the reasons that RUC officers have been able to indulge in such systematic abuse against me is that the conditions under which they interview clients detained under emergency laws allow them to operate without sufficient scrutiny. My access to my clients can be deferred for periods of up to 48 hours. I am never allowed to be present while my clients are interviewed. Interviews are now subject to silent video recording but are not yet being audio-recorded, although that is due to be introduced. The UN Special Rapporteur has made a number of recommendations that would remedy this situation, which to date have not been implemented. I should be grateful if this Subcommittee would lend their support to what he proposes.

Another reason why RUC officers abuse me in this way is because they are unable to distinguish me as a professional lawyer from the alleged crimes and causes of my clients. This tendency to identify me with my clients has led to accusations by RUC officers that I have personally been involved in paramilitary activity, which I deeply and bitterly resent. The Special Rapporteur has recommended that RUC officers be sensitised to the important role played by defence lawyers in the criminal justice system. To date this recommendation had not been implemented. I should be grateful if this Subcommittee would ask the UK government what steps they intend to take to act on this recommendation.

I, like many others, was pleased to see the human rights provisions included in the recently signed Agreement. In particular I was pleased that the Agreement looked to the early removal of the emergency provisions legislation which has been in place in some shape or form since the inception of the state. The existence of this legislation has seriously undermined public confidence in the rule of law and led to numerous miscarriages of justice, some of which have involved my clients. I was therefore very disappointed when, in the wake of the horrific Omagh bombing, new and draconian legislation was introduced which further erodes suspects' due process rights. For example, the legislation provides for the opinion of a senior RUC officer that someone is a member of a proscribed organisation to be accepted as evidence by the courts. I and many of my colleagues fear that if these laws are used they will lead to further miscarriages of justice. Although this legislation has already been passed I hope that the Subcommittee will express its concern to the British government that it will not be used.

I believe that my role as a lawyer in defending the rights of my clients is vital. The test of a new society in Northern Ireland will be the extent to which it can recognise and respect that role, and enable me to discharge it without improper interference. I look forward to that day.

I thank Chairman Smith and this honourable Subcommittee for its continuing interest in these important matters for the future of my country.

**Statement of Paul Mageean****Committee on the Administration of Justice, Belfast**

**Before the International Operations and Human Rights Subcommittee  
of the House International Relations Committee  
Hearing on Human Rights in Northern Ireland**

**29th September 1998**

Thank you for the invitation to testify today. The Committee on the Administration of Justice (CAJ) is an independent human rights organisation which draws its membership from across the different communities in Northern Ireland. CAJ works on behalf of people from all sections of the community and takes no position on the constitutional status in Northern Ireland. CAJ was recently awarded the Council of Europe human rights prize in recognition of its efforts to place human rights at the heart of the peace process. It is on these continuing efforts that my comments will mainly focus. However, before turning to these issues I want to refer briefly to the comments made by Rosemary Nelson and Peter Madden. CAJ is profoundly concerned at the continued problems experienced by the small group of highly dedicated and courageous defence lawyers in Northern Ireland who act for suspects detained under the emergency laws. This has been an ongoing problem throughout the conflict but particularly since the mid 1980s. The attention it is now receiving is due to the work of the Special Rapporteur on the Independence of Judges and Lawyers and the efforts of a number of NGOs including in particular the Lawyers' Committee for Human Rights and British Irish Rights Watch. We would urge the Committee to take whatever action it can to ensure that the UK Government comply with the recommendations from the UN Special Rapporteur on the Independence of Judges and Lawyers, Mr. Dato Param Cumaraswamy. Members had the opportunity to listen to Mr. Cumaraswamy earlier this morning and I would request that the contents of his report into these matters be placed on the record.

CAJ, like many others, welcomed the Good Friday Agreement and its commitments to the protection of the human rights of all. The Good Friday Agreement states that

*"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 or 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."*

CAJ endorses these sentiments entirely. We have consistently maintained that human rights issues were at the heart of the conflict and that the protection of human rights must be central to building a lasting peace. In this context it is very welcome that human rights commitments have been given institutional form as an intrinsic element of the Agreement. This was then ratified by the vast majority of the people on the island of Ireland. The language of human rights has moved from the margins to the mainstream.

However, while it is right to celebrate how far we have come, we have not yet reached our destination. Now the task ahead is to turn rhetoric into reality. This is particularly true of the new human rights structures established under the Agreement. These include a new Human Rights Commission, a review of the Criminal Justice System, new arrangements to promote equality and a commission on policing.

The Commission on Policing has the crucial task, as President Clinton said on his recent visit to Belfast of adapting the police service "so that it earns the confidence, respect and support of all the people". The extent of that task has been illustrated for the Committee by the testimony of Rosemary Nelson and Peter Madden. A key starting point for the work of the Commission is obviously the implementation of the recommendations of the Special Rapporteur to ensure that in future defence lawyers can discharge their

professional duty without fear of interference from the police, a key component of any normal democratic society.

It is crucial that the will for change and lasting peace is given full expression in the institutions yet to be established. It is the task of civil servants to deliver on commitments made. It is not acceptable that they should in any way obstruct or dilute these commitments. It is equally the responsibility of ministers and politicians to ensure that those commitments are honoured.

If we take for example the proposed Human Rights Commission, the current legislative proposals fall far short of that goal. Such a Commission needs to be fully independent, it needs to be able to take cases of its own volition, and most importantly, it must be able to undertake investigations into alleged violations of human rights. The current legislative proposals should therefore be amended to ensure a genuinely independent commission adequately equipped with the above powers to act as guarantor for the rights of everyone in Northern Ireland.

We are similarly concerned that the legislative proposals on equality fail to measure up fully to the commitments made in the Agreement. It is essential that the Bill specifies in the clearest terms the exact nature of the mechanisms to implement the equality provisions made in the Agreement. Furthermore, the Bill should ensure, as envisaged in the Agreement that discrimination is outlawed on all grounds, not simply those of religious or political opinion. We would like to inform the Committee that the upper chamber of the United Kingdom Parliament, the House of Lords, will be debating the legislative proposals on human rights and equality during October. I would request that a critique of the current proposals together with a full set of proposed amendments which CAJ has compiled be placed on the record. We believe interventions by the Committee to urge that the legislation fully comply with the spirit and ethos of the Agreement may well assist in strengthening the legislative proposals on human rights and equality. We would be grateful for whatever assistance the Committee can give in this regard.

We believe that the continued support and attention of the international community, and particularly the USA, will be key to ensuring that all of the human rights commitments contained in the Agreement are implemented in full. In this context we are particularly grateful to Chairman Smith, and to the other members of the sub-committee for their continuing interest in human rights in Northern Ireland. We are also grateful for the continuing work of our colleagues in the international human rights groups, particularly Human Rights Watch, the Lawyers Committee for Human Rights and Amnesty International.

While the Agreement offers the hope of a bright future, it is also clear that it is all too easy to repeat the mistakes of the past. This was clearly demonstrated in the wake of the horrific Omagh bombing. The government recognised that intention of those who planted the bomb had been to undermine the Agreement, however rather than heeding the need (acknowledged in the Agreement) to move away from emergency legislation, the government chose instead to introduce perhaps the most draconian legislation that we have seen in the last 30 years. We would like to place on record a briefing on this legislation compiled by CAJ and British Irish Rights Watch.

Similar legislation has in the past not simply failed to resolve the conflict but has actually fuelled it by undermining respect for the rule of law. We cannot allow our society to be dragged back into the tragedy from which we are emerging. A future for all the people of Ireland, underpinned by the human rights protections of the Agreement, is too precious a prize to risk by repeating the mistakes of the past. In so doing, we play into the hands of all of those who would seek to wreck the Agreement.

The task now for all of us is to secure that future and the best way we can do that is, as President Clinton said, to *"build a more just society where human rights are birthrights and where every citizen receives equal protection and equal treatment under the law. These must be the benchmarks of the new Northern Ireland."*

Thank you very much



SUBMISSION BY JANE WINTER, DIRECTOR, BRITISH IRISH RIGHTS WATCH,  
TO THE HOUSE COMMITTEE ON INTERNATIONAL RELATIONS'  
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS AND HUMAN RIGHTS

ATTEMPTED INTIMIDATION OF DEFENCE  
LAWYERS IN NORTHERN IRELAND AND THE  
MURDER OF PATRICK FINUCANE

OCTOBER 1998

## 1. INTRODUCTION

- 1.1 British Irish RIGHTS WATCH is an independent non-governmental organisation that has been monitoring the human rights dimension of the conflict, and latterly the peace process, in Northern Ireland since 1990. Our services are available, free of charge, to anyone whose human rights have been violated because of the conflict, regardless of religious, political or community affiliations. We take no position on the eventual constitutional outcome of the conflict.
- 1.2 Since 1992 British Irish RIGHTS WATCH has made no less than 8 submissions to the United Nations Special Rapporteur on the Independence of Judges and Lawyers concerning the murder in 1989 of Belfast solicitor Patrick Finucane and attempts to intimidate defence lawyers in Northern Ireland.

## 2. INTIMIDATION OF DEFENCE LAWYERS

- 2.1 Intimidation of defence lawyers is endemic to the system of criminal justice in Northern Ireland. Detainees held under emergency laws in holding centres such as Castlereagh lack many due process safeguards which are afforded to suspects held under the ordinary system of criminal justice. They can be held for up to 48 hours without either their lawyer or their family being informed of their arrest. They can be denied access to a lawyer for periods of 48 hours at a time. Lawyers are not allowed to remain present while suspects are interviewed by the police, as they are in other cases, and even in terrorist cases elsewhere in the United Kingdom. There is no effective independent scrutiny of police interrogations. The only record of such interrogations is notes taken by the police. The purpose of such an oppressive regime of detention is to obtain confessions and to collect intelligence. As part of that process, detainees are actively encouraged to feel isolated and that no-one can help them. One element in that process of persuasion is an attempt by RUC officers to alienate detainees from their lawyers.
- 2.2 This attempt to drive a wedge between lawyers and their clients takes a variety of forms. At its lowest level, RUC officers will suggest that lawyers are incompetent, or alternatively only interested in making money without having any real concern for the welfare of their clients. More sinisterly, RUC officers will allege that certain lawyers are well-known for their sympathy with paramilitary groups and that suspects have betrayed their own affiliations by choosing a particular lawyer. At its worst, RUC will offer death threats against lawyers and volunteer to collude with paramilitaries to bring about the lawyer's demise.
- 2.3 British Irish RIGHTS WATCH has over time interviewed the majority of defence solicitors - and a smaller number of high-profile defence barristers - acting in terrorist cases in Northern Ireland. We have found that all defence lawyers suffer this type of intimidation, regardless of whether they more often defend republican or loyalist clients. The more emergency law cases they undertake, the more likely they are to



experience such attempts to intimidate them. However, there is an element of discrimination at play, in that historically most defence lawyers, even those acting for loyalist clients, are Catholic. This is because Catholics were later to enter university and the professions in Northern Ireland, owing to inherent discrimination against Catholics in Northern Ireland's formative years. Furthermore, the police force in Northern Ireland has traditionally been drawn from the majority, Protestant community. Currently, the RUC is over 90% Protestant. Politically, the Protestant community is unionist and, in many cases, loyalist, in its affiliations, and this is equally the case with the RUC. Threats against Catholic lawyers that RUC officers will collude with loyalist paramilitaries in order to kill the lawyers are therefore particularly potent. Although death threats against lawyers have diminished since the ceasefires in Northern Ireland, other forms of abuse, including references to Patrick Finucane, continue. All lawyers, whether Protestant or Catholic, come in for this type of abuse from certain RUC officers, who essentially identify the lawyers with the supposed crimes and causes of their clients.

- 2.4 Northern Ireland lawyers bitterly resent these attempts to intimidate them. They resent slurs on their professional integrity, and any attempt to undermine their clients' confidence in their ability to represent their interests competently and impartially. Death threats, while irritating, were not taken very seriously until Belfast solicitor Patrick Finucane was murdered in 1989. Since then, many lawyers have courageously operated in fear of their lives. His death was all the more shocking in that evidence gradually began to emerge that strongly suggest security force, and possibly government, collusion in his death. These circumstances are examined below.

### 3. THE MURDER OF PATRICK FINUCANE

- 3.1 Patrick Finucane was murdered on 12th February 1989 by an illegal loyalist paramilitary group, the Ulster Freedom Fighters. No-one has been prosecuted for his death, despite the fact that Brian Nelson, a British intelligence agent, has allegedly admitted to participating in his murder. There is evidence of collusion in his killing by members of the British security forces. There is also evidence that death threats were made against him by police officers prior to his death. He was killed shortly after a government minister made remarks in Parliament disparaging some solicitors in Northern Ireland. The police investigation into his murder and the inquest were both deficient. Although some members of Patrick Finucane's family had paramilitary involvement, he himself had none. He was an able, effective and innovative lawyer who represented clients from both sides of the conflict in Northern Ireland. He was involved in a number of high profile legal cases arising from the conflict, including cases taken against the United Kingdom at the European Commission of Human Rights, and his family believe that it was because of his work on these cases that he was targeted for murder.

3.2 In 1989, John Stevens, a senior English police officer, was asked to investigate allegations that members of the security forces had been passing details of suspected IRA members to loyalist paramilitaries. As a result of his inquiry, 94 people were arrested, of whom 59 people were charged or reported to the Director of Public Prosecutions, resulting in 47 prosecutions and 183 convictions for separate offences. The most significant outcome of Stevens' inquiry was the prosecution of Brian Nelson, a British agent who was working for the government intelligence service and acting as the senior intelligence officer of the UDA from 1987 to 1990. In January 1992 he stood trial on five charges of conspiracy to murder, to which he pleaded guilty. Two charges of actual murder and 13 other charges against him were dropped shortly before the trial, which lasted only two days. He was convicted on all five conspiracy charges, plus a number of lesser charges, and sentenced to 10 years' imprisonment, a remarkably lenient sentence. After his conviction, he showed journalists his prison diary, which was featured in a *Panorama* programme transmitted by BBC television on 8.6.1993. In this diary, he allegedly admitted to involvement in a number of other murders, including that of Patrick Finucane and to targeting another lawyer, Paddy McGrory. The transcript of the programme was referred to the Director of Public Prosecutions, who asked John Stevens to investigate these allegations. Stevens completed his enquiries in January 1995, and submitted his final report to the DPP of Northern Ireland on 24.1.1995. On 17.3.1995 the DPP issued a direction of no prosecution to the Chief Constable of the RUC. It is not known why he reached this decision, which seems extraordinary in the face of Brian Nelson's allegedly self-confessed part in the murders. None of Stevens' reports have been published, although a summary of his first report is available.

3.3 Nelson's prison diary sheds light on some of the evidence given on his behalf by his security service handler, identified in court only as Colonel J. J testified that Brian Nelson was a security service agent<sup>1</sup>. He was infiltrated into the UDA and became their senior intelligence officer. In that capacity he came into possession of numerous records of potential targets for assassination. He passed all of these to his handlers, whom he met regularly to inform them of planned loyalist assassinations. Nelson's reports were regarded as highly valuable. He was considered to be "a very important agent"<sup>2</sup>. Intelligence supplied by him was reported to senior officers in RUC Special Branch and the Chief Constable, the highest levels of the military command in Northern Ireland, the Special Branch of the Irish police service, and the Secretary of State for Northern Ireland. J referred to a particular incident during his evidence when Nelson had been asked by the UDA for a photograph of an individual who was an assassination target and Nelson had shown them a picture of this individual coming out of the courthouse with another person, who was in fact the intended target<sup>3</sup>. It is now understood that the true target was Patrick Finucane, who was portrayed in the photograph in the company of a client. It is further understood that J was attempting

1 Transcript, J's evidence. p. 5

2 Ibid. p. 24

3 Ibid. p. 29

to suggest by his testimony that Nelson's handlers did not know that Patrick Finucane was the target, but Nelson, according to the *Panorama* programme, informed his handlers of that fact some weeks prior to the murder<sup>4</sup>.

- 3.4 Patrick Finucane's death came less than four weeks after Douglas Hogg MP, then Parliamentary Under-Secretary of State for the Home Department, said in a Committee stage debate on the Prevention of Terrorism (Temporary Provisions) Bill on 17.1.1989:

"I have to state as a fact, but with great regret, that there are in Northern Ireland a number of solicitors who are unduly sympathetic to the cause of the IRA."

Although challenged, he failed to substantiate this allegation, although he repeated it several times in similar language, saying only:

"...I state it on the basis of advice that I have received, guidance that I have been given by people who are dealing with these matters, and I shall not expand on it further."

Statements made in Parliament are privileged and cannot be made the subject of legal action. Speaking in reply, Seamus Mallon MP said:

"I have no doubt that there are lawyers walking the streets or driving on the roads of the North of Ireland who have become targets for assassins' bullets as a result of the statement that has been made tonight.....Following [this] statement, people's lives are in grave danger. People who have brought cases against the European Court of Human Rights will be suspected. People accused of IRA membership and other activities will be suspected."

Commenting on this episode, the American Lawyers Committee for Human Rights said:

"Hogg's remarks caused a public outcry, especially from within Northern Ireland's legal community. Mrs Finucane told us that her husband was especially shocked. Not only could he not understand why a government minister would make so irresponsible a statement, he also began to take the threats against him as more than interrogation devices. After Finucane's murder, another outcry against Hogg arose that included calls for his resignation, but these went unheeded. Hogg has since moved on to another post. To date, neither he nor the government has issued an apology for his remarks save for feeble expressions of regret at Finucane's killing. Hogg also refused to meet with our delegation to discuss his remarks."<sup>5</sup>

Patrick Finucane's family and colleagues believe that Douglas Hogg's remarks may have been based on intelligence reports from Brian Nelson. At the inquest on his death, the police officer in charge of the murder inquiry, Detective Superintendent Simpson, said:

"The police refute the claim that Mr Finucane was a member of the PIRA. He was just another law-abiding citizen going about his professional duties in a professional manner."

<sup>4</sup> *Panorama* transcript, p.12

<sup>5</sup> *Human Rights and Legal Defense in Northern Ireland: The Intimidation of Defense Lawyers, the Murder of Patrick Finucane*, Lawyers Committee for Human Rights, New York, February 1993, p.52

- 3.5 Before his death, Patrick Finucane received a number of death threats, mainly delivered via his clients, by RUC officers. In May 1987 a group of solicitors in Northern Ireland issued a public statement from the offices of the firm of Patrick Fahy & Co. in Omagh alleging that their clients had reported regular abuse of the solicitors by members of the RUC, who had not acted upon complaints made to them by the solicitors concerned. Patrick Finucane's name appeared in the list of solicitors subscribing to this statement.
- 3.6 Amnesty International, in its report *United Kingdom Human Rights Concerns*, said that a client of Patrick Finucane's had "said that his lawyer, Patrick Finucane, would be killed" <sup>7</sup> a year before the murder took place. That client was Brian Gillen, who suffered severe ill-treatment in RUC custody for which he later received compensation. Brian Gillen told the American Lawyers Committee for Human Rights that after Patrick Finucane filed a petition for habeas corpus on his behalf, police officers told him that, "It would be better if he [Patrick Finucane] were dead than defending the likes of you," and that they threatened to give details concerning the solicitor and his client to loyalist paramilitaries<sup>8</sup>.
- 3.7 Occasional threats had been made against Patrick Finucane since the late 1970s. After the Gillen case the incidence of threats escalated. Clients reported abuse of Patrick Finucane by police officers during interrogations at holding centres such as Castlereagh. Several former clients of Patrick Finucane's told the Lawyers Committee about death threats made against him by police officers. He also received threatening telephone calls at his home.
- 3.8 John Stalker, writing of his experiences of trying to investigate allegations of a shoot-to-kill policy in Northern Ireland in his book *Stalker*<sup>9</sup>, reported that in 1984 or 1985 an RUC sergeant said to him of a lawyer who must have been Patrick Finucane<sup>10</sup>,  
 "The solicitor is an IRA man - any man who represents IRA men is worse than an IRA man. His brother is an IRA man also and I have to say that I believe a senior policeman of your rank should not be seen speaking to the likes of either of them. My colleagues have asked me to tell you that you have embarrassed all of us in doing that. I will be reporting this conversation and what you have done to my superiors."  
 John Stalker professed himself surprised at the sergeant's "studied vehemence".
- 3.9 On 5<sup>th</sup> January 1989, five weeks before his death, one of Patrick Finucane's clients alleged that an RUC officer

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<sup>6</sup> June 1991

<sup>7</sup> *Ibid*, p. 56

<sup>8</sup> *Human Rights and Legal Defense in Northern Ireland: The Intimidation of Defense Lawyers, the Murder of Patrick Finucane*, Lawyers Committee for Human Rights, New York, 1993, p. 49

<sup>9</sup> Penguin, 1988, p. 49

<sup>10</sup> Identified by his client's name and case

".....Informed me that my solicitor was working for the IRA, and would meet his end also.....He asked me to give Mr Finucane a message from him.....He told me to tell him he is a thug in a suit, a person trying to let on he is doing his job, and that he, like every other fenian [republican] bastard, would meet his end."

On 7<sup>th</sup> January, another client was told,

"Fucking Finucane's getting took out [murdered]."<sup>11</sup>

- 3.10 The solicitor's widow, Geraldine Finucane, knew that the RUC had been making death threats against her husband for some time before his death. She attempted to make a statement to that effect at his inquest, but was prevented from doing so by the Coroner. In the absence of a police prosecution, the Coroner's Inquest is the only available public forum for investigating a murder. However, her attempts to read out her statement were ruled irrelevant by the Coroner, John Leckey, who was constrained by the rigid rules on inquests in Northern Ireland, which do not allow the inquisition to extend beyond the identity of the deceased and how, when and where he died.
- 3.11 It was because of these threats that Patrick Finucane's law firm, Madden & Finucane, began to monitor clients' instructions systematically. British Irish RIGHTS WATCH has independently examined these instructions over a number of years. The sort of threats made against Patrick Finucane by RUC officers have continued to be made against other members of the firm and are still being made today. Other solicitors who have not systematically recorded such remarks reported to us; their clients have nonetheless experienced them and reported them to us. Before Patrick Finucane's death, they did not take such threats seriously; now they do, especially since the threats are often coupled with direct references to Patrick Finucane. References to him are also made when clients are threatened by police officers.
- 3.12 The following questions remain outstanding concerning Patrick Finucane's murder:
1. What role did Brian Nelson play in the murder of Patrick Finucane?
  2. What reports did Brian Nelson make to his army handlers concerning Patrick Finucane?
  3. What steps did the British intelligence services take to prevent the murder of Patrick Finucane?
  4. Apart from the involvement of Brian Nelson, what role, if any, did the British security services play in the murder?
  5. What information, if any, was passed by British military intelligence to the RUC concerning Patrick Finucane, and concerning the murder?
  6. What police roadblocks were within one mile of the Finucane residence on the day of the murder? When were they removed, and why?
  7. What steps did the police take to investigate Geraldine Finucane's allegations that her husband's clients had reported death threats

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<sup>11</sup> Source: instructions taken by Madden & Finucane, solicitors

issued against him by police officers prior to his death? Why has she, Patrick Finucane's business partner Peter Madden, and Patrick Finucane's clients not been interviewed by police about these allegations?

8. What aspects of Patrick Finucane's murder were referred to John Stevens on both occasions?
9. What investigations did John Stevens make with regard to Patrick Finucane?
10. What conclusions did John Stevens reach concerning the murder? Why were these not published?
11. Why did the DPP decide not to prosecute Brian Nelson?
12. Will the government publish both John Stevens' reports?
13. What was the basis for the remarks made in Parliament by Douglas Hogg? To which solicitors specifically was he referring? Does the government still believe that his remarks were accurate; and if so on what evidence?
14. Will the United Kingdom government set up an independent inquiry with full judicial powers into the murder of Patrick Finucane and on-going attempts to intimidate defence lawyers?

#### 4. INTERNATIONAL HUMAN RIGHTS STANDARDS

- 4.1 On 7<sup>th</sup> September 1990 the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba, adopted a set of Basic Principles on the Role of Lawyers. The United Nations General Assembly subsequently welcomed these Principles in its Resolution 45/121 of 14<sup>th</sup> December 1990 and invited all governments to be guided by them in the formulation of appropriate legislation and practice and to make efforts to ensure their implementation.
- 4.2 Basic Principle 15 states:  
"Lawyers shall always loyally respect the interests of their clients."
- 4.3 Basic Principle 18 says:  
"Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions."
- 4.4 Basic Principle 17 stipulates:  
"Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities."
- 4.5 In the view of British Irish RIGHTS WATCH, the United Kingdom government is failing to uphold these important principles. An independent legal profession, able to act free of state interference and protected by the state from terrorist or other threats, is the cornerstone of a proper system of criminal justice in a democracy.

## 5. SCRUTINY BY THE UNITED NATIONS

5.1 As a result of our submissions of evidence over the previous five years to systematic abuse of defence lawyers on Northern Ireland by RUC officers claiming to act in collusion with loyalist paramilitaries, the United Nations' Special Rapporteur on the Independence of Judges and Lawyers, Dato' Param Kumaraswamy, made an official visit to the United Kingdom in the autumn of 1997. He delivered his report to the United Nations Commission on Human Rights on 1<sup>st</sup> April 1998<sup>12</sup>.

5.2 The Special Rapporteur visited both Northern Ireland and London on his extensive fact-finding mission. During his trip he met government ministers, the RUC Chief Constable, the Director of Public Prosecutions, the Lord Chief Justice and many others, including lawyers, civil servants and NGOs.

5.3 His report is extremely critical of RUC practices and emergency laws. He concluded that "... the RUC has engaged in activities which constitute intimidation, hindrance, harassment or improper interference" with lawyers. He found that intimidation and harassment of defence lawyers in Northern Ireland was "consistent and systematic". He has called for an independent judicial inquiry into the murder of Patrick Finucane, saying,

"So long as this murder is unresolved, many of the community will continue to lack confidence in the ability of the Government to dispense justice in a fair and equitable manner."

He also called for an independent inquiry into intimidation of lawyers, preferably to be carried out by the new Police Ombudsman.

5.4 The Special Rapporteur recommended that the Law Society and Bar Council should be more vocal in their defence of lawyers who have been abused. Lawyers should lodge formal complaints whenever they suffer abuse, and the RUC should organise joint training with lawyers' professional bodies "to sensitise them [the RUC] to the important role that defence lawyers play in the administration of justice." The government should protect any lawyer who is threatened, vigorously investigate any threat, and bring perpetrators to justice.

5.5 The Special Rapporteur also made a number of other important recommendations:

- solicitors should have immediate access to their clients;
- solicitors should be present during police interviews;
- RUC interviews should be video- and audio-recorded;
- the right of silence should be reinstated immediately;
- the standard for the admissibility of confession evidence applied in the ordinary criminal law should apply in all cases;
- the right to trial by jury should be reinstated, with safeguards for jurors;

<sup>12</sup> *Report on the mission of the Special Rapporteur on the Independence of Judges and Lawyers to the United Kingdom of Great Britain and Northern Ireland.* United Nations, E/CN.4/1998/39/Add.4.

- privileged communications between lawyers and clients should be respected when suspects are under surveillance;
- the office of Police Ombudsman should be provided with all necessary resources required so that it can meaningfully carry out its mandate;
- the judiciary should be trained in international human rights standards.

5.6 When the Special Rapporteur presented his report to the Commission on Human Rights, the UN High Commissioner on Human Rights, Mary Robinson, made a point of sitting beside him to register her support for him and his mandate. In his address, he said:

"... I was satisfied that there was truth in the allegations that the defense lawyers were harassed and intimidated as described in the several reports I had received... There was, in my view, a complete indifference shown by the RUC to the allegations contained in the reports from the NGOs."

Concerning the murder of Patrick Finucane, he said,

"... I am convinced that there are compelling reasons for an independent judicial inquiry. I accept the reason given by the Director of Public Prosecutions that there was insufficient evidence to prosecute any one for the murder even if the person who actually committed the murder was known. The doubt which needs to be cleared, is whether there was security forces collusion in the murder. That seems to be the outstanding issue and only a judicial enquiry could resolve this."

The Special Rapporteur concluded his address to the Commission with these words:

"I am quite conscious of the fact that the ongoing peace talks in Northern Ireland are at a crucial stage. It is within this context that I concluded and made these recommendations in my report with the conviction that respect for the rule of law and human rights with greater confidence in public institutions showing transparency and accountability will enhance the prospects for a lasting peaceful settlement of the conflict."

## 6. OFFICIAL RESPONSES TO THE SPECIAL RAPPORTEUR'S REPORT

6.1 The United Kingdom government issued a pre-prepared response to the Special Rapporteur's report. Although it welcomed the report, their response was full of misleading justifications of present policies and contained no concrete promises of reform. They refused to consider a judicial inquiry into Patrick Finucane's murder, claiming that it did not raise any matter of urgent public importance, and saying,

"Unless new evidence is brought to light there can be no justification for another inquiry although the police file remains open."

The journalist John Ware, who has researched the role of government agent Brian Nelson in the murder of Patrick Finucane, has recently published<sup>14</sup> disturbing new evidence which suggests that Nelson's

<sup>14</sup> *Time to come clean over the army's role in the 'Dirty War'*, New Statesman, 24.4.1998



handlers were well aware of the threat to Patrick Finucane's life, although no steps were taken to protect him. His evidence also suggests that MI5 may have censored the material that was passed to John Stevens concerning Nelson's activities, in order to exclude evidence relating to the Finucane killing. If fresh evidence is required for a public inquiry, his revelations ought to qualify.

- 6.2 The Irish government's response was much more positive. It expressed deep concern about intimidation of defence lawyers and called for "a full re-examination of the circumstances" of the murder of Patrick Finucane. The Irish government also made an oral statement along similar lines at the Commission hearing.
- 6.3 The Chief Constable of the RUC, Ronnie Flanagan, issued an extraordinary press statement, dated 19<sup>th</sup> March 1998, in response to a draft copy of the report sent to him by the Special Rapporteur. The draft report included the following passage:

"However, the Chief Constable did express the view that some solicitors may in fact be working for the paramilitaries. In this regard, he stated that this is more than a suspicion. He explained that one agenda of the paramilitary organizations is to ensure that detainees remain silent, and thus, one role of a solicitor is to convey this message to the detainee. Further, he stated that there is in fact a political divide in Northern Ireland and part of the political agenda is to portray the RUC as part of the unionist tradition. These allegations concerning police intimidation and harassment of solicitors is part and parcel of this political agenda. The Assistant Chief Constable also admitted that during the course of an interrogation an officer may express the view that the solicitor is providing bad advice to the client and not acting in his interests, for instance, by advising the client to remain silent."

The Chief Constable objected to parts of this paragraph and denied that he personally had uttered any such sentiments. As a result, the first two sentences were omitted and a small amendment was made to the start of the third sentence. The press release criticised the report as if these changes had not been made, and launches an attack on the Special Rapporteur's integrity. In a discussion with the UK mission in Geneva, British Irish RIGHTS WATCH was assured that the Chief Constable's press release did not reflect the government's views, and that, despite being issued on official RUC headed paper and having been issued to *Independent* journalist David McKittrick by the RUC press office, it was not an "official" press release.

## 7. INTERNATIONAL CONCERN ABOUT INTIMIDATION OF LAWYERS AND THE MURDER OF PATRICK FINUCANE

- 7.1 Five of the world's largest and most prestigious NGOs – Amnesty International, the International Commission of Jurists, Human Rights Watch, the International Federation of Human Rights (FIDH), and the Lawyers Committee for Human Rights – all of whom have been monitoring intimidation of lawyers in Northern Ireland and the murder of

Patrick Finucane, have issued a joint statement supporting the UN report and its recommendations. Amnesty, ICJ, FIDH and LCHR all made oral statements at the Human Rights Commission supporting the UN report.

- 7.2 The following functionaries and non-governmental organisations have expressed concern about the murder of Patrick Finucane and the issue of intimidation of lawyers:
- the United Nations Special Rapporteur on the Independence of Judges and Lawyers, Dato' Param Cumaraswamy;
  - Dr Claire Palley, UK nominee on the United Nations Commission on Human Rights;
  - Peter Burns, Rapporteur on the UK for the Committee Against Torture;
  - the Standing Advisory Commission on Human Rights, which advises the UK government on human rights in Northern Ireland;
  - Viscount Colville of Culross QC, in his capacity as Independent scrutineer of UK emergency laws;
  - Amnesty International;
  - the International Commission of Jurists;
  - the International Federation of Human Rights;
  - the Committee on the Administration of Justice;
  - Liberty;
  - British Irish RIGHTS WATCH;
  - the Haldane Society;
  - Norwegian Helsinki Committee;
  - the American Bar Association;
  - the Lawyers Committee on Human Rights;
  - Human Rights Watch (formerly Helsinki Watch);
  - the Law Society of England and Wales; and
  - the Association of the Bar of the City of New York.
- 7.3 The American State Department has also raised the murder in consecutive years in its country reports to the Senate on human rights in the UK.

## 8. CONCLUSION

- 8.1 British Irish RIGHTS WATCH welcomes the concern of the House Committee on International Relations' Subcommittee on International Operations and Human Rights, about human rights problems in Northern Ireland generally and about intimidation of defence lawyers and the murder of Patrick Finucane in particular.
- 8.2 We respectfully request the Subcommittee to take every opportunity open to it to persuade the British government to implement all the recommendations in the report by the United Nations' Special Rapporteur, especially his call for a full judicial inquiry into the murder of Patrick Finucane.

OCTOBER 1998

**SUBMISSION OF THE  
LAWYERS COMMITTEE FOR HUMAN RIGHTS**

**ON**

**"HUMAN RIGHTS AND LEGAL DEFENSE IN NORTHERN IRELAND"**

**TO THE  
HOUSE OF REPRESENTATIVES  
COMMITTEE ON INTERNATIONAL RELATIONS  
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS AND  
HUMAN RIGHTS**

**September 29, 1998**

## I. Introduction

The Lawyers Committee for Human Rights expresses its deep appreciation to Chairman Smith, Chairman Gilman and Members of the Subcommittee for their sustained attention to the important and complex issue of human rights in Northern Ireland. In particular, the Lawyers Committee is grateful to Chairman Smith for his persistence and objectivity both in shining a spotlight on human rights violations in Northern Ireland and in pressing for their elimination.

The Lawyers Committee for Human Rights is an independent, non-governmental organization. Since 1978, the Lawyers Committee has worked to protect and promote fundamental human rights, holding all governments accountable to the standards contained in the Universal Declaration of Human Rights and related international human rights instruments. In its efforts to provide workable solutions to human rights problems, the Lawyers Committee brings a principled legal focus grounded in international law and principles.

When the Subcommittee last met to discuss the issue of human rights in Northern Ireland nearly one year ago, multi-party peace talks were cautiously proceeding. Our chief concerns then were twofold: first, that human rights violations of a serious nature were continuing to occur in Northern Ireland; and second, that the peace process was failing to address these issues aggressively.

We are pleased to note that the Good Friday Agreement provides a framework not only for a political solution to the conflict in Northern Ireland but also for new institutions designed to effect real change in the area of human rights. But the commitments contained in the Agreement must be scrupulously and in good faith delivered upon if the Agreement is to fulfill its promise of a lasting peace. In order for peace and reconciliation in Northern Ireland to take on deep roots in Northern Ireland, all members of the community must feel that their rights are being respected.

The Lawyers Committee believes that a transparent and fair justice system is a barometer of the health of a civil society and a strong indication of a government's commitment to human rights and the rule of law. In two reports following extensive fact-finding missions, the Lawyers Committee has focused on a number of problems related to the justice system in Northern Ireland.<sup>1</sup> Key among these problems is the intimidation and harassment of human rights and defense lawyers. This is a subject to which the Lawyers Committee has devoted considerable attention over the years. It is a problem which is not unique to Northern Ireland. As evidence of the pervasive nature of

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<sup>1</sup> See Lawyers Committee for Human Rights, *Human Rights and Legal Defense in Northern Ireland: The Intimidation Defense Lawyers, The Murder of Patrick Finucane*, (1993). See Lawyers Committee for Human Rights, *At the Crossroads: Human Rights and the Northern Ireland Peace Process*, (1995).

the problem and the central role played by lawyers in the protection of rights, the United Nations has appointed a Special Rapporteur on the Independence of Judges and Lawyers to investigate and report on problems in this area. We are pleased that the Subcommittee is taking this opportunity to examine and comment on the Special Rapporteur's most recent Report on Northern Ireland. Our statement here addresses the Special Rapporteur's Report and, in addition, comments on a number of other emerging issues which affect progress towards the full realization of human rights in Northern Ireland.

## **II. The Report of the UN Special Rapporteur**

The Report of April 1, 1998 by Dato' Param Cumaraswamy, the United Nations Special Rapporteur on the Independence of Judges and Lawyers, offers a persuasive and comprehensive description of serious violations of human rights occurring in Northern Ireland, particularly in connection with police conduct toward lawyers defending parties charged with terrorism-related offenses. The Lawyers Committee for Human Rights welcomes this Report and supports without reservation the Special Rapporteur's recommendations. In particular, the Lawyers Committee concurs in the Rapporteur's conclusion that officers of the Royal Ulster Constabulary have engaged in systematic abuse and intimidation of defense lawyers in Northern Ireland. These problems should be promptly investigated, and those found responsible should be held accountable. We would like to draw particular attention to Mr. Cumaraswamy's recommendation that the U.K. Government initiate an independent judicial inquiry into allegations of official involvement in the murder of Belfast solicitor Patrick Finucane.

### **A. The Findings of the Report**

The Report of the Special Rapporteur has identified a number of serious violations of human rights occurring in Northern Ireland.

#### **1. The RUC persists in the intimidation and harassment of defense lawyers.**

The Special Rapporteur found that the RUC has engaged in a pattern of intimidation and harassment of solicitors who defend individuals charged with terrorism-related offenses. This conduct ranges from questioning the integrity of lawyers to issuing death threats against lawyers through their clients. The Special Rapporteur emphasized that he interviewed numerous lawyers, all of whom confirmed the existence of this sort of conduct. Rosemary Nelson and Peter Madden, both defense lawyers in Northern Ireland who present testimony today to the Subcommittee, have confirmed to the Lawyers Committee that such conduct on the part of the RUC persists even after the signing of the Good Friday Agreement.

The Report of the Special Rapporteur highlights Principle 18 of the United Nations Basic Principles on the Role of Lawyers, which provides that:

*"Lawyers shall not be identified with their clients' causes as a result of discharging their functions," and expresses concern that "the RUC has in fact identified lawyers who represent those accused of terrorist related offences with their clients or their clients' causes and further, that they have interfered in the attorney/client relationship by questioning during the course of interrogations the integrity and professionalism of solicitors." (Paragraph 25)*

Principle 16 of the United Nations Basic Principles on the Role of Lawyers provides that:

*"Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics."*

Based on the Special Rapporteur's Report and on our own findings, we must conclude the U.K. Government has failed to uphold this principle.

In addition, the Report criticizes the Northern Ireland Bar Council and Law Society for not taking a sufficiently active role in defending their members and complaining to the authorities about abuses. In order for these organizations to do a better job, however, the Report also states that barristers and solicitors will have to report their complaints more systematically:

*"The Special Rapporteur is also concerned that the reports by non-governmental organizations such as the Lawyers Committee for Human Rights and British-Irish Rights Watch detailing this pattern of harassment and intimidation seem to have been dismissed by the RUC as baseless. In the view of the Special Rapporteur, these reports should serve as a basis for a dialogue between the RUC and the Law Society to improve the conditions under which defence solicitors must work within the Holding Centres." (Paragraph 31)*

In this regard the Special Rapporteur also refers to Principle 25 of the United Nations Basic Principles on the Role of Lawyers, which provides that:

*"Professional associations of lawyers shall cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional*

*standards and ethics."*

**2. Detainees are systematically denied access to counsel.**

The Report indicates that the Prevention of Terrorism Act and the Emergency Provisions Act provide for the deferral of a detainee's right to see counsel under certain circumstances. The Report emphasizes the critical importance of the right to have counsel present during all interrogations. In this regard the Special Rapporteur again cites the United Nations Basic Principles on the Role of Lawyers as follows:

*"Principle 5: Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence."*

*"Principle 7: Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than 48 hours from the time of arrest or detention."*

*"Principle 8: All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and to consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials."*

The Lawyers Committee for Human Rights believes that adequate access to counsel during interrogations is particularly important given the significance role currently of confessions in the prosecution of suspects in Northern Ireland and the history of police abuse, and supports the view of the Special Rapporteur that:

*" . . . [I]t is desirable to have the presence of an attorney during police interrogations as an important safeguard to protect the rights of the accused. The absence of legal counsel gives rise to the potential for abuse, particularly in a state of emergency where more serious criminal acts are involved. In the case at hand, the harsh conditions found in the holding centres of Northern Ireland and the pressure exerted to extract confessions further dictate that the presence of a solicitor is imperative."*

The Lawyers Committee has urged the U.K. Government to introduce legislation which would grant an accused the right to access to counsel during interrogations and which would thereby overrule the House of Lords' finding in the case of *In re Charles Begley's Application* which denies such access to persons detained under emergency laws.

The Report also describes the procedure by which certain high-risk prisoners are required to consult with their lawyers through a screen. The Report concludes that this procedure is an unnecessary infringement on the ability of defense lawyers to prepare their cases, at least in the absence of evidence of abuse. The Report notes that the Government has indicated that it will discontinue the practice.

3. **The failure of the U.K. Government to uphold the right to silence and the right to trial by jury have resulted in miscarriages of justice and a lack of confidence in the justice system on the part of a large segment of society in Northern Ireland.**

The Report strongly criticizes existing limitations on the right to silence in Northern Ireland. It notes that limitations on this right have led to human rights abuses and miscarriages of justice, without apparent impact in terms of increased conviction rates:

*"A joint study by the non-governmental organization, Committee for the Administration of Justice and Liberty claims that the extension of the provisions [Criminal Evidence (Northern Ireland) Order of 1988] took place with no empirical assessment of whether the desired results (i.e., increased convictions) and the stated dangers had in fact resulted from the legislation in Northern Ireland. To the contrary, the study demonstrates that the statistical evidence indicates no change in conviction rates for serious crime resulting from the imposition of the order. The study further concludes that the caution given upon arrest is poorly understood by suspects; that vulnerable suspects are being pressured to speak; that innumerable professional conflicts arise for lawyers from the adverse inferences; that the shift in the burden of proof at trial is real and pronounced; that the use of the inference at preliminary inquiry is pushing cases with insufficient prima facie evidence to trial; and that judges have displayed a lack of caution in their willingness to read negative inferences into a defendant's silence." (Paragraph 78)*

The Report notes that establishment of the so-called Diplock courts in which certain terrorism-related offenses are tried without a jury has had the effect of eroding public confidence in the administration of justice in Northern Ireland. The Report states that the absence of a jury and the unique role that judges play in such cases, including the inferences that may be drawn from the silence of the accused, has altered the manner in which judges are viewed. The result, according to the Report, is that a large segment of the population of Northern Ireland view the administration of justice in such cases as not being independent and impartial.

The Report criticizes the standards for admitting at trial confessions induced through psychological pressure and other forms of coercion. The Special Rapporteur



emphasizes that changing these standards is particularly important given the poor conditions in which many detainees are held.

### **B. The Report's Recommendations**

The Lawyers Committee for Human Rights endorses all of the Recommendations made by the Special Rapporteur in Section VIII of his Report. The Lawyers Committee in particular urges the U.K. Government to take immediate action on the following items in order to restore due process to the Northern Ireland justice system:

- An end to deferral of access to legal advice for those held under emergency laws;
- The introduction of legislation to give suspects the right to have a solicitor present during all police interviews;
- The introduction of video- and audio-recording of police interviews;
- The immediate restoration of the rights to remain silent under police questioning and to refrain from testifying in self-defense without adverse inferences being drawn from such silence;
- The extension to detainees held under emergency laws of the higher Police and Criminal Evidence Act two-part test regarding confessions, mandating that a confession is inadmissible in a court of law if it was obtained by "oppression" (such as threats of violence or degrading treatment) or by conduct which otherwise renders the confession unreliable;
- The restoration of the right to trial by jury;
- An end to the practice of closed prison visits in England and Wales;
- The exemption of lawyers' offices from official surveillance; and
- Training on international human rights laws and norms for the judiciary and the police.

The Special Rapporteur, in his address on the Report to the United Nations Commission on Human Rights, stated that:

*"I am quite conscious of the fact that the ongoing peace talks in Northern Ireland are at a crucial stage. It is within this context that I concluded and made these recommendations in my report with the conviction that respect for the rule of law and human rights with greater confidence in public institutions showing transparency and accountability will enhance*

*the prospects for a lasting peaceful settlement of the conflict."*

The Good Friday Agreement clearly echoes those sentiments. The Lawyers Committee for Human Rights believes that a just and durable peace in Northern Ireland will depend on an independent, well-informed judiciary and on lawyers unhindered in their duties by abusive treatment at the hands of law enforcement officials. It will also depend on respect for the rule of law, which the proposed reforms would do much to enhance.

### C. The Finucane Case

In his Report, the Special Rapporteur urges the U.K. Government to appoint a judicial inquiry to investigate the murder of Patrick Finucane in 1989. The Lawyers Committee strongly concurs in this recommendation.

The following is an extract from the Lawyers Committee's *Oral Statement on Northern Ireland* presented before the 54<sup>th</sup> Session of the Commission on Human Rights, April 2, 1998 in Geneva:

*In 1992 the Lawyers Committee published a report entitled "Human Rights and Legal Defense in Northern Ireland". It focused on the intimidation of lawyers defending those who are involved in security cases. It included a detailed examination of the murder of Belfast solicitor Patrick Finucane.*

*The Special Rapporteur devotes considerable attention to the Finucane case in his Report. He notes, accurately, that Mr. Finucane received numerous death threats from RUC officers, mostly delivered via his clients. He reports that since Mr. Finucane's murder in 1989, "further information that seriously calls into question whether there was official collusion has come to light . . ." The Special Rapporteur points out that although "this was only one of hundreds of unsolved murders in Northern Ireland, the murder of Patrick Finucane can be distinguished." He goes on to say that "as a high profile lawyer who had tremendous success representing clients, both before domestic courts and the European Court of Human Rights, his murder had a chilling effect on the profession and further undermined public confidence in the judicial system."*

*Based on these and other findings, the Special Rapporteur has concluded that "the outstanding questions surrounding the murder of Patrick Finucane demonstrate the need for an independent judicial inquiry. So long as his murder is unresolved, many in the community will continue to lack the public confidence in the ability of the Government to dispense justice in a fair and equitable manner."*

The Lawyers Committee is deeply disappointed with the U.K. Government's refusal to launch the recommended inquiry. The grounds of refusal given by the Government are that the matter lacks a sufficient degree of urgent public importance. Such a response demonstrates the failure on the part of the U.K. Government fully to appreciate the gravity of the allegations of official collusion in this crime. As the Lawyers Committee has long argued, the murder of Patrick Finucane under circumstances which suggest official involvement or collusion goes to the heart of public confidence in the justice system of Northern Ireland. Failure to address this issue through an independent inquiry will continue to be a stumbling block in the progress towards normalization of the Northern Ireland justice system.

### **III. Legislation Implementing the Good Friday Agreement**

The Agreement, which won an overwhelming vote of approval in both the Northern Ireland and the Republic of Ireland, recognizes that progress on the human rights agenda is a pivotal goal in the days and months ahead. The Special Rapporteur's Report spells out the most urgent needs in meeting that goal, and the Lawyers Committee for Human Rights continues to press the U.K. Government to draw up specific plans for implementing the recommendations outlined in Mr. Cumaraswamy's Report.

In particular, the Agreement makes provision for the establishment of a policing commission which will make proposals for a future police service that can enjoy widespread support from, and be seen as an integral part of, the community as a whole. The Lawyers Committee for Human Rights believes that a central element of this process must be the recognition of the problems outlined in the Report of the Special Rapporteur and full implementation of the Report's recommendations.

#### **A. The Human Rights Act**

Prior to the conclusion of the Good Friday Agreement, the U.K. Government announced its intention to put forward legislation that would incorporate into U.K. law the European Convention on Human Rights, making its provisions directly effective in the U.K. The new Human Rights Act is expected to be enacted in November 1998 and to come into force some time in the year 2000. The Lawyers Committee welcomes this development and urges the U.K. Government to bring the law into force as soon as possible.

The Lawyers Committee for Human Rights regrets, however, that the Act has been weakened since its initial drafting stage in that it preserves the doctrine of parliamentary sovereignty thereby denying the status of supremacy to the ECHR that the Treaty of the European Union holds in the commercial/economic field. Nevertheless, the Lawyers Committee welcomes the wide powers that have been granted under the Act and in particular the requirement that all new U.K. legislation be drafted in light of it and certified to conform to it. The Lawyers Committee for Human Rights would hope that

the European Convention on Human Rights is given full supremacy status in the near future in the United Kingdom.

## **B. Northern Ireland Bill**

The Northern Ireland Bill, which will implement portions of the Good Friday Agreement, is now being debated before the U.K. Houses of Parliament. It has had its second reading in the House of Lords and is at the committee stage there. The Bill is expected to come into force before the Human Rights Act.

The Lawyers Committee for Human Rights notes that the Bill as it is currently drafted fails to implement fully some provisions of the Good Friday Agreement. In chief, it does not give adequate powers to the Human Rights Commission for it to fulfil its function as proposed in the Agreement. The Agreement states that:

*"4. The new Northern Ireland Human Rights Commission will be invited to consult and advise on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and – taken together with the ECHR – to constitute a Bill of Rights for Northern Ireland . . .*

*5. A new Northern Ireland Human Rights Commission . . . will be established by Westminster legislation, independent of Government, with an extended and enhanced role beyond that currently exercised by the Standing Advisory Commission on Human Rights, to include keeping under review the adequacy and effectiveness of laws and practices, making recommendations to Government as necessary; providing information and promoting awareness of human rights; considering draft legislation referred to them by the new Assembly; and, in appropriate cases, bringing court proceedings or providing assistance to individuals doing so."*

The Lawyers Committee submits that this requires that the Commission be granted full power to compel cooperation of witnesses and the production of papers as well as the power to initiate legal proceedings on its own behalf as well as providing assistance to individuals bringing proceedings. The Bill as it currently stands, however, denies the Human Rights Commission sufficient evidentiary and investigative powers, and seeks to maintain consistency with the Human Rights Bill, which requires individuals to be a 'victim' of any alleged breach of the European Convention on Human Rights before they may litigate. This restriction is carried across to the Northern Ireland Bill. The Lawyers

Committee maintains that the provisions of the Good Friday Agreement are not merely aspirational and that, because of its special circumstances, the province of Northern Ireland should be treated differently than the rest of the United Kingdom in this respect.

#### IV. New Emergency Legislation

##### A. United Kingdom of Great Britain and Northern Ireland

The New Emergency Act effectively eliminates an accused's right to silence in the realm of terrorist-related offenses. A person may be convicted of belonging to a proscribed organization, with a maximum penalty of 10 years imprisonment, on the word of a senior police officer. Refusal by a suspect to answer any relevant question during interrogation or later, or a refusal to co-operate with any relevant inquiry, may be regarded as corroboration of the police officer's evidence and read as an inference of guilt. The Lawyers Committee for Human Rights maintains that this legislation, in conjunction with existing emergency legislation, contravenes European and International Human Rights standards, and is unlikely to survive a challenge in the European Court of Human Rights.

The Good Friday Agreement expressly aspires to a climate in Northern Ireland where emergency legislation would no longer be necessary:

##### *"SECURITY*

*The participants note that the development of a peaceful environment on the basis of this agreement can and should mean a normalization of security arrangements and practices.*

*The British Government will make progress towards the objective of as early a return as possible to normal security arrangements in Northern Ireland, consistent with the level of threat and with a published overall strategy, dealing with:*

...  
 (iii) *the removal of emergency powers in Northern Ireland . . ."*

The new legislation clearly goes against both the letter and the spirit of the Agreement. The Lawyers Committee regrets its enactment and would urge the U.K. Government not to resort to it, in the interests of the fair administration of justice, and to seek its early repeal.

##### B. Republic of Ireland

Regrettably, the Republic of Ireland as well, in apparent reaction to the terrible bombing in Omagh, introduced draconian anti-terrorism legislation in clear contravention of European and international human rights standards. Similarly to the legislation passed by the United Kingdom, this emergency legislation amounts to a withdrawal of the

suspect's right to silence. Refusal to answer police questions can be used as corroboration of a chief superintendent's evidence that a defendant is a member of an illegal organization.

The Lawyers Committee for Human Rights notes that the Republic of Ireland has yet to make the European Convention on Human Rights directly effective in domestic law despite increasing pressure for it to do so. The Republic of Ireland is alone among the 40 members of the Council of Europe in failing to incorporate the European Convention into its domestic law.

The Irish Republic made express commitments in the Agreement regarding human rights:

*"9. The Irish Government will . . . take steps to further strengthen the protection of human rights in its jurisdiction. The Government will . . . bring forward measures to strengthen and underpin the constitutional protection of human rights. These proposals will draw on the European Convention on Human Rights and other international legal instruments in the field of human rights and the question of the incorporation of the ECHR will be further examined in this context. The measures brought forward would ensure at least an equivalent level of protection of human rights as will pertain in Northern Ireland. In addition, the Irish Government will:*

*Establish a Human Rights Commission with a mandate and remit equivalent to that within Northern Ireland; . . .*

*Continue to take further active steps to demonstrate its respect for the different traditions in the island of Ireland." (Article 6)*

The Lawyers Committee for Human Rights would urge the Irish Government to enact appropriate legislation making the ECHR directly applicable thereby conforming to a common standard of human rights, and would urge the Government not to resort to the recently enacted anti-terrorism law.

The Irish Government also committed itself under the Agreement to reviewing its emergency legislation:

*"5. The Irish Government will initiate a wide-ranging review of the Offences Against the State Acts (1939-1985) with a view to both reform and dispensing with those elements no longer required as circumstances permit."*

## V. Conclusion

The U.S. Government has made a substantial investment in pressing for a peaceful

resolution of the conflict in Northern Ireland, an investment that is now beginning to pay dividends with the conclusion of the Good Friday Agreement. The challenges facing Northern Ireland today are very different from those which it faced even just a year ago. Recognition by the U.K. Government of the defects in the criminal justice system in Northern Ireland, including in policing, and of the damage done to the administration of justice by years of operation under emergency law, is an important first step towards restoration of the rule of law. When defense lawyers no longer practice under fear or threat of harm, this will be an indication that the justice system in Northern Ireland is on the mend. But, as Mr. Cumaraswamy's Report clearly demonstrates, there is quite a way to go towards this end.

The Good Friday Agreement provides a roadmap for achieving the common goals of the people of Northern Ireland. Delivery on the promise of the Agreement would be significantly advanced if the U.K. Government moved forward to implement the recommendations contained in Mr. Cumaraswamy's powerful Report. We respectfully suggest that the Subcommittee undertake to communicate its views on these matters directly to the Governments of the U.K. and the Republic of Ireland, and that it urge the U.S. Administration to remain attentive to these issues which are so critical to building a lasting peace in Northern Ireland.



JEDONM J. SHOSTAKZ  
 President  
 American Bar Association  
 750 North Lake Shore Drive  
 Chicago, IL 60611  
 (312) 962-5100  
 FAX (312) 962-5100  
 Internet: abapresident@abonet.org

AMERICAN BAR ASSOCIATION

Direct Personal Replies to:  
 Twelfth Floor  
 Packard Building  
 15th & Chestnut Street  
 Philadelphia, PA 19102-2678  
 (215) 977-2290  
 FAX: (215) 977-2787

July 27, 1998

The Right Honorable Dr. Marjorie Mowlan  
 Secretary of State for Northern Ireland  
 Stormont Castle  
 Belfast, Northern Ireland BT7 3ST

*Dear Dr. Mowlan,*

On behalf of the American Bar Association (ABA), I write to express our longstanding commitment to the rule of law and to convey our serious concerns regarding occurrences in Northern Ireland. We are particularly concerned with police conduct toward lawyers defending parties charged with terrorism-related offenses and widespread denial of basic rights-of-the-accused for defendants in such cases. These human rights violations have been persuasively and comprehensively described in the Report of April 1, 1998 by Datta Param Cumaraswamy, the United Nations Rapporteur on the Independence of Judges and Lawyers, a copy of which is enclosed.

Representing more than 392,000 members, the American Bar Association has a long standing commitment toward the preservation of the rule of law throughout the world. Pursuant to this commitment, we seek to encourage a justice system which actively preserves the independence of judges, lawyers and human rights advocates in order to uphold internationally recognized standards of fairness and justice. We appreciate the United Kingdom's commitment to that goal.

The American Bar Association is concerned about the U.N. Special Rapporteur's conclusions that officers of the Royal Ulster Constabulary have engaged in systematic abuse of defense lawyers in Northern Ireland, including allegations of official involvement in the murder of Belfast solicitor Patrick Finucane. In addition, the Special Rapporteur's Report reveals a widespread and continuous denial of core rights, including the right to counsel during interrogation, the right to remain silent, the right to be free from use of confessions that were secured by psychological pressure, deprivation, or other nonviolent forms of coercion, and the right to trial by jury.

The American Bar Association believes that such harassment of lawyers and denial of basic rights of the accused, if true, clearly would violate international human rights norms. These norms include Articles 19 and 22 of the International



Convention on Civil and Political Rights ("ICCPR") (protecting freedom of expression and association) and Article 14 (preserving, among other rights, the rights of the accused to communicate with counsel of his own choosing, to be fairly tried without undue delay, and to be free from self incrimination) The ABA supports the ICCPR and passed a resolution in 1979 urging the United States to ratify the ICCPR, which it did in 1992. Because the United Kingdom is a party state to the ICCPR, the government is surely poised to take steps to end the patterns of harassment of lawyers and policies denying rights of the accused, and to insure compliance with international obligations under the ICCPR.

The American Bar Association is aware that the recently approved Peace Accord, which won enormous approval of opposing interest, has identified preservation of basic human rights as an essential ingredient of any lasting peace. The peace process obviously is at a critical juncture.

We urge the government of the United Kingdom to give serious consideration to the specific recommendations and solutions proposed by the U.N. Special Rapporteur to address the ongoing deprivations of human rights in Northern Ireland. Indeed, the Irish government has expressed the view that the Special Rapporteur's Report "will be of considerable assistance in addressing the need to build confidence in the administration of justice on the part of both traditions in Northern Ireland." In particular, we immediate action is highly desirable to address the intimidation and harassment of defense lawyers, including conducting independent investigations of all threats to legal counsel in Northern Ireland; providing the necessary protection when threats of physical violence are made against lawyers; and education of police on the importance of defense lawyers to the administration of justice. Moreover, with regard to the rights of the accused, we endorse the Special Rapporteur's recommendations for legislation to restore to the accused the right to have a solicitor present during all police interviews; to restore the rights to remain silent under police questioning and to refrain from testifying in self-defense without adverse inferences being drawn from such silence; to restore the right to trial by jury; and to provide human rights training for members of the judiciary and the police.

The sole concern of the American Bar Association is for the maintenance of the rule of law in the international community and the elements necessary to sustain it, a concern that we know is shared by the legal profession in the United Kingdom. We recognize that preservation of the security of the state and public order are responsibilities of any government. Nevertheless, we suggest that these concerns can be addressed without causing or permitting harassment of defense lawyers in Northern Ireland. Similarly, the government's concern for security should not justify abrogation of fundamental rights of fair criminal procedure.

We therefore, respectfully urge the government of the United Kingdom to take all steps necessary to ensure that lawyers are not intimidated because of the

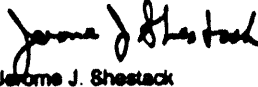
clients or cause; that they champion, and that the rights of the accused, as basic human rights, be preserved.

In view of the 50th Anniversary of the Universal Declaration of Human Rights, it is especially appropriate for all nations to implement the fundamental human rights to which it has subscribed as a member of the United Nations. The United Kingdom's heritage of encouraging the rule of law makes the concern of the U.N. Rapporteur especially compelling.

We look forward to your reply so that we can address our hundreds of thousands of members in this country and worldwide of your government's response to our serious concerns.

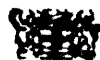
With expression of esteem.

Sincerely,



Jerome J. Shestack

cc: The Honorable Madeleine Albright, Secretary of State, United States  
Department of State  
The Honorable Bertie Ahern, Taoiseach  
The Honorable John Shattuck, Assistant Secretary for Democracy, Human  
Rights and Labor, United States Department of State  
The Honorable Philip Lader, United States Ambassador to the United  
Kingdom  
The Honorable Jean Kennedy Smith, United States Ambassador to Ireland  
The Honorable Christopher Mayer, Ambassador of the United Kingdom to the  
United States  
The Honorable Sean O'Huiginn, Ambassador of Ireland to the United States




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**THE LAW SOCIETY**


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113 Chancery Lane  
London WC2A 1PL  
Tel 0171 343 1222

Telex 261203  
Dr. 54 LOND-CHANCERY LN  
Fax 0171- 631 0344

The Rt Hon Tony Blair MP  
Prime Minister  
10 Downing Street  
London  
SW1A 2AA

Our Ref: P/3.5.1/261/kh  
31 June 1998

*Dear Prime Minister*

The Law Society of England and Wales has studied with interest the report of the UN Special Rapporteur on the independence of judges and lawyers following his mission in October 1997 to the United Kingdom and Northern Ireland (UN Document E/CN.4/1998/39/Add.4). As you may be aware, the Law Society's International Human Rights Working Party produced a report *Northern Ireland: An Emergency Ended?* in 1995 and was able to brief the Special Rapporteur during his 1997 mission. A copy of this report is enclosed for your information.

The Law Society believes that the United Kingdom Government's decision to invite the Special Rapporteur to carry out on-site investigations was to be welcomed. It has noted the government's written response, circulated at the recent session of the UN Commission on Human Rights, including the expression of concern about the harassment of defence lawyers. Given that the Law Society reported such problems in 1995, and the recent instances raised in the Special Rapporteur's report (paragraphs 16 to 20), we are surprised that the government's written response requested "specific details" and said that "new evidence" will be looked into. It is our hope that the government will look again at the Special Rapporteur's recommendations (paragraph 91) and will take prompt action to ensure the safety of all lawyers in Northern Ireland.

In 1995, the Law Society's report recommended that a judicial enquiry with subpoena powers be held to establish the facts of the murder in February 1989 of lawyer Patrick Funicane. The Special Rapporteur reported that solicitors informed him that "the murder led them either to give up criminal practice entirely or to alter the manner in which they handled terrorist-related cases" (paragraph 72). Citing Principle 17 of the UN Basic Principles on the Role of Lawyers and Article 6 of the International Covenant on Civil and Political Rights, the Special Rapporteur commented that "[s]o long as this murder is unresolved, many in the community will continue to lack confidence in the ability of the Government to dispense justice in a fair and equitable manner" (paragraph 73).

The Law Society is disappointed that the government considers that there is "no justification for another enquiry unless new evidence is brought to light". We reiterate our comment in our 1995 report that "[t]his case justifies special treatment because of its impact on the administration of justice" (page 43).

recommendation of the UN Human Rights Committee which stated that "[i]n context of the negotiation of a peace settlement for Northern Ireland, that further concrete steps be taken so as to dismantle the apparatus of laws infringing civil liberties which were designed for periods of emergency" (UN Document CCPR/C/79/Add.55, 27 July 1995) The Law Society endorses the Special Rapporteur's conclusion that "respect for the rule of law and human rights with greater accountability from all public institutions will enhance the prospect for a peaceful resolution of the conflict" (paragraph 89).

The Special Rapporteur's recommendations, if implemented, would do much to underpin the tremendous efforts now being made to re-establish a sound democratic society in Northern Ireland. In particular, the Special Rapporteur makes a number of recommendations (see below) which the Law Society endorses:

- an end to deferral of access to legal advice for those held under emergency laws;
- the introduction of legislation to give suspects the right to have a solicitor present during all police interviews,
- the immediate restoration of the right to remain silent under police questioning and to refrain from testifying in self-defence without adverse inferences being drawn from such silence,
- the extension of the PACE standard for the admissibility of confession evidence to all cases;
- the restoration of the right to trial by jury;
- an end to the practice of closed prison visits in England and Wales;
- the exemption of lawyers' offices from official surveillance; and
- training on international human rights laws and norms for the judiciary and the police.

*Yours sincerely,  
Phillip Sycamore.*

Phillip Sycamore  
President

enc. *Northern Ireland: An Emergency Ended!*

cc. Dr. Marjorie Mowlem

## PAPER FOR THE US CONGRESS HUMAN RIGHTS SUB-COMMITTEE ON POLICE COMPLAINTS IN NORTHERN IRELAND

The British Government is, unfortunately, not able to send a representative to attend the Committee's meeting on Tuesday 29 September to discuss alleged harassment of defence lawyers. It would, however, like to offer the Committee a note on the police complaints system in Northern Ireland and on future developments to this.

The British Government has made it clear that it will not tolerate harassment or intimidation of lawyers, or anyone else, and nor will the Chief Constable. Where allegations are made then they are investigated and if there is evidence to substantiate such allegations the appropriate action will be taken. However, as the UN Special Rapporteur recently observed, solicitors have rarely filed such complaints. He has encouraged them to do so, as has the Government.

Where complaints are made they are rigorously investigated. The current system for investigation of complaints is by the police, but a separate department within the RUC (Complaints and Discipline Branch) carries this out. Investigations are overseen by an outside body, separate from the RUC, the Independent Commission for Police Complaints (ICPC). The ICPC must supervise the investigation of more serious cases and it may supervise the investigation of less serious complaints if it considers it in the public interest to do so. This is a significant power. The Commission has to approve the appointment of the investigating officer and can direct and control the conduct of the investigation. At the end of the investigation the Commission is required to issue a statement of satisfaction or otherwise. It also looks at the discipline aspects of a case and can direct disciplinary charges.

Nevertheless the Government recognises that there are weaknesses in the current system.

The Government, therefore, this year passed the Police (Northern Ireland) Act through Parliament which provides for the establishment of a new office of Police Ombudsman, which we hope will be in place by 1 March 1999. The creation of a Police Ombudsman was recommended in an independent report commissioned by the Government - the report was prepared by Dr Maurice Hayes, a former Northern Ireland Ombudsman. His recommendation for a Police Ombudsman was made after extensive research throughout the world, including of civilian complaints bodies in the United States. The Police Ombudsman will be in a unique position with extensive powers. He/she will have complete control of the complaints process, and will decide what is or is not a complaint. He or she will be able to be involved even where there is no complaint, if this is in the public interest. In other words the Ombudsman will be able to react to an incident and need not wait for a complaint. Importantly, he or she will decide how complaints are to be investigated and will be required to investigate all serious complaints, i.e. those where it is

alleged that police conduct has caused death or serious injury. The Office of the Ombudsman may independently investigate any other complaint it chooses, or refer it to the police to investigate, but with supervision by the Ombudsman. After any investigation, whether by the Ombudsman or police, the Ombudsman will consider the report and will consider whether this indicates that a criminal offence may have been committed by a member of the police force. If so, he or she will send a copy of the report to the Director of Public Prosecutions together with his/her recommendations.

Once the issue of criminal proceedings has been dealt with the Ombudsman is required to make recommendations on disciplinary proceedings. Where the Chief Constable is unwilling to bring such proceedings the Ombudsman may direct proceedings which will be heard by an independent tribunal.

These radical reforms have received widespread support, including from the police, and are aimed at building greater public confidence in the system, whilst also inspiring police confidence.

We understand that the Committee is particularly interested in the case of Rosemary Nelson. Although it would not be appropriate to get into the detail of individual cases we can say that Ms Nelson's complaints are currently being investigated by Commander Mulvihill, an officer of the Metropolitan Police, under the supervision of the Independent Commission for Police Complaints.

It is also worth mentioning that in response to the recommendation in paragraph 91(e) of the UN Rapporteur's Report the Chief Constable has had a series of meetings with the Law Society in relation to their involvement in police detective training. These discussions are ongoing.

Finally, the terms of reference for the independent Commission for Policing in Northern Ireland include a requirement to ensure that "there are open, accessible and independent means of investigating and adjudicating upon complaints against the police". The Commission will be able, therefore, to review the working of the Police Ombudsman if it thinks that necessary.

## **RESPONSE TO THE CONCLUSIONS AND RECOMMENDATIONS TO THE UN SPECIAL RAPPORTEUR'S REPORT.**

We welcome the report of the UN Special Rapporteur on the Independence of Judges and Lawyers, Mr. Kumaraswamy, following his visit to the United Kingdom in October 1997. Britain fully supports the UN's human rights machinery of which the system of Special Rapporteur's is a key element. We are pleased that Mr. Kumaraswamy has noted the positive steps that the United Kingdom has taken to ensure the independence of its judiciary but are concerned about his comments about the harassment of defence lawyers. We are examining these closely. Meanwhile, we are forwarding some information relating to specific points made in the Special Rapporteur's report.

### **The Harassment And Intimidation Of Solicitors.**

We have considered carefully the Special Rapporteur's comments on "the harassment and intimidation of solicitors". The conclusion, in paragraph 90, is "that the RUC has engaged in activities which constitute intimidation, hindrance, harassment or improper interference".

This obviously is a matter of considerable concern. We would ask, however, to be provided with the specific details on which the allegations are made. If there is new evidence we will want to ensure that this is looked into.

The current system for investigation of complaints is by the police, but a separate department within the RUC carries this out, overseen by the Independent Commission for Police Complaints (ICPC). In more serious cases the ICPC will supervise the case. This is a significant power.

The Commission has to approve the appointment of the investigating officer and can direct and control the conduct of the investigation.

At the end of the investigation the Commission is required to issue a statement of satisfaction or otherwise. They also look at the discipline side and can direct disciplinary charges.

Nevertheless the Government, and indeed the ICPC, recognise there are weaknesses in the current system which are failing to inspire public confidence.

The Government, therefore, has introduced the Police (Northern Ireland) Bill which provides for a :

- An Police Ombudsman to be appointed who will have complete control of the complaints process.
- The Ombudsman decides what is or is not a complaint. He may call himself in even where there is no complaint, if this is in the public interest.
- The Ombudsman to be wholly independent.

These reforms have received widespread support, and are aimed at building greater public confidence in the system (while also inspiring police confidence).

An area often criticised, and seen as a reason for the relatively low number of substantiated cases, is the standard of proof. The Government is currently considering a report by the Home Affairs Select Committee which recommended a change to the balance of probabilities.

In the meantime, while change is awaited, we have been encouraging people to recognise what the Government is asking to do and to co-operate with the system as it exists. We note that the Special Rapporteur recommends such co-operation.

#### Concerning Access To Lawyers in England and Wales

In paragraph 93(a) and (b) of his report the Special Rapporteur recommends that Section 14 of the Prevention of Terrorism Act should be amended to prohibit the deferral of access of counsel to their clients and that the right to have a solicitor present during police interviews should be respected.

In practice, access is rarely deferred. The Metropolitan Police are not aware of any instances in England and Wales in the past two years where access to a solicitor of choice has been delayed.

The Government is to publish later in the year a consultation document with proposals for permanent UK wide counter-terrorism legislation. This will look at all aspects of the current emergency legislation, including conditions of detention.

#### Closed Legal Visits

In paragraph 94(c) of his report the Special Rapporteur recommends that the practice of closed visits in England and Wales should be discontinued.

The Prison Service recognises the implications of imposing closed visits on a prisoner held in a special secure unit (SSU). Only those prisoners who are held to constitute the greatest danger to the public and have been categorised as exceptional risk are subject to closed visits. There are currently six exceptional risk prisoners in England and Wales. These prisoners are held in the Whitemoore SSU. The SSU at Full Sutton is currently out of use. The building at Belmarsh which housed the SSU is now used to hold high risk prisoners.

There are no terrorist prisoners among the six men currently being held in the SSU at Whitemoore. All of the prisoners currently held in SSUs have been classified as exceptional escape risk: they could have access to substantial outside assistance in any escape attempt and would constitute a very real threat should they escape.

Rule 37 of the Prisons Rules 1964 sets out the requirements for visits by legal advisers. Legal visits must take place in sight but out of hearing of prison staff. The closed visits policy is consistent with this. A prison officer remains in the visits room during



a domestic visit but outside during legal visits. Arrangements have been made to ensure that legal visits can be conducted properly under secure conditions and to ensure that documents can be transferred securely and confidentially between legal adviser and prisoner. There were some practical difficulties with the operation of the closed visits facilities immediately after their introduction but these were quickly resolved.

The closed visits facilities have been inspected by an independent barrister on a number of occasions. He has concluded that the facilities do not impede legal conferences.

The introduction of closed visits in 1995 was challenged in the courts. The judicial review of the policy had three grounds:

- that there was no power to impose closed visits;
- that the decision to do so was unreasonable and
- that the closed visits facilities were unsatisfactory.

The Court found in favour of the Prison Service on all three grounds but instructed it to keep the policy under review.

The issue went to appeal. In February 1997 the Court of Appeal also found in favour of the Prison Service. The Court found that, although in normal circumstances the imposition of closed visits might make communication more difficult, closed visits did not prevent communication. The Court noted that the Prison Service had taken steps to ensure that reasonable facilities were available and to improve the facilities when faults were identified. The judgement made particular mention of the Prison Service's willingness to allow open visits where representations on behalf of prisoners' legal advisers had shown that in specific cases the facilities did not allow reasonable communication between prisoner and lawyer.

The closed visits policy applies to all visitors. In addition to the visitors who may be tempted to smuggle in items voluntarily there is also the risk that other visitors may be conditioned, threatened or intimidated to smuggle in articles. Legal visits are in a special category but where there is a risk that a visitor may, for example, be intimidated into bringing contraband into prison, this risk applies as much to solicitors and their staff as it does to other visitors. The policy must therefore include them.

The policy protects legal representatives and their staff from having pressure put on them and eliminates the security risk. Closed visits were introduced to remove the risk of unauthorised objects being passed from visitor to prisoner whether voluntarily or by coercion. The introduction of the policy has acted as a deterrent to prisoners and remains a necessary security measure.

The current closed visits policy provides that:

- exceptional risk prisoners should be subject to closed visits;
- open visits may be granted in exceptional circumstances with the approval of the Director of Dispersals;
- the decision whether to grant open visits should be taken in the light of the particular circumstances of each case;
- in particular, for legal visits in connection with criminal proceedings, the Prison Service, when deciding that there are exceptional circumstances, will take into account the need to ensure that there is a fair trial.

Although significant improvements have been made to security in prisons, there is still no acceptable alternative to closed visits which can guarantee that objects cannot be passed between prisoner and visitor.

The policy provides for open visits in exceptional circumstances. Exceptional circumstances are not defined. However, specific reference is made in the policy to the need to ensure that prisoners are given a fair trial. Regular open legal visits have been granted to a number of defendants in the past year to allow them to prepare for trial. Reasons for granting such visits have included the need to examine large numbers of documents and for groups of defendants to confer jointly with their legal representatives.

Her Majesty's Chief Inspector of Prisons (HMCIIP) has previously expressed an interest in this area but it is understood that he does not now intend to pursue the issue. The policy has been reviewed on a number of occasions since its introduction. The Prison Service's assessment remains that closed visits are necessary on security grounds for those few prisoners who are classified as exceptional escape risk. The Prison Service will continue to keep the policy of closed visits under review to ensure that it remains the appropriate response to the threat posed by exceptional risk prisoners.

#### Concerning Access to Lawyers in Northern Ireland

2. In paragraphs 92 and 93 of his Report, the Special Rapporteur concludes that a defendant's right to Counsel is of paramount importance to guarantee his/her right to a fair trial and to protect against potential abuse. Therefore, amongst other things, he recommends that the right to have a solicitor present during police interrogation should be respected.

3. All suspects do have a right to legal advice. Access may however be delayed for up to a maximum of 48 hours only if the police have a reasonable suspicion that allowing access to lawyers would prejudice the investigation. The reason for this is that lawyers, however unwittingly, sometimes may be used to convey information

or be forced to reveal it under duress to the outside, which may prejudice the outcome of an investigation. Once the reasons for delay and access have expired the suspect is always told that he may exercise his right to legal advice. It is worth pointing out that in 1997 only 33 requests were delayed out of 512 requests made overall. In other words the percentage actually deferred was approximately 6%.

4. As for solicitors' presence during interview, there is nothing in law to say that solicitors should or should not be present. On this basis, the police consider on its merits each individual request for a solicitor to be present.

#### **Concerning Video And Audio-Recording Of Police Interviews**

In his Report, Mr Cumaraswamy recommends that as a matter of urgency the Government should install video and audio recording equipment in all holding centres in Northern Ireland, and that the tapes of such recordings should be available to Counsel upon request.

The silent video recording of police interviews with terrorist suspects came into operation from midnight on 10 March 1998. The introduction of audio recording, for which provision is made in the Emergency Provisions Bill currently passing through Parliament, will follow as soon as possible. Copies of silent video tapes will be made available to the person who was previously detained and/or his solicitor, and as appropriate, to the investigating authority, in the following circumstances:

- (a) where the tape or part of it would otherwise have to be disclosed in criminal or civil proceedings;
- (b) where the person who was previously detained has made a complaint in writing of ill-treatment against any of the interviewing officers; and the complaint specifies the nature of the alleged ill-treatment and approximately when it occurred. In such circumstances, upon providing details of the complaint, the relevant parts of the tape shall be made available for interviewing and upon identifying that part(s) of the tape which he alleges supports the complaint, the person who was previously detained and/or his solicitor shall be entitled to receive a copy of the relevant part(s). If the complaint is received in respect of a specific interview, only that part of the master tape shall be made available for viewing/copying.

#### **Concerning The Murder Of Patrick Finucane**

In his report Mr Cumaraswamy urges the Government to appoint a judicial inquiry to investigate the murder of Patrick Finucane in 1989. Mr Cumaraswamy urges the setting up of a tribunal similar to that set up to look in the events of 30 January 1972 known as Bloody Sunday. A Tribunal under that Act can only be established if there is an need to look at a matter of urgent public importance, the information given to the Government last year raised sufficient concern to justify an inquiry.

This is not the case with the murder of Mr Finucane. There was a police inquiry that led to three people being charged with possession of the weapon that was used in the killing of Mr Finucane. A further inquiry was conducted by Mr John Stevens following further allegations. In February 1995, having considered the report before him, the Director of Public Prosecutions for Northern Ireland concluded that there was insufficient evidence to warrant the prosecution of any person for the murder. Unless new evidence is brought to light there can be no justification for another inquiry although the police file remains open.

### Concerning The Emergency Legislation

#### *A Right to Silence*

Under the Criminal Evidence (Northern Ireland) Order 1988, the defendant is entitled to remain silent. Silence does not constitute a criminal offence or contempt of court and a defendant cannot be convicted on the basis of silence alone. The Order enables a court to draw whatever inferences appear proper when the defendant remains silent in situations which clearly call for an explanation. The Order has made a significant contribution to dealing with serious crime, both terrorist and non-terrorist.

#### *The Murray decision of the European Court of Human Rights*

In the case of Murray v the United Kingdom, the European Court of Human Rights found against the UK on the question of drawing inferences from silence while a suspect is denied access to legal advice. The judgement has implications for both criminal and emergency law and wide consultation within Government has been necessary.

A number of options have been studied and the Government hopes to be in a position to announce a detailed response in the near future. It should be noted that in recent years access to legal advice has been delayed in only a small number of cases in Northern Ireland, 13 occasions in 1996 compared to 706 occasions in 1990.

#### Confession Evidence

At paragraph 93(b) of his Report, Mr Kumaraswamy states that "the permissive EPA standard for admitting at trial confession evidence procured by psychological pressure, deprivation or other non-violent forms of coercion should be abolished".

While the law currently provides for a lower standard of proof for the admissibility of confession evidence in terrorist cases, that provision is under review. In practice judges apply the higher Police and Criminal Evidence Act (PACE) standard. The Government attaches the greatest importance to the protection of the rights of those held in police custody. A significant range of statutory and administrative safeguards to protect persons in police custody are in place. The introduction of video and audio recording will add to those safeguards. It should also be borne in mind that allegations of ill-treatment are thoroughly investigated

by the police. The Independent Commission for Police Complaints must supervise any case where there are allegations of serious injury and may supervise any other which is in the public interest. All complaints are investigated for any breach of discipline.

The Independent Commissioner for the Holding Centres, Sir Louis Blom-Cooper, and his deputy make frequent visits to the holding centres to monitor both conditions and procedures. Sir Louis' most recent Report shows yet again that neither he nor his deputy have found any cause for concern.

### **Diplock Courts**

At paragraph 95(c) of his Report, Mr Cumaraswamy recommends that the right to trial by jury should be reinstated, with safeguards put into place to protect the integrity of jurors.

In principle, the British Government agreed with this recommendation, but it is easier said than done. Diplock Courts were introduced in Northern Ireland to safeguard the judicial process because of significant levels of intimidation against jurors and the returning of perverse verdicts. Added to this there is always the possibility of a jury splitting along sectarian lines. For these reasons the time has not yet come for a return to jury trials although the matter is kept under continual review.

It should also be pointed out that although the judge sits without a jury in court, all the principles of British justice have been maintained: trial in open court with the calling and cross-examining of witnesses; an onus on the prosecution to prove guilt beyond reasonable doubt; the right on the part of the accused to take legal action and be represented by a lawyer, and if necessary the provision of legal aid. There are also important additional safeguards in existence to ensure that justice is seen to be done. In the light of a conviction the judge must provide a written judgement outlining the reasons for it. There is also an automatic right of appeal on both points of law and fact and all such appeals are considered by the Appeal Court which comprises three judges.

There is no evidence whatsoever that the present system of a single judge has in any way led to perverse verdicts or to a lowering of standards to the detriment of defendants. The safeguards of a written judgement and an automatic right of appeal to a three court judge preclude this.

### **Concerning The Issues Of "Bugging"**

Mr Cumaraswamy refers specifically to criticisms of part III of the Police Act 1997 voiced by non-governmental organisations that it is viewed as "narrowly drafted". Part III of the Police Act 1997 was specifically intended only to provide for the authorisation of Police and Customs intrusive surveillance operations involving interference with property or wireless telegraphy. It should be seen as a first step in regulating surveillance operations undertaken by UK law enforcement agencies.

Consideration is already being given to what other safeguards and procedures are necessary to cover other forms of surveillance which presently come within the terms of Home Office guidelines.

Part III puts operations involving interference with property on a clear statutory basis and introduces a number of safeguards against inappropriate use of the provisions. These safeguards include independent oversight of the authorisation process and investigation of complaints by a Chief Commissioner and Commissioners, all of whom must hold or have held high judicial office. It will provide an effective statutory basis for important law enforcement techniques, whilst safeguarding individual liberties.

The Act contains no specific exemptions for certain categories of information. Mr Kumaraswamy acknowledges our view that such exemptions would create loop-holes which criminals would be sure to exploit. However, the Act does incorporate special procedures which take full account of the sensitivity and need for particular care where questions of legal privilege are likely to arise. Section 97 of the Act requires that the approval of an independent Commissioner must, save in cases of urgency, be given to an authorisation believed likely to result in the acquiring of matters subject to legal privilege. Section 98 of the Act provides further clarification of "Matters subject to legal privilege" and Section 103 outlines the remedies available to independent Commissioners to quash authorisations and order destruction of records where required approval requirements are not applied.

The draft code of practice, which supports the provisions, does not describe the concept of legal privilege in greater detail. Terms such as "legal privilege" are constantly being redefined by the courts. The addition of a free standing definition in the code would quickly become out of date and would need constant updating.

Neither does the code of practice explicitly provide for the destruction of legally privileged material. Statutory disclosure requirements contained in the Criminal Procedure and Investigations Act 1996 and compliance with data protection obligations impact on this issue. The draft code already makes clear that material obtained by intrusive surveillance which is wholly unrelated to a criminal investigation or to any person who is the subject of the investigation, where there is no reason to believe relevance to future proceedings, should be destroyed immediately.

Mr Kumaraswamy has drawn attention to the statutory regime for authorisation which exists in New Zealand. However, direct comparisons of this type are not always helpful. Different jurisdictions have approached this issue in a variety of ways, reflecting their own criminal justice police systems. The approach taken in part III fully reflects the structure of the regional policing system in the United Kingdom (New Zealand has a national police force). It ensures accountability for decision making, building upon the independence and responsibility of chief officers and fully utilising their unique operational experience and knowledge. It also incorporates an element of independent oversight in the form of surveillance Commissioners, who are required to be senior retired or serving judicial figures.

For the reasons outlined above, we disagree with Mr Kumaraswamy's conclusion that part III of the Police Act is too vague and requires amendment to ensure scrupulous respect for lawyer/client relations. The authorisation mechanism is based upon a number of significant statutory safeguards which fully acknowledge the importance of legally privileged material, striking an important balance between operational effectiveness and individual freedoms. The UK Government is fully committed to implementing these important provisions and will do so at the earliest opportunity.

#### **Concerning The Police Ombudsman**

Turning to the Special Rapporteur's recommendations in Paragraph 90 (a) that "the authorities, preferably the police Ombudsman, conduct an independent and impartial investigation of all threats to legal counsel in Northern Ireland"

As mentioned if we receive evidence of such action we will ensure that it is acted upon. *The Chief Constable has already said that he will do so.*

We do not understand recommendation 91 (b) "where there is a threat to the physical integrity of a solicitor or barrister, irrespective from whom the threat emanates, the Government should provide the necessary protection and should vigorously investigate the threats and bring to justice the guilty party"

The Government already seeks to fulfil its duty to protect all of its citizens. The police and the ICPC will also investigate threats and where possible bring to justice those who are guilty. However, I repeat that full co-operation is necessary.

It is worth saying in this context that our experience of complaints is that there are often two different versions of events and it can be a difficult task to get at the truth. But there is a determination to attempt to do this.

The Government welcomes Mr Kumaraswamy's comments on Royal Ulster Constabulary training, which we are sure the Chief Constable will look at carefully. We are sure such an approach, if tackled with good will on all sides would be a significant step forward

#### **Concerning The Judiciary**

The Government attaches great importance to ensuring that effective arrangements are made to support the judiciary in the task of implementing the Human Rights Bill and giving effect to the Convention rights. The Judicial Studies Board is currently planning training programmes for members of the judiciary at all levels which will be delivered prior to the implementation of the legislation.

The Government is undertaking a review of the UK's position under various other human rights treaties and will announce its conclusions in due course.



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**COMMISSION ON HUMAN RIGHTS**  
Fifty-fourth session  
Item 8 of the provisional agenda

**QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO  
ANY FORM OF DETENTION OR IMPRISONMENT**

**Report of the Special Rapporteur on the independence of judges and lawyers,  
Mr. Param Cumaraswamy, submitted pursuant to Commission  
on Human Rights resolution 1997/23**

**ADDENDUM**

**Report on the mission of the Special Rapporteur to the  
United Kingdom of Great Britain and Northern Ireland**

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VIII. CONCLUSIONS AND RECOMMENDATIONSINTRODUCTION

1. The present report concerns a fact-finding mission to the United Kingdom of Great Britain and Northern Ireland undertaken from 20 to 31 October by the Special Rapporteur on the independence of judges and lawyers, pursuant to Commission on Human Rights resolution 1994/41 of 4 March 1994, as renewed by resolution 1997/23 of 11 April 1997 extending the mandate for a further period of three years. This mandate calls upon the Special Rapporteur *inter alia* to inquire into any substantial allegations transmitted to him and report his conclusions thereon.

2. In both his second and third annual reports submitted to the fifty-second and fifty-third sessions respectively of the Commission on Human Rights, the Special Rapporteur reported on allegations received concerning the harassment and intimidation of solicitors by police officers of the Royal Ulster Constabulary (RUC) of Northern Ireland. (E/CN.4/1996/37, paras. 228-240 and E/CN.4/1997/32, paras. 177-179.) Further, he reported on allegations he had received on measures implemented by the Government that hamper the unfettered access by "exceptional high risk" prisoners to legal advice.

3. In response to a report submitted by British Irish Rights Watch to the Special Rapporteur, the Independent Commissioner for the Holding Centre for Northern Ireland transmitted a memorandum dated 17 January 1997 to the Special Rapporteur expressing the view, *inter alia*, that he might favour "an independent investigation into the nature and extent of any intimidation of defence solicitors". (E/CN.4/1997/32, para. 178.)

4. In light of the response from the Independent Commissioner, as well as a response from the Chairman of the General Council of the Bar of Northern Ireland, the Special Rapporteur sought by a letter dated 21 February the permission of the Government of the United Kingdom of Great Britain to visit Northern Ireland for an *in situ* investigation into the allegations he had received on the situation in Northern Ireland. The Government replied favourably to this request in a letter dated 10 March 1997.

5. The issues to be examined by the Special Rapporteur during the course of the mission were set forth in a letter dated 4 April 1997 to the Permanent Representative of the United Kingdom to the United Nations Office at Geneva. The issues were summarized as follows:

(a) There have been consistent reports of alleged systematic abuse of defence lawyers in Northern Ireland by certain police officers since 1992. There have also been reports of similar abuse, although to a lesser degree, in England. More recently, there has been reported an increase of such abuses in Northern Ireland, associated with an increase in arrests under the emergency laws;

(b) There has been concern expressed over a number of provisions that restrict access to legal advice. These include: (i) deferrals of access to a solicitor for periods of up to 48 hours under emergency laws, (ii) refusal to allow solicitors to remain present during police interviews in Holding Centres in Northern Ireland, (iii) closed visits for the purpose of legal consultations for certain prisoners in England;

(c) There is concern about the absence of safeguards to prevent abuse of lawyers, such as video and audio-recording of police interviews;

(d) There have been serious allegations received concerning the unresolved murder of Belfast solicitor Patrick Finucane, which claim that there was official collusion in his death;

(e) There have been concerns expressed that certain provisions in the emergency legislation (e.g., absence of a jury, lower threshold for admissibility of confession evidence) and in the ordinary criminal law (e.g., the abrogation of the right to silence) impinge on the ability of the judiciary to function impartially and independently;

(f) There have been concerns expressed that the provisions of the Police Act which do not exempt lawyers' offices from bugging undermine the lawyer/client privilege.

6. However, the primary focus of the Special Rapporteur's mission was issues (a) and (b), owing to concerns expressed for many years, both domestically and internationally.

7. During the course of his mission, the Special Rapporteur travelled to London, from 20 to 22 October, and to Belfast, from 23 to 31 October. In London the Special Rapporteur held consultations with the following Government representatives: the Lord Chief Justice of England and Wales, Lord Bingham; the Minister of State, Home Office, Mr. Alun Michael, MP; Mr Tony Pearson, Director of Security and Programmes Prison Service; Mr. Peter Wrench, Head of Policing and Organized Crime Unit, Home Office; General Sir David Ramsbottom, Her Majesty's Chief Inspector of Prisons, Home Office. The Special Rapporteur was also scheduled to meet with Mr. Tony Lloyd, MP, Minister of State, Foreign and Commonwealth Office, but owing to an unavoidable delay in his schedule the Special Rapporteur was unable to meet the Minister. In Belfast the Special Rapporteur held consultations with the following Government representatives: Mr. Paul Murphy, MP, Minister of State, Northern Ireland Office; Mr. Ronnie Flanagan, Chief Constable of the Royal Ulster Constabulary, and Assistant Chief Constable, Mr. Raymond C. White; Mr. Roy Spence, Chairman of the Community Relations Committee and David Sterling of the Police Authority for Northern Ireland; Mr. Steele, Senior Director of Security Policy, Northern Ireland Office; Mr. Nick Perry, Head of Security Policy and Operations Branch, Northern Ireland Office; Mr. Alastair Frasier, Director of Public Prosecution for Northern Ireland; Sir Louis Blom-Cooper, Commissioner for the Holding Centres; Mr. Murray Power, Head of Criminal Justice Policy Division, Northern Ireland Office; Lord Carswell, Lord Chief Justice of Northern Ireland and the Honorable Justice Kerr; Mr. Geoff Huggins, Police and Planning Division, Northern Ireland Prison Service; Mr. Michael Lavery, Q.C., Chairman, and Ms. Denise Magill, Legal Officer, Standing Advisory Commission on Human Rights; (U) Mr. Paul Donnelly, Chairman, and Mr. Brian McClelland of the Northern Ireland Independent Commission for Police Complaints; Mr. Glenn Thompson, Director, and Mr. Hugh Ritchie, Deputy Director, Northern Ireland Court Service.

8. In London, the Special Rapporteur also met with the following private individuals and non-governmental organizations: Ms. Jane Winter, Director, British Irish Rights Watch; Mr. Peter Norlander, Justice; Mr. Roger Pannone, Chairman of the Working Party on International Human Rights, Law Society of England and Wales; Ms. Jane Deighton and Mr. Geoffrey Bindman, Law Society of England and Wales; Halya Gowan, Amnesty International; Ms. Gareth Peirce, Solicitor. In Belfast the Special Rapporteur met with the following private individuals and non-governmental organizations: Mr. Martin O'Brien, Director, and Mr. Paul Mageean, Legal Officer, Committee on the Administration of Justice, Northern Ireland; Mrs. Geraldine Finucane and family; Mr. Eugene Grant, Q.C., Chairman of the Bar Council; Mr. Alistair Rankin, Chairman, Mr. Richard Monteith, Chairman, Human Rights Committee; Mr. Barra McGory, Chairman, Criminal Law Society, Law Society of Northern Ireland. The Special Rapporteur also met with a large number of solicitors and barristers who were able to provide him testimony on the forms of harassment they have experienced. For the sake of confidentiality, the Special Rapporteur is of the view that it would be inappropriate to name those with whom he met during the course of his mission in Northern

Ireland unless explicitly authorized by the solicitor to do so, but he is indebted to them for the extensive testimony they provided. He would like to emphasize that he met with solicitors who represented clients on both sides of the political divide in Northern Ireland and who had shared experiences of police harassment and intimidation.

9. During the course of the mission the Special Rapporteur also visited HM Prison Belmarsh in London, Gough Barracks in Armagh, Northern Ireland, Castlereagh Holding Centre in Belfast, HM Prison Maghaberry and HM Prison Maze. The Special Rapporteur visited the Legal Visits Areas in the respective locations.

10. The Special Rapporteur would like to thank the Government of the United Kingdom of Great Britain and Northern Ireland for the invitation and for the assistance provided during the mission. The Special Rapporteur is particularly grateful for the candid and comprehensive manner in which all Government officials with whom he met answered his questions. The Special Rapporteur would also like to thank all non-governmental organizations and other groups that provided him with information. Particular thanks are extended to British Irish Rights Watch and the Committee on the Administration of Justice.

11. The United Kingdom of Great Britain and Northern Ireland has signed and ratified most international human rights treaties. Those of most relevance to the Special Rapporteur include: the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Rights of the Child; the Convention on the Elimination of All Forms of Discrimination Against Women; and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. [[back to the contents](#)]

## I. GENERAL BACKGROUND

12. The "Troubles" that have afflicted Northern Ireland for the past three decades have placed a tremendous strain on the administration of justice. According to the latest statistics available, between 1969, when the British deployed troops to Northern Ireland in August, and 1994, there were over 3,100 deaths connected to the security situation which peaked in 1972 at 470; in 1994 there were 60 deaths. (2)

13. In an effort to combat the terrorism in Northern Ireland, the Government has enacted emergency legislation that gives the RUC extraordinary police powers to stop, question, search, arrest, detain, and interrogate persons merely suspected of terrorist activity. In fact, emergency legislation has been in force in Northern Ireland since the partition of Ireland in 1922. The primary emergency laws currently in force in Northern Ireland are the Northern Ireland (Emergency Provisions) Act 1996 (EPA) (2) and its counterpart, the Prevention of Terrorism (Temporary Provisions) Act 1989 (PTA). The EPA was renewed in January 1996 for two years commencing in August 1996. The PTA, first passed in 1974, applied across the United Kingdom, is renewable annually, and was extended for another year in March 1997.

14. On 31 August 1994, the Irish Republican Army (IRA) announced a unilateral ceasefire. On 13 October 1994, the Combined Loyalist Paramilitary Command (CLMC), the coordinating body representing loyalist paramilitary groups, also called for a cessation of "all operational activities". Regrettably, on 9 February 1996, the IRA broke its ceasefire with the terrorist attack at Canary Wharf in London, killing two men and injuring more than 100 people. Since that time there have been a series of terrorist incidents by both the Republican and Loyalist paramilitary organizations. As a result of this continued violence, the Government has taken the position that the emergency regime in place in Northern Ireland is still necessary. [[back to the contents](#)]

## II. INTIMIDATION AND HARASSMENT OF LAWYERS

15. Since the inception of his mandate in 1994, the Special Rapporteur has received numerous

allegations concerning the pattern of abusive remarks made against defence solicitors in Northern Ireland, particularly against those who represent individuals accused of terrorist related offences. These allegations were already the subject of a report to the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities in 1992. (4) They are based primarily upon instructions taken from clients by their solicitors, which reveal widespread reports of abuse of solicitors uttered by plain-clothes RUC officers during interrogations at the holding centres used to detain suspects held under emergency laws. The abuse against lawyers takes various forms ranging from mild forms of harassment (e.g., solicitor kept waiting to see client) to interference in the solicitor/client relationship (e.g., telling the detainee that the solicitor is not interested in him or her, that the solicitor's advice should be ignored, that the solicitor is representing the paramilitaries and not the client, etc.) to physical abuse and/or death threats (e.g., references to Patrick Finucane, whose murder is described below in paragraphs 60-74).

16. An example of this type of harassment and intimidation of solicitors is seen in a case the Special Rapporteur transmitted to the Government in a letter dated 1 August 1997. According to the source, it was alleged that one solicitor had been the victim of numerous death threats owing to the representation of a client, who had been charged with the murder of two RUC officers. Further, in relation to the representation of a residents group who oppose marching by the Orange Order through their nationalist housing estate, it was alleged that on 6 July 1997 the solicitor was verbally and physically abused while attempting to communicate with an RUC officer concerning the RUC efforts to seal off the area. The source further alleged that an RUC officer spat on the face of the solicitor who was accused of being a "Fenian" sympathizer. The solicitor was also allegedly struck on the back of the head with a police riot shield while intervening on behalf of a boy who was allegedly being ill-treated by an RUC officer.

17. In a response dated 6 October 1997, the Government informed the Special Rapporteur, *inter alia*, of the following:

I can confirm that the Royal Ulster Constabulary has received four complaints from the solicitor and the client. The investigation of these is being supervised by the Independent Commission for Police Complaints. However, to date, the solicitor has not made himself available for interview to discuss the complaints. Police conduct is guided by the RUC's Professional Policing Ethics and Disciplinary Regulations: members who engage in any activity which contravenes either face the full rigours of the disciplinary regulations ...

18. While in Northern Ireland the Special Rapporteur was provided with another example of physical abuse concerning a solicitor. On 18 December 1996, the solicitor was attending the Grosvenor Road RUC Station in Belfast on behalf of a client. The RUC requested permission to take a mouth swab from the client for the purposes of DNA testing. The solicitor advised the client that he could decline to give a sample, but that if he did so the RUC were entitled to use reasonable force to do so. He did so decline, and the solicitor then advised him not to resist if the RUC insisted on taking a sample. However, he declined to take that advice and proceeded to resist, whereupon the police officer concerned summoned assistance from his colleagues. A number of officers entered the Charge Room, including the Custody Sergeant, Sergeant Reid, who is responsible for the welfare of detainees. He ordered the solicitor to leave the room. The solicitor questioned his authority to require him to leave and his reasons for doing so. He replied that it was for the safety of the solicitor. The latter advised him that he was prepared to take responsibility for his own safety, whereupon Sergeant Reid grabbed him by the arm and forcibly ejected him from the room. The solicitor has commenced legal proceedings against the officer concerned and the Chief Constable of the RUC for assault, battery and trespass to person and is seeking exemplary damages.

19. Another serious incident related to the Special Rapporteur concerns a solicitor from Belfast. According to his client, the solicitor was described as a "provie bastard" by RUC officers interrogating him on 14 October 1997 at the Gough Barracks in Armagh. What makes this case unique and disturbing to the Special Rapporteur is that the Deputy Independent Commissioner for

the Holding Centres, Mr. John Norris, was present during the interrogation in which the alleged derogatory comments were made. Mr. Norris has stated that he was not aware of any comment of a controversial nature or conduct that amounted to any abuse.

20. The Special Rapporteur wishes to emphasize that he spoke to a large number of solicitors and barristers who have worked in terrorist related cases representing both Loyalist paramilitaries and Republican paramilitaries. All were able to provide testimony that corroborates the reports that the Special Rapporteur has been receiving for the past four years concerning the harassment and intimidation of defence solicitors. Many referred to the harassment and intimidation as an occupational hazard that they have come to expect and accept, noting that in the absence of audio-recording there is only hearsay evidence to prove the allegations, that is, the word of the client against that of the RUC officer. Therefore, most find it futile to file a complaint, particularly in lieu of the fact that any investigation will be carried out by the RUC itself and that they had no confidence in such investigation.

21. The RUC categorically denies the allegations. In his meeting with the Special Rapporteur, the Chief Constable noted that there is a lack of evidence to substantiate the allegations, and further, there were hardly any complaints made by lawyers. He also pointed out that, in his view, it is significant that the solicitors have not sought judicial review of detentions on grounds of harassment and intimidation. He emphasized that the greatest degree of respect is shown to lawyers and questioned what possible benefit could there be for a police officer to make a disparaging comment or a threat. He also mentioned that numerous safeguards have been put in place to prevent such abuse, including the use of closed circuit televisions which must be monitored during the entire interrogation by a uniformed officer, the presence of a doctor who is available upon the request of the detainee and the appointment of the Independent Commissioner. The Chief Constable alluded to an agenda in which the paramilitary organizations ensured that detainees remain silent and alleged that solicitors may be involved in conveying this message to the detainees. Further, he stated that there is in fact a political divide in Northern Ireland and part of the political agenda is to portray the RUC as part of the unionist tradition. These allegations concerning police intimidation and harassment of solicitors is part and parcel of this political agenda. The Assistant Chief Constable also admitted that during the course of an interrogation an officer may express the view that the solicitor is providing bad advice to the client and not acting in his interests, for instance, by advising the client to remain silent.

22. The Special Rapporteur views with concern allegations of solicitors acting on behalf of paramilitaries. If true, they would constitute an egregious violation of a solicitor's professional responsibilities and, in the view of the Special Rapporteur, could be grounds for disciplinary proceedings. Further, if there were evidence that solicitors were involved in any complicity with a crime, criminal charges would undoubtedly have been brought against the solicitor. However, the Special Rapporteur wishes to emphasize that he was provided with no evidence to support the allegations. In this regard, to the knowledge of the Special Rapporteur, no solicitor has been disciplined for engaging in such unethical activities or has had criminal charges brought against him. To a specific question from the Special Rapporteur, the Chief Constable said that the RUC did not lodge any complaint with the Law Society. If the RUC does have evidence to prove the allegations, the Special Rapporteur would encourage the RUC to submit the evidence to the disciplinary board of the Law Society so that the appropriate disciplinary action can be taken against the solicitor in question. With respect to failure on the part of the solicitors to apply for judicial review, the Special Rapporteur is of the view that harassment and intimidation may not be sufficient grounds for judicial review of the legality of the detentions. It is here pertinent to note that in its 18th Annual Report (1992-1993) to the Secretary of State, the Standing Advisory Commission on Human Rights (SACHR) stated, *inter alia*:

"68. During the year the Commission received communications from some non-governmental organizations containing allegations that some lawyers who represent terrorist suspects in Northern Ireland are subject to intimidation by the police, through the process of interviews with their clients.

The Commission is aware that there are difficulties in relation to whether allegations can be substantiated and takes the view that any cases supported by substantive information ought to be referred to the Independent Commission for Police Complaints. However, the Commission also recognizes that this matter raises significant questions about the nature of confidentiality and takes note of observations by the United Kingdom representative on the United Nations Commission to the effect that such concerns were justified. The Commission understands that this is a difficult and delicate issue and urges Government to take all reasonable steps to eliminate the circumstances which give rise to such allegations."

23. Principle 16 of the United Nations Basic Principles on the Role of Lawyers provides:

"Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics."

24. Further, Principle 18 of the United Nations Basic Principles on the Role of Lawyers provides that "[l]awyers shall not be identified with their clients or their clients' causes as a result of discharging their functions".

25. The Special Rapporteur is concerned that the RUC has in fact identified lawyers who represent those accused of terrorist related offences with their clients or their clients' causes and further, that they have interfered in the attorney/client relationship by questioning during the course of interrogations the integrity and professionalism of solicitors. This is based not only upon the comments made by the Chief Constable and Assistant Chief Constable in his meeting with the Special Rapporteur, but also upon documentary information presented to the Special Rapporteur. The Special Rapporteur was provided a copy of the transcript of a statement of witness to be tendered in evidence at preliminary inquiry in the case of R. v. Canning. In this transcript, in response to an unsatisfactory answer given by the accused, the interrogating officer is quoted as follows: "It's because it was a lie and your solicitor is getting you into more trouble. Can you not see that Paddy?" The transcript contains other innuendo suggesting that the solicitor is not acting in the interests of the client. In the case of Patrick Finucane, a solicitor murdered by a loyalist paramilitary organization in 1989 (see paragraphs 60-74 below), there was significant evidence to demonstrate that the RUC equated Patrick Finucane with the causes of his clients. However, the Special Rapporteur does wish to emphasize that following the murder of Patrick Finucane the RUC unequivocally stated that Patrick Finucane was not a member of the IRA or any other Catholic paramilitary organization. Nevertheless, the fact that many within the RUC did equate him with the causes of the IRA is reflected in the book written by John Stalker concerning his experience of trying to investigate allegations of a shoot-to-kill policy in Northern Ireland. In his book, Stalker describes a conversation between himself and an RUC sergeant concerning a lawyer who could only have been Patrick Finucane based upon the identification of the client and case:

"The solicitor is an IRA man - any man who represents IRA is worse than an IRA man. His brother is an IRA man also and I have to say that I believe a senior policeman of your rank should not be seen speaking to the likes of either them. My colleagues have asked me to tell you that you have embarrassed all of us in doing that. I will be reporting this conversation and what you have done to my superiors." (2)

26. The Special Rapporteur is also concerned by the fact that the solicitors themselves rarely file complaints concerning this alleged harassment and intimidation. Several reasons were given as way of explanation. First, the solicitors clearly see this as a normal reaction to a difficult situation and is simply an occupational hazard. Second, the allegations are based on hearsay evidence that is impossible to prove, and thus, it would be the word of the client against that of the RUC officer. Third, any investigation of the complaint would require further questioning of the client by the

police, which is understandably not desired by the client. Fourth, the investigation is carried out by the RUC, in whom the solicitors have no confidence. (6) Fifth, the solicitors have no confidence in their own Law Society and its ability or willingness to take up the issue. The Law Society's position was attributed to a view that criminal solicitors are second class solicitors and that it should remain neutral in political cases to avoid a divide within its own membership.

27. The Special Rapporteur considers that despite their loss of confidence in the RUC's investigative measures, it would have been prudent for the solicitors concerned to have documented and submitted their complaints to the RUC, if for not anything else, at least for record purposes. Their failure contributed to the situation.

28. The Government has established an Independent Commission for Police Complaints (ICPC). (7) However the ICPC has come under severe criticism owing to its limited powers. It cannot initiate investigations, but only supervise those referred to it by the Secretary of State, the Police Authority, or the Chief Constable. Even then its supervisory authority is limited insofar as a member of the Commission may only make suggestions to the assigned RUC officer about how an investigation should proceed, but cannot take direct action. If the member considers the investigation to be inadequate, the ICPC can only withhold a statement of satisfaction. Of the 16,375 complaints generally received by the ICPC through 1994, not one has resulted in any disciplinary sanction against any RUC officer. The 1996 report of the ICPC indicates that during 1996 the Chief Constable notified the Commission of 2,540 new cases of complaint. (8) In only 10 cases, involving 39 charges and 10 officers, were disciplinary charges made; in only 1 case was an RUC officer found guilty of abuse of authority. (9)

29. As a result of the criticisms of the manner in which police complaints were handled, the Government authorized a review of the complaints system in Northern Ireland by Dr. Maurice Hayes. Based upon his review, Dr. Hayes main recommendation is that "there should be a Police Ombudsman, responsible to Parliament with the duty to investigate complaints and to report his/her findings". He also recommended that the post should be filled by a judge or a person of the quality and experience of a senior judicial figure. Further, the Ombudsman would recruit a staff which would include investigators, lawyers and people with police experience and others. She/he would investigate complaints against police even where the action complained about amount to criminal behaviour. Also, all complaints about the police and not just those on conduct, should be made through the ombudsman in the first place. (10)

30. During the course of the mission, the Special Rapporteur was informed that the recommendation of Dr. Hayes to establish a Police Ombudsman for Northern Ireland has been accepted by the Government. The Special Rapporteur has subsequently received a copy of the draft Police (Northern Ireland) Bill to be submitted to Parliament which provides for a Police Ombudsman to replace the Independent Commission for Police Complaints. Article 54 provides for formal investigation which must be carried out by the Ombudsman in serious cases. Section 56 covers the cases where a complaint or other matter is to be formally investigated by the Ombudsman. It provides for him to appoint an officer of the Ombudsman, who will have the powers and privileges of a constable. The Special Rapporteur welcomes this initiative by the Government as a positive step to improve public confidence in the complaint procedure system. The Special Rapporteur, however, does consider it imperative that the Government provide the Police Ombudsman with sufficient financial and human resources that will enable him to carry out this important mandate in an effective manner.

31. During the course of his mission, the Special Rapporteur was provided documents in those rare cases in which a solicitor has filed a complaint, either to the relevant Government authorities or to the Law Society. In all cases, the solicitor received no response or an inadequate response. The Special Rapporteur is also concerned that the reports by non-governmental organizations such as the Lawyers Committee for Human Rights and British-Irish Rights Watch detailing this pattern of harassment and intimidation seem to have been dismissed by the RUC as baseless. In the view of the

Special Rapporteur, these reports should serve as a basis for a dialogue between the RUC and the Law Society to improve the conditions under which defence solicitors must work within the Holding Centres.

#### Legal Profession

32. The Legal Profession in Northern Ireland, as in England and Wales, is divided into barristers and solicitors. The Bar Council is the professional body of the barristers. The Law Society is that of the solicitors. There are today in Northern Ireland about 1,700 solicitors, of whom 800 are women.

33. There was only a small number of lawyers who have been representing suspects or accused persons in politically sensitive cases. About 20 to 30 were actively involved and were largely solicitors. The very small number of barristers involved had no direct dealings with detainees or the RUC, hence they were not subject to this form of harassment.

34. In his meeting with the Bar Council, the Chairman indicated that as the issue was a matter concerning solicitors it was not so much for the Bar Council to address.

35. In his discussions with the Law Society, the President admitted that the Society had not taken a more forceful position to protect solicitors who were subjected to harassment and intimidation while representing clients in Holding Centres. However, it was emphasized that very few solicitors lodged complaints with the Law Society. One participant in the meeting explained that he personally had not sought the assistance of the Law Society because he felt that the Society would have no greater success than the individual solicitors in bringing complaints against the RUC. He did, however, note that he had in fact raised the issue when he had first become a member of the Law Society, but he had never received a response from the President. Another participant, who also represents those accused of terrorist related crimes, seconded this view, stating that he had "no confidence that any complaint would see the light of day". Both of these participants expressed the view that there is a lack of will on the part of the RUC to deal with the problem and that the only way to deal with it is to have video and audio recording of the interrogations. The President of the Law Society admitted to the Special Rapporteur that the Society could have done more for their solicitors.

36. The Special Rapporteur expresses his concern over the manner in which the professional bodies of lawyers in Northern Ireland, particularly the Law Society, addressed this issue. Harassment and intimidation of defence lawyers go to the core of the concept of independence of the legal profession and the administration of justice. The professional associations of the legal professions in such cases are duty bound to rush in aid of their members in such situations. What greater objective or interest can the organized legal profession have than the protection of the independence of the profession and of its individual members. Here the Special Rapporteur refers to Principle 25 of the United Nations Basic Principles on the Role of Lawyers, which provides "Professional associations of lawyers shall cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics." (emphasis added)

37. The Special Rapporteur has learned since the completion of his mission that the Law Society has published an advertisement in the Journal of the Law Society of Northern Ireland "The Writ", Issue No. 86, 1997, confirming the Society's concern "to ensure that solicitors are not subjected to any treatment in the course of their professional duties which would impugn or threaten their independence, professionalism and integrity". The advertisement also indicates that the Council has accepted recommendations from the Criminal Law and Human Rights Committees that a more formal system should be established to enable solicitors to report and register their concerns and calls upon solicitors with any complaints about the RUC, Prison Service or any agency within either the criminal or civil justice system to write with details to the President of the Society. The Special Rapporteur welcomes this initiative by the Law Society.

38. The Special Rapporteur is satisfied that there have been harassment and intimidation of defence



lawyers by RUC officers as described. He is also satisfied that these harassments and intimidation were consistent and systematic. Though there were generally no specific substantiated complaints lodged with the RUC by the solicitors concerned, yet given the various reports from concerned non-governmental organizations, the annual report of the SACHR and the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, the RUC should have taken note of these complaints and taken steps to investigate them and end the situation. Failure to address these complaints and other general complaints over the years on the grounds that there were no substantiated complaints lodged with the RUC resulted in the RUC losing credibility in its internal complaints investigatory mechanism. This further resulted in a general loss of confidence, leading to the proposal for an independent ombudsman to investigate these complaints. [\[back to the contents\]](#)

### III. ACCESS TO COUNSEL

#### A. Deferrals of Access

39. Under Section 14 of the Prevention of Terrorism (Temporary Provisions) Act of 1989 (PTA), a person who has been arrested may be detained for up to 48 hours. This initial detention period can be extended for up to five days upon authorization by the Secretary of State. Thus, a detainee can be held without charge for up to seven days. (11) Under Section 47 of the EPA, a detainee has the right to see a solicitor, but access to a solicitor can be deferred for up to 48 hours if a senior police officer reasonably believes that such access will interfere with the investigation, alert other suspects, or hinder the prevention of an act of terrorism. Further, the initial deferral of access can be renewed for further periods of up to 48 hours, although renewal of the deferral is rare.

40. Between 1987 and 1991, access to lawyers was deferred in 58 per cent of all PTA detentions on average. This rate of deferral fell to 26 per cent in 1992, 14 per cent in 1993, 16 per cent in 1994, 0.5 per cent in 1995, and 3 per cent in 1996. (12) According to the Chief Constable of the RUC, in 1997, as of October, only 19 of 322 cases have been deferred.

41. Principle 5 of the Basic Principles on the Role of Lawyers provides that: "Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence." Principle 7 provides that "Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than 48 hours from the time of arrest or detention." Principle 8 provides that "All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and to consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials."

42. Read in conjunction, these principles indicate that, at a minimum, an individual has right of access to a lawyer within 48 hours of his or her arrest. Deferral of access beyond 48 hours is in violation of the Basic Principles. Further, the detainee must be informed immediately of the right of access to counsel upon his or her arrest or detention. [\[back to the contents\]](#)

#### B. The Right to have a solicitor present during police interrogations

43. In practice solicitors have not been permitted by the RUC to be present at any stage during interrogations. In January 1996, *In the Matter of Applications by Michael Russell and Others for Judicial Review*, HUTE2184, the Belfast High Court rejected a petitioner's argument that he had a right to have counsel present during interrogations. However, while holding that no right has been extended by Parliament, the Court did express the opinion that "each application for access to a solicitor should be considered individually". (13) Before the case was heard, the RUC changed its policy stating that every request for counsel to be present during interrogations would be considered

on the particular merits of each case. Despite this new policy, however, the Special Rapporteur was informed by solicitors that in practice they continue to be denied the right to be present during the interrogation in the vast majority of cases falling under section 14 of Prevention of Terrorism Act 1989, although the RUC has occasionally exercised that discretion.

44. In the case of *In re Charles Begley's Application*, the High Court ruled that those detained under emergency laws have no right to have a solicitor present during interrogations and that no exceptional circumstances existed which warranted the exercise of discretion on the part of the RUC to allow the solicitor to be present. On appeal, the House of Lords held that a person arrested in Northern Ireland under Section 14 of the Prevention of Terrorism (Temporary Provisions) Act 1989 had no right to be accompanied and advised by his solicitor during interviews with the police. In its decision, the House of Lords pointed out that a suspect detained under the terrorism provisions was merely entitled to consult privately with a solicitor under section 47 of the Northern Ireland (Emergency Provisions) Act 1996. Further, the Code of Practice issued under section 61 of the 1991 Act was to the same effect. Nowhere was there reference to any right for a person arrested under terrorism provisions to have a solicitor present during interview. The House of Lords concluded that the differential treatment of persons suspected of having committed offences under the terrorism provisions in Northern Ireland was plainly part of a deliberative legislative policy.

45. The United Nations Basic Principles on the Role of Lawyers do not explicitly address the issue as to whether a detainee has the right to have a lawyer present during a police interrogation. Principle 7 provides that "Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than 48 hours from the time of arrest or detention." Principle 8 provides that "All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials."

46. Similarly, the jurisprudence of the Human Rights Committee provides little guidance on this question. Article 14 (3) (b) provides that "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: ... (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing." While the Human Rights Committee has found impermissible interference with the right to preparation of defence in a large number of cases, none address the issue as to whether a detainee has the right to have counsel present during police interrogations.

47. In the view of the Special Rapporteur, it is desirable to have the presence of an attorney during police interrogations as an important safeguard to protect the rights of the accused. The absence of legal counsel gives rise to the potential for abuse, particularly in a state of emergency where more serious criminal acts are involved. In the case at hand, the harsh conditions found in the holding centres of Northern Ireland and the pressure exerted to extract confessions further dictate that the presence of a solicitor is imperative. [[back to the contents](#)]

### C. Closed visits

48. In England and Wales, but not Northern Ireland, the Home Office has instituted a policy under which certain prisoners are designated as exceptional high risk category and are allowed legal visits in prisons only where the prisoner was separated from his lawyers by a transparent screen. In particular, the closed visits have been put in place in the Special Secure Units (SSUs) of Belmarsh, Full Sutton and Whitemoor prisons. They are applied to any prisoner who has been designated as being at "exceptional high risk" of escape. Elaborate security measures are in place, with lawyers being searched several times as they enter and exit SSUs and prisoners are strip-searched before and after visits, despite the fact that they had no contact with their lawyers or anyone apart from the prison staff.

49. As noted in paragraph above, the Special Rapporteur visited Belmarsh Prison in London where he was shown the closed visit area. All visitors to the SSU, including the prison staff, must pass through elaborate security measures upon entering the prison and upon entering the SSU. The closed visit area itself has four rooms for legal visits; each room is divided by a transparent screen to separate the solicitor and the client, and documents are exchanged between the solicitor and client by means of an x-ray screening machine to ascertain that there are no unauthorized materials passed between the two. A prison guard remains just outside the sound proof room to monitor the visit; the Special Rapporteur was assured that the prison guard cannot overhear the conversation, but can only visually monitor the visit.

50. Solicitors have complained that trial preparation is extremely difficult within the circumstances of a closed visit, which include problems over, for instance, examining documents jointly, and problems of confidentiality. Lawyers have also expressed the view that it is very difficult to establish the relationship of trust and rapport with their clients that is necessary for them to adequately prepare for the defence. Further, although the solicitors may request an open visit if exceptional circumstances so warrant, they believe that the decisions by the authorities concerning such requests are arbitrary and irrational. The Governor of the prison explained that often a few weeks prior to the trial discretion is exercised to open visits to enable the lawyer to prepare his or her client's case for trial.

51. In a recent Court of Appeal decision concerning the issue of closed visits, <sup>(14)</sup> the Court held that whether to impose closed visits or not was a matter of prison security to be decided by the prison authorities, and dismissed the appeal. However, the Special Rapporteur has learned that the Government has recently announced the recategorization of IRA prisoners in British jails which has meant that they have been moved out of SSUs. Prison officials informed the Special Rapporteur that in fact, at the time of his visit, there are only six prisoners in England and Wales that were currently categorized as exceptional high risk, down from 23 in May 1997. The officials noted that there is a continuous review of categorization and they are constantly reviewing the policy in general to maintain the proper balance between the needs of the institution and the needs of individual prisoners. The Special Rapporteur was informed by the Chief Inspector of Prisons, Sir David Ramsbottom, at the Home Office in London that closed visits would soon be discontinued as he himself did not feel the need for their continuation.

52. Principle 8 of the Basic Principles on the Role of Lawyers provides that "All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials." The General Comment of the Human Rights Committee on Article 14 of the International Covenant on Civil and Political Rights provides, inter alia:

"9. Subparagraph 3 (b) provides that the accused must have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing. What is "adequate time" depends on the circumstances of each case, but the facilities must include access to documents and other evidence which the accused requires to prepare his case, as well as the opportunity to engage and communicate with counsel ... Lawyers should be able to counsel and to represent their clients in accordance with their established professional standards and judgement without any restrictions, influences, pressures or undue interference from any quarter." <sup>(15)</sup>

53. In the view of the Special Rapporteur, in the absence of evidence that solicitors are abusing their professional responsibilities, the closed visits within the SSUs constitute an undue interference with the lawyer/client relationship and create unnecessary impediments for adequate trial preparation. At a minimum, the burden should be upon the prison officials on a case-by-case basis to demonstrate that the closed visits are an exceptional measure necessary to maintain prison security. In the light of what the Chief Inspector of Prisons said to the Special Rapporteur, it is expected that closed visits will be discontinued. [\[back to the contents\]](#)

#### **D. Proposal for a Legal Advice Unit: Independent Commissioner for Holding Centres**

54. The Independent Commissioner for Holding Centres (IHC) was appointed in 1992. His role is described as "providing further public reassurance that terrorist suspects detained in any of the then holding centres (Castlereagh, Belfast; Strand Road, Londonderry; and Gough Barracks, Armagh) were fairly treated and that the statutory and administrative safeguards for their treatment were being properly observed and apply". The mandate of the Independent Commissioner does not include investigation of complaints against police. He may receive complaints, yet such complaints must be transmitted to the Chief Constable for investigation.

55. In 1994, the Independent Commissioner for the Holding Centres proposed the establishment of a legal advice unit at Holding Centres, which would modify the present legal aid system in Northern Ireland by granting legal aid only to those detainees arrested under the emergency legislation who choose a government-appointed solicitor from a unit of lawyers associated with the holding centres. The Law Society of Northern Ireland would manage and operate the legal advice unit and it would be funded by the Government. (16) This proposal came under severe criticism on the grounds, *inter alia*, that it violated the principle that a defendant has the right to counsel of his or her choice. During his discussions with the Independent Commissioner, the Special Rapporteur learned that the Independent Commissioner has withdrawn this proposal. [\[back to the contents\]](#)

#### **IV. VIDEO AND AUDIO-RECORDING OF POLICE INTERVIEWS**

56. The pervasive allegations of harassment and intimidation of lawyers and of the accused himself during police interrogations in the Holding Centres in Northern Ireland has led many commentators to call for the installation of video or audio/video recording of interrogations. Interrogations are currently relayed on a silent television monitor which is monitored by a police officer. However, there has been no instance in which a disciplinary or criminal charge has been brought against any police officer as a result of this surveillance, despite many allegations of ill-treatment made by detainees and despite the numerous cases in which civil damages have been awarded to detainees as a result of ill-treatment in the Holding Centres. (17)

57. In his first annual report, the Independent Commissioner for the Holding Centres, Sir Louis Blom-Cooper, Q.C., called for the introduction of video- and audio-recording of police interviews. The detainee or his legal representative would be able to initiate the process of disclosure if the detainee wishes in any future trial to challenge the admissibility of a statement alleged to have been extracted from him improperly. (18) In his second annual report, the Independent Commissioner reiterated his call to introduce audio- and video-recording of police interviews, noting the widespread support for such measures from, among others, the Northern Ireland judiciary and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. (19)

58. In 1995 the then Secretary of State for Northern Ireland, Sir Patrick Mayhew announced that he would introduce a scheme for "electronic recording" at the Holding Centres, which was incorporated into the new s.53 of the 1996 version of the EPA. In January 1997 a draft code of practice was issued on silent video-recording of police interviews at the Holding Centres. Solicitors and non-governmental organizations have expressed the view that the draft code is deficient in many respects, particularly since it leaves in the hands of the prosecution the question of whether a video or any part of it, should be disclosed to the defence.

59. On 16 October 1997 the Northern Ireland Office announced that silent video-recording is to be installed in Castlereagh Holding Centre and will be eventually installed at Gough Barracks and Strand Road. During the course of his visit to Castlereagh, the Special Rapporteur was shown the work in progress to install the necessary equipment. More importantly, the Special Rapporteur was informed by the authorities that it is the intention of the current Government to amend the legislation

to include audio- as well as video-recording. The Special Rapporteur welcomes this initiative as an important step towards enhancing public confidence in the Government's commitment to ensure accountability. The Special Rapporteur also notes that it is in the interest of the RUC itself as a means to defend itself against what they allege to be false allegations. [\[back to the contents\]](#)

#### V. MURDER OF PATRICK FINUCANE

60. On 12 February 1989, Patrick Finucane, a solicitor who was well-known for his defence of individuals detained under Northern Ireland's emergency legislation, was killed by two masked gunmen who entered his home and shot him 14 times in front of his wife and three children. His wife, Geraldine Finucane, was also injured when a bullet probably ricocheted and hit her in the ankle. The Ulster Freedom Fighters, a Protestant paramilitary organization, immediately claimed responsibility for the murder, but to date no one has ever been charged for the crime.

61. The murder of Patrick Finucane came less than four weeks after statements were made by Douglas Hogg, MP, then Parliamentary Under-Secretary of State for the Home Department, in a Committee stage debate on the Prevention of Terrorism. In the debate, Mr. Hogg stated: "I have to state as a fact, but with regret, that there are in Northern Ireland a number of solicitors who are unduly sympathetic to the cause of the IRA." Mr. Hogg failed to provide any evidence to substantiate this serious allegation, merely stating, "... I state it on the basis of advice that I have received, guidance that I have been given by people who are dealing with these matters, and I shall not expand on it further."

62. Prior to his murder, Patrick Finucane also received a number of death threats from RUC officers, mainly delivered via his clients. One client, Brian Gillen, who received compensation for ill-treatment he suffered while in detention, has provided testimony that he was told by a RUC officer following the filing of a habeas corpus petition on his behalf by Finucane that "it would be better if he [Patrick Finucane] were dead than defending the likes of you," and that they threatened to give details concerning the solicitor and his client to loyalist paramilitaries. Following his defence of Gillen, other clients have testified that numerous death threats were made against Finucane by the RUC. He is also reported to have received threatening phone calls at his home. On 5 January 1989, five weeks before his death, one of Patrick Finucane's clients alleged that an RUC officer

"... informed me that my solicitor was working for the IRA, and would meet his end also ... He asked me to give Mr. Finucane a message from him ... He told me to tell him he is a thug in a suit, a person trying to let on he is doing his job, and that he, like every other fenian [republican] bastard, would meet his end."

63. Since Patrick Finucane's murder, further information that seriously calls into question whether there was official collusion has come to light following the arrest and conviction of Brian Nelson for conspiracy to murder in January 1990. According to the evidence that was presented at his trial, Nelson, who served as a chief intelligence officer for the Ulster Defence Association (UDA), had been recruited by military intelligence to provide information on paramilitary activities, including planned assassinations, which the army would then pass on to the RUC. Nelson did in fact later participate in the planning of assassinations that were actually carried out, which were the basis for his conviction. A BBC *Panorama* documentary that was broadcast on 8 June 1992 revealed that Nelson had kept a prison diary in which he wrote that he had informed "his handlers" in the military that Patrick Finucane was being targeted by loyalist paramilitaries as early as December 1988. The diary also stated that Nelson had provided a photograph of Finucane to a paramilitary assassin a few days before the murder. Although certain questions have arisen as to the authenticity of the journal, the information contained in the diary was essentially corroborated by a witness at Nelson's trial. This witness, referred to only as "Colonel J" to protect his identity, was a senior ranking military intelligence officer. According to his testimony, Nelson had provided him with UDA materials on a weekly basis, which included security documents, photo montages and reports "from all sectors of security forces" which had been leaked to the UDA. More seriously, Colonel J testified that the RUC

had been informed about the information passed on by Nelson to military intelligence, including the planned assassinations. In this regard, Colonel J noted that planned assassinations had been foiled, including an attempt on the life of Mr. Gerry Adams. The RUC, however, has denied that any information obtained by Nelson concerning the planned assassination of Patrick Finucane had been passed on to the police. During the mission, the Special Rapporteur was told by Government sources that Brian Nelson's information saved about 70 lives.

64. Following the *Panorama* broadcast, the then RUC Chief Constable Hugh Annesley requested John Stevens, who had conducted an earlier inquiry into charges of collusion which led to the arrest and conviction of Brian Nelson, to investigate the allegations made in the *Panorama* programme. Stevens issued his final report on this second investigation to the Director of Public Prosecutions (DPP) in January 1995. Unfortunately, neither the report nor its conclusions have ever been made public and Mr. Stevens has declined to discuss its recommendations on the grounds, presumably, that he is prohibited from commenting by the Official Secrets Act. On 17 February 1995 the DPP issued a direction of "no prosecution" to the Chief Constable. This decision not to prosecute has come under severe criticism from non-governmental organizations, particularly in light of the fact that Stevens has publicly stated that he knew "absolutely" who killed Patrick Finucane. (20)

65. In a letter dated 1 September 1996, the Special Rapporteur on situations of extrajudicial summary or arbitrary executions transmitted a letter to the Government setting forth the following questions:

- (a) Why did the DPP decide not to prosecute Brian Nelson?
- (b) Have reports been produced as a result of the investigation carried out? Have these been made public?
- (c) What further steps have been taken?

66. In a letter dated 31 October 1996, the Government provided the following response:

#### "Nelson Allegations

Following the television broadcast in June 1992 in which Brian Nelson alleged involvement in the murder of Mr. Finucane, Mr. Stevens (Deputy Chief Constable, Cambridgeshire Constabulary) was asked to investigate the allegations made which were not covered earlier in his report. Supplementary reports were forwarded to the Director of Public Prosecutions for Northern Ireland, in April 1994, October 1994 and January 1995. A considerable number of matters were subject of investigation in the supplementary reports including matters relating to the murder of Mr. Patrick Finucane. The Director concluded that there was insufficient evidence to warrant prosecution of any person and accordingly a direction of no prosecution was issued on 17 February 1995.

#### Availability of Reports

A summary of Mr. Stevens' initial report was published on 17 May 1990. The supplementary reports have not been made public.

#### Other Points

The RUC investigation of the murder of Mr. Finucane is still open and the RUC will look at any new evidence presented to them in relation to the case."

67. During the course of his mission to Northern Ireland, the Special Rapporteur met with Mrs. Finucane and other family members, Mr. Peter Madden and Mr. Kevin Winters of Madden & Finucane and other barristers and solicitors familiar with the case. He also discussed the murder of Patrick Finucane with the Chief Constable of the RUC, Mr. Ronnie Flanagan, and the Director of

## Public Prosecutions, Mr. Alasdair Fraser, Q.C.

68. In his discussion of the case with the Special Rapporteur, the Director of Public Prosecutions emphasized that the case was reviewed in a rigorous manner, but there was simply insufficient evidence to bring a prosecution. In this regard, he noted that there is a two-pronged test in England and Northern Ireland in determining prosecution: (1) Is there a reasonable prospect of obtaining a conviction?; (2) Does the public interest demand prosecution? In this case, he had concluded that the first test had not been met, noting that allegations merely constitute a line of investigation but may not constitute admissible evidence. He emphasized that the DPP is wholly independent of the Government and that it prosecutes cases across the divide, as well as against the RUC and the military. At the same time, he acknowledged that his role is necessarily limited owing to the fact that he does not have investigators. The investigation itself is done by the RUC, or in this case by the Stevens inquiry. In this case, he stated confidently that the Office had met its responsibilities. He did note, however, that each murder case remains open and that he would bring the case forward if there is further evidence.

69. The Special Rapporteur appreciates that there can be some cases where the person who committed the crime may be known, yet there may be insufficient admissible evidence to prove the case and secure a conviction.

70. Owing to the time constraints, the Special Rapporteur was unable to meet with Mr. John Stevens at the time of the mission, as suggested by the Chief Constable, who felt he was not in a position to comment upon the particulars of the case. However, in a letter to Mr. Stevens dated 27 November 1997, the Special Rapporteur requested a written response to the following questions:

(a) Did the military know that Patrick Finucane was the target of the UDA? If so, did the military notify the RUC?

(b) If the military did not notify the RUC, why not? In any event, why did the military not alert Patrick Finucane and provide adequate protection?

(c) If the military did notify the RUC, why did the RUC not alert Patrick Finucane and provide security?

(d) Prior to his murder, Patrick Finucane was subjected to threats and intimidation by RUC officers. Were these allegations investigated by the RUC?

71. In a letter dated 14 January 1998, Mr. Stevens acknowledged receipt of the Special Rapporteur's letter dated 27 November 1997. The response states:

"As you will be aware the reports submitted by me are the property of the Secretary of State for Northern Ireland and the Chief Constable of the RUC. I am therefore not in a position to release these reports or indeed divulge any of the contents. The reports are highly classified and the authority of the above persons will be required before information is released."

Mr. Stevens concludes by stating that "[t]he contents of your letter will be discussed with the Chief Constable of the RUC.

72. Although some pointed out that this was only one of hundreds of unresolved murders, the murder of Patrick Finucane is of a different nature. As a high profile lawyer who had tremendous success representing his clients, both before domestic courts and the European Court of Human Rights, his murder had a chilling effect on the profession and further undermined public confidence in the judicial system. Solicitors informed the Special Rapporteur that the murder led them either to give up criminal practice entirely or to alter the manner in which they handled terrorist related cases. Thus, the defendant's right to counsel was compromised. It was also learnt that several lawyers armed themselves for self-defence and their houses were equipped with security devices.

73. Principle 17 of the United Nations Basic Principles on the Role of Lawyers provides, "Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities." If it is true that Brian Nelson informed military intelligence of the UDA's intent to murder Patrick Finucane, as Nelson claims in his prison diary and which seems to be corroborated by the testimony of Colonel J at Nelson's trial, then the Government has violated its duty to safeguard Patrick Finucane. Further, this omission would constitute a violation of article 6 of the International Covenant on Civil and Political Rights. The outstanding questions surrounding the murder of Patrick Finucane demonstrate the need for an independent judicial inquiry. So long as this murder is unresolved, many in the community will continue to lack confidence in the ability of the Government to dispense justice in a fair and equitable manner.

74. Though the United Nations Basic Principles on the Role of Lawyers were endorsed by the General Assembly in the aftermath of this murder, yet the Government's duty to provide adequate safeguards to protect the security of lawyers in such circumstances must necessarily be implied, particularly in a country which cradled and nurtured the concept of an independent system of justice.

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## VI. EMERGENCY LEGISLATION AND ORDINARY CRIMINAL LAW

75. Concerns have been expressed to the Special Rapporteur that certain provisions in the emergency legislation and in the ordinary criminal law impinge on the ability of the judiciary to function impartially and independently. These provisions include the abrogation of the right to silence, the lower threshold for admissibility of confession evidence and the absence of a jury. In this regard, the Special Rapporteur notes that Principle 6 of the Basic Principles on the Independence of the Judiciary provides that "The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected."

76. The Special Rapporteur wishes to emphasize that he has full confidence in the integrity of the judiciary in Northern Ireland and believes that they are in fact applying the law in an impartial manner. Nevertheless, the Special Rapporteur has repeatedly emphasized that the judiciary must not only be independent and impartial, it must be seen to be independent and impartial. The provisions in question have seriously eroded public confidence in the ability of the judiciary to render its decision in an independent and impartial manner, and therefore, these issues fall within the remit of the Special Rapporteur's mandate. [\[back to the contents\]](#)

### A. Right to remain silent

77. The Criminal Evidence (Northern Ireland) Order 1988 permits a judge to draw adverse inferences from a detainee's silence in three circumstances: (1) when the defendant bases his or her defence on a fact that he or she could reasonably have been expected to raise during police questioning, but did not; (21) (2) when the accused fails to give the police an explanation for the presence of a nearby substance, object or mark that could reasonably be believed to have a connection to a crime; (22) and, (3) when a defendant fails to account for his or her whereabouts at the time a crime was committed. (23) The Order also allows a negative inference to be drawn if the defendant fails to answer questions at trial. (24) Section 34 of the Criminal Justice and Public Order Act 1994 extends the same legislation to England and Wales, the relevant provisions of which came into force on 1 April 1995.

78. A joint study by the non-governmental organization, Committee for the Administration of Justice (CAJ) and Liberty claims that the extension of the provisions took place with no empirical assessment of whether the desired results (i.e., increased convictions) and the stated dangers had in fact resulted from the legislation in Northern Ireland. To the contrary, the study demonstrates that the statistical evidence indicates no change in conviction rates for serious crime resulting from the imposition of the order. The study further concludes that the caution given upon arrest is poorly



understood by suspects; that vulnerable suspects are being pressured to speak; that innumerable professional conflicts arise for lawyers from the adverse inferences; that the shift in the burden of proof at trial is real and pronounced; that use of the inference at preliminary inquiry is pushing cases with insufficient prima facie evidence to trial; and that judges have displayed a lack of caution in their willingness to read negative inferences into a defendant's silence. (25)

79. International standards, as well as general principles of criminal law, provide that the burden of proving guilt rests with the prosecution. The right not to be compelled to incriminate oneself is outlined in article 14 (3) of the International Covenant on Civil and Political Rights. In its General Comment 13 on article 14, subparagraph 3 (g) on the Covenant, the Human Rights Committee states *inter alia*: "In order to compel the accused to confess or testify against himself frequently methods which violate these provisions [article 7 and article 10] are used. The law should require that evidence provided by means of such methods or any other form of compulsion is wholly unacceptable." While the Human Rights Committee is referring to the use of torture or inhumane treatment in detention as means of compelling a confession, in the view of the Special Rapporteur any means used by the State to exert undue influence upon a detainee to compel a confession of guilt is unacceptable. In the case of Northern Ireland, the inferences that may be drawn under the 1988 Criminal Evidence Order indirectly exert pressure on the detainee to make statements that may incriminate him, and thus, is a violation of the principle of right to silence set forth in article 14 of the ICCPR.

80. Other international human rights bodies have issued similar findings. In *Murray v. United Kingdom*, the European Court of Human Rights held that the power to draw adverse inferences from silence, coupled with the deferral of access to counsel in Northern Ireland, constitutes a violation of the fair trial provisions of article 6 of the European Convention on Human Rights. (26) Similarly, in their comments to the United Kingdom representative during the presentation of the periodic report, the Human Rights Committee members expressed their concern that the extension of the legislation to England and Wales diluted the presumption of innocence, violated the prohibition against testimonial compulsion and negated the right to a fair trial. (27) In its comments on the periodic report the Committee found that the provisions of this legislation violate article 14 of the Covenant. (28) [\[back to the contents\]](#)

#### **B. Admissibility of confession evidence.**

81. In Northern Ireland confession evidence is admissible in cases scheduled under section 12 of the Northern Ireland (Emergency Provisions) Act (EPA) unless the accused was subjected "to torture, to inhuman or degrading treatment, or to any violence or threat of violence (whether or not amounting to torture), in order to induce [an accused] to make the statement". (29) Further, in Northern Ireland the accused must present prima facie evidence of the torture, inhuman or degrading treatment or violence or threat to violence, while under the Police and Criminal Evidence (NI) Order (PACE) there is a lower threshold for the admissibility of such evidence. In Northern Ireland, once the defendant makes this showing, the burden shifts to the prosecution to show that the confession was not coerced in the specified manner.

82. Non-governmental organizations have argued that this standard means that physical deprivation or psychological pressure short of outright violence is permissible. This standard is particularly troubling in light of the fact that the Human Rights Committee has recommended the closing of Castlereagh Holding Centre as a "matter of urgency" owing to "unacceptable" conditions of detention, including tiny cells with no opening to natural light, the absence of exercise areas, lengthy and frequent interrogations, and persistent allegations of intimidation and harassment during interrogations. (30) The provisions under Section 12 of the EPA also means that nothing prevents the introduction of involuntary confessions. In the view of the Special Rapporteur, Section 12 may be in contravention of the principle that one should not be compelled to incriminate oneself and shifts the burden to prove innocence from the prosecution to the defendant. [\[back to the contents\]](#)

### C. Diplock Courts

83. In Northern Ireland the Government has established the so-called Diplock courts in which certain scheduled offences are tried without a jury by a single judge. (31) The absence of a jury and the unique role that judges play in these cases (e.g., the inferences that may be drawn if the accused remains silent) has altered the manner in which judges are viewed. This has led, as reported to the Special Rapporteur, a large segment of the population of Northern Ireland to view the administration of justice in such cases as not being independent and impartial. (32) In the view of the Special Rapporteur, restoration of the jury system, which has been a culture within the criminal justice system in England, would help restore public confidence in the administration of justice. [[back to the contents](#)]

## VII. OTHER ISSUES

### A. "Bugging"

84. Part III of the Police Act, allowing for actions "with respect to property and wireless telegraphy", allows an operation to be authorized if the authorizing officer believes (1) that the action is likely to be "of substantial value" in the prevention or detection of serious crime, and (2) this cannot reasonably be achieved by other means. Where an action is likely to result in acquiring knowledge by any person of matters subject to legal privilege, prior approval by one of the Commissioners is needed. The Act defines legally privileged matters as communications between a professional legal adviser and his client, or any person representing his or her client, which are made (1) in connection with the giving of legal advice to the client; (2) made in contemplation of legal proceedings and the purposes of such proceedings; and items with or enclosed to such communications. Excluded from legal privilege are matters which are privileged as to their content, but which are in the possession of someone who should not have them; and matters held or communications made with the purpose of furthering a criminal purpose. The decision whether or not a communication is legally privileged is up to the authorizing officer, but will be reviewed by the Commissioner ex officio upon receipt of the authorization notification required under Section 96.

85. Non-governmental organizations with whom the Special Rapporteur met during his mission criticized the provisions of Part III of the Police Act empowering law enforcement agencies to undertake "bugging" operations on the following grounds:

- (1) The Police Act is narrowly drafted and deals only with use of listening devices which interfere with "wireless telegraphy" or use of which necessitates trespass. Thus, devices such as sensitive microphones, or the bugging of communications in a police or prison cell is wholly outside of any statutory control. There are no safeguards against misuse of "bugging" devices in such situations;
- (2) The Act does not define the additional criteria necessary for authorization of intrusive operations in which privileged communications are likely to be intercepted, and conditions that may be attached to such operations;
- (3) The Code of Practice should explain the concept of legal privilege in greater detail. For instance, it fails to clarify a borderline case between a lawyer acting legitimately for a client suspected of a criminal offence, and the lawyer furthering a criminal purpose;
- (4) The Code of Practice fails to clarify the term "legal adviser";
- (5) The Code of Practice does not explicitly provide for the destruction of legally privileged material.

86. The Government's contention has been that the lawyers could not be exempted from the surveillance of premises envisaged under the act. Further, the Government considers that involving a judge at that stage may be viewed as the judiciary involving itself in the investigatory process

87. While appreciating the Government's contention, yet given the importance of the concept of legal privilege, which is crucial to the independence of lawyers, the Special Rapporteur views the provisions of Part III of the Police Act with grave concern. The Special Rapporteur draws the Government's attention to the strict statutory regime in New Zealand pertaining to applications for the use of listening devices to intercept private communications. In New Zealand, such applications have to be made to a High Court Judge, who may issue a warrant only if she/he is satisfied that: (a) to issue a warrant would be in the best interests of the administration of justice; (b) one of the specified offences has been or is about to be committed; (c) there are reasonable grounds to believe that evidence relevant to the investigation of this offence will be obtained through the use of a listening device; (d) other methods have been tried and failed, or the use of other methods would be unlikely to lead to the successful conclusion of the investigation or would be too dangerous to adopt; (e) *the communications to be intercepted are not likely to be subject to legal or other privilege* (emphasis added). The Special Rapporteur is particularly concerned that under the Police Act for England and Wales the decision to authorize bugging of legal premises is made by a police officer who most likely will not have the requisite training to appreciate the concept of legal privilege. In the view of the Special Rapporteur, such a decision should require prior authorization from a judicial officer. [[back to the contents](#)]

#### **B. Incorporation of the European Convention on Human Rights**

88. During the course of the Special Rapporteur's mission to the United Kingdom and Northern Ireland, the Government introduced to Parliament the Human Rights Bill, which will incorporate the European Convention of Human Rights into United Kingdom law. (22) The Special Rapporteur welcomes the introduction of this Bill to Parliament.

### **VIII. CONCLUSIONS AND RECOMMENDATIONS**

89. The Special Rapporteur is quite cognizant of the fact that the ongoing peace talks in Northern Ireland are at a crucial stage, particularly in the light of the upsurge in violence over the course of the past months. It is within this context that the Special Rapporteur makes these conclusions and recommendations with the conviction that respect for the rule of law and human rights with greater accountability from all public institutions will enhance the prospects for a peaceful resolution of the conflict. In this regard, the Special Rapporteur wishes to express his gratitude to the Government of the United Kingdom and Northern Ireland for inviting him to undertake this mission, which demonstrates the Government's openness to outside scrutiny and its willingness to listen to the concerns of the international community.

#### **Concerning the harassment and intimidation of solicitors**

90. The Special Rapporteur concludes that the RUC has engaged in activities which constitute intimidation, hindrance, harassment or improper interference. The Special Rapporteur is particularly concerned by the fact that the RUC has identified solicitors with their clients or their clients' causes as a result of discharging their functions.

91. Accordingly, the Special Rapporteur recommends that:

- (a) The authorities, preferably the proposed Police Ombudsman, conduct an independent and impartial investigation of all threats to legal counsel in Northern Ireland;
- (b) Where there is a threat to the physical integrity of a solicitor or barrister, irrespective from whom the threat emanates, the Government should provide the necessary protection and should vigorously investigate the threats and bring to justice the guilty party;
- (c) Both the Bar Council and the Law Society should be more vocal in their defense of solicitors who have been subjected to such harassment and intimidation and should enter into a dialogue with the RUC on how best to address the problem. In this regard, the Special Rapporteur welcomes the steps

taken by the Law Society to establish a complaints procedure;

(d) Lawyers themselves must lodge formal complaints with the authorities including these non-professional bodies;

(e) As a matter of urgency, the RUC should organize, in conjunction with the Law Society and the Bar Council, training seminars for police officers to sensitize them on the important role that defence lawyers play in the administration of justice.

#### Concerning access to lawyers

92. The Special Rapporteur considers a defendant's right to counsel to be of paramount importance to guarantee his or her right to a fair trial and to protect against potential abuse.

93. Accordingly, the Special Rapporteur recommends that:

(a) The right to immediate access of counsel should be respected, and therefore, Section 14 of the PTA should be amended to prohibit deferral of access;

(b) The right to have a solicitor present during police interrogations should be respected;

(c) The practice of closed visits in England and Wales should be discontinued.

#### Concerning video and audio-recording of police interviews

94. As a matter of urgency, the Government should install video and audio-recording equipment in all holding centres in Northern Ireland. Further, the tapes of such recordings should be available to counsel upon request. While welcoming the proposed legislation in this regard, the Special Rapporteur urges speedy implementation of the legislation once passed by Parliament.

#### Concerning the murder of Patrick Finucane

95. The Government should appoint an independent judicial inquiry to investigate the outstanding questions that remain in the case of Patrick Finucane. The Special Rapporteur urges the Government to invoke the provisions of the Commissions of Inquiry Act as it has recently done in the case of the Bloody Sunday incident.

#### Concerning the emergency legislation

(a) The right to silence should be immediately reinstated. Neither judges nor juries should be permitted to draw adverse inferences at trial from a defendant's failure to respond to police questioning. Accordingly, the Criminal Evidence (Northern Ireland) Order 1988 should be rescinded;

(b) The permissive EPA standard for admitting at trial confession evidence procured by psychological pressure, deprivation, or other non-violent forms of coercion should be abolished. The standard for admitting confession evidence should conform to the Police and Criminal Evidence (Northern Ireland) Order of 1989 (PACE). In general, the implementation of the ordinary law should be given priority;

(c) The right to trial by jury should be reinstated, with safeguards put into place to protect the integrity of jurors.

#### Concerning the issue of "bugging"

96. The Special Rapporteur is concerned that Part III of the Police Act, which allows for actions "with respect to property and wireless telegraphy" is too vague and should be amended to ensure that privileged communications between an attorney and client are scrupulously respected.

Concerning the Police Ombudsman

97. While welcoming the Police (Northern Ireland) Bill submitted to Parliament, calling for the creation of a Police Ombudsman, the Special Rapporteur calls upon the Government to provide the institution with the necessary human and financial resources to meaningfully carry out its mandate, which will go a long way towards restoring public confidence in the police complaints procedure.

Concerning the judiciary

98. The Government should implement training programmes on international human rights standards and on the jurisprudence of international human rights bodies such as the Human Rights Committee and the European Court of Human Rights. The latter is particularly timely in light of the Government's Human Rights Bill calling for the incorporation into British law of the European Convention on Human Rights. [\[back to the content\]](#)

Notes

1. The Standing Advisory Commission on Human Rights (SACHR) is the government-appointed board which advises the Government on human rights concerns. [\[back to the text\]](#)
2. Digest of Information on the Northern Ireland Criminal Justice System, Northern Ireland Office, Statistics and Research Branch, July 1996, p. 6. [\[back to the text\]](#)
3. The Emergency Provisions Act (EPA) was first enacted in 1973, replacing the Civil Authorities (Special Powers) Act (Northern Ireland) 1922. There have been a series of amended versions since 1973. [\[back to the text\]](#)
4. The Independence and Impartiality of the Judiciary, Jurors and Assessors and the Independence of Lawyers: Report on the Independence of the judiciary and protection of practising lawyers, prepared by Mr. Louis Joinet pursuant to resolution 1991/35 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Forty-fourth session, E/CN.4/Sub.2/1992/25, 5 August 1992. [\[back to the text\]](#)
5. Stalker, Stalker, J. (Penguin, 1988), p. 49. [\[back to the text\]](#)
6. This skepticism appears to be borne out by the statistics. The statistics for 1994 indicate that the RUC dealt with 554 complaints of harassment or oppressive conduct and substantiated only four. See Royal Ulster Constabulary, Chief Constable's Annual Report 1994, at 91 (1995). [\[back to the text\]](#)
7. The Independent Commission for Police Complaints, established in 1988, is an eight-man member body appointed by the Secretary of State for Northern Ireland to provide civilian oversight of complaints investigation. [\[back to the text\]](#)
8. Independent Commission for Police Complaints Northern Ireland, 1996 Annual Report (June 1997), p. 39. [\[back to the text\]](#)
9. *Ibid.*, p. 43. [\[back to the text\]](#)
10. A Police Ombudsman for Northern Ireland: A Review of the police complaints system in Northern Ireland, by Dr. Maurice Hayes (January 1997). [\[back to the text\]](#)
11. In Brogan, et al. v. United Kingdom, (Series A, No. 145-B, Strasbourg, 29 November 1988), the European Court of Human Rights held that a detention under the PTA for four days and six hours violated the fair trial provisions of Article 5(3) of the European Convention on Human Rights. In response, the United Kingdom entered a derogation under Article 4 of the International Covenant on Civil and Political Rights and Article 15 of the ECHR in order to retain the power to detain for up to

seven days without charge. [\[back to the text\]](#)

12. Northern Ireland (Emergency Provisions) Acts: Statistics, Northern Ireland Office, Table 12. [\[back to the text\]](#)

13. See *In the Matter of Applications by Michael Russell and Others for Judicial Review*, KERE2222, p. 5. [\[back to the text\]](#)

14. *R v. Secretary of State for the Home Department, ex parte O'Dhuibhir and O'Brien*, 1997, unreported, Court of Appeal. [\[back to the text\]](#)

15. General Comment 13/21 of 12 April 1984 [Procedural Guarantees in Civil and Criminal Trials]. [\[back to the text\]](#)

16. Independent Commissioner for Holding Centres, *Delayed Choice or Instant Access? Legal Advice for Detainees in Holding Centres* (Belfast: ICHC, November 1994). [\[back to the text\]](#)

17. The annual reports of the Independent Commission for Police Complaints from 1988 to 1995 indicate that despite the fact that approximately 400 complaints have been filed against the police annually arising out of detention under the emergency laws, not a single complaint has been upheld in the past eight years. [\[back to the text\]](#)

18. First Annual (1993) Report of the Independent Commissioner for Holding Centres, submitted to the Secretary of State for Northern Ireland, 31 January 1994, pp. 110-111. [\[back to the text\]](#)

19. Second Annual (1994) Report of the Independent Commissioner for the Holding Centres, submitted to the Secretary of State for Northern Ireland, 31 March 1995. [\[back to the text\]](#)

20. Stevens told the Lawyers Committee for Human Rights that he knew "absolutely" who killed Patrick Finucane, "but was not at liberty to disclose their identity publicly." Lawyers Committee for Human Rights, *At the Crossroads: Human Rights and the Northern Ireland Peace Process*, p. 108. [\[back to the text\]](#)

21. Criminal Evidence (Northern Ireland) Order 1988, article 3. [\[back to the text\]](#)

22. *Id.* article 5. [\[back to the text\]](#)

23. *Id.* article 6. [\[back to the text\]](#)

24. *Id.* article 4. [\[back to the text\]](#)

25. Justice and the Committee on the Administration of Justice, *Right of Silence Debate: The Northern Ireland Experience* (1994). [\[back to the text\]](#)

26. *Murray v. United Kingdom*, Case 41/1994/488/570 (1996.) [\[back to the text\]](#)

27. HR/CT/424, 21 July 1995. [\[back to the text\]](#)

28. CCPR/C/79/Add.55, para. 17, 27 July 1995. [\[back to the text\]](#)

29. Northern Ireland (Emergency Provisions) Act 1996, section 12 (2)(b). [\[back to the text\]](#)

30. *Comments of the Human Rights Committee in Consideration of the Fourth Periodic Report of the United Kingdom and Northern Ireland*, para. 22. The United Nations Committee against Torture has also expressed concern that interrogations at Castlereagh may breach the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. See Consideration of Second Periodic Report of the United Kingdom of Great Britain and Northern Ireland, para. 27. More

notably, the Independent Commissioner for the Holding Centres, Sir Louis Blom-Cooper, has called for the immediate closing of Castlereagh stating: "Each day that passes, the Government is in breach of its obligations to comply with the minimum standards for prisoners". See Fourth Annual Report of the Independent Commissioner for the Holding Centres (Police Offices) (Belfast: ICHC, 10 March 1997). [[back to the text](#)]

31. The Diplock courts derive their name from Lord Diplock, who chaired a commission established in 1971 to review criminal justice in Northern Ireland whose recommendations led directly to the repeal of the Special Powers Act and the passage of the EPA. [[back to the text](#)]

32. In a report issued by the Criminal Justice Policy Division of the Northern Ireland Office concerning a Criminal Justice Conference held from 16-17 October 1997, it is noted that "[s]ince 1992/3 there had been a progressive fall in Catholics' confidence in the fairness of the criminal justice system. When considering whether both sides of the community were treated fairly in regard to terrorist and other sectarian crime, Protestant confidence levels were above 80 per cent but almost half of Catholics believed there was not equal treatment". Report, Northern Ireland Criminal Justice Conference, 16-17 October 1997, p. 6. [[back to the text](#)]

33. *Rights Brought Home: The Human Rights Bill*, Presented to Parliament by the Secretary of State for the Home Department by Command of Her Majesty, October 1997 (CM 3782). [[back to the text](#)]

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**AMNESTY  
INTERNATIONAL  
USA**

600 Pennsylvania Avenue SE 5<sup>th</sup> Floor Washington DC  
Phone (202) 544-0200 • Fax (202) 546-7142

## **UNITED KINGDOM**

### **UN Report criticizes emergency law practices in Northern Ireland**

Amnesty International welcomes the report by Param Cumaraswamy, the United Nations (UN) Special Rapporteur on the independence of judges and lawyers, on his fact-finding mission to the United Kingdom of Great Britain and Northern Ireland (UK) in October 1997 [ Report on the mission of the Special Rapporteur to the United Kingdom of Great Britain and Northern Ireland, 5 March 1998, E/CN.4/1998/39/Add.4.]. The report highlighted the lack of safeguards for suspects arrested under emergency legislation, including restrictions on access to legal advice, and made a number of recommendations aimed at ensuring respect for the rule of law and human rights. Amnesty International joined other international non-governmental organizations [ Amnesty International, the International Commission of Jurists, Human Rights Watch, the International Federation of Human Rights and the Lawyers Committee for Human Rights issued a joint statement on 31 March 1998 on the Special Rapporteur's report (see EUR 45/08/98).] in urging the UK Government to implement the recommendations of the UN Special Rapporteur on the independence of judges and lawyers (Special Rapporteur).

The continued abrogation of basic human rights in Northern Ireland has played a central role in the conflict in Northern Ireland. Previous UK governments have hidden behind secrecy and internal inquiries to avoid being accountable for human rights violations by its agents in Northern Ireland. They have ignored the recommendations of international treaty bodies as well as some of their own internal inquiries. The protection of fundamental human rights has been seen as secondary to the maintenance of a high level of security.

The new government has an opportunity to reassert the primacy of the protection of human rights in Northern Ireland. The incorporation of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) into national law is a first step towards implementing its international obligations. The government should move swiftly to establish a Human Rights Commission, which would have full and effective powers to strengthen human rights protection.

Amnesty International welcomes the commitments expressed in recent government statements to emphasize issues of fairness and justice in Northern Ireland. The organization believes strongly that the protection of human rights and the strengthening of a human rights culture are central to a lasting peace. Amnesty International also believes that a lasting peace has to be built on the basis of full accountability of the security forces for their actions and redress for the victims of human rights violations.

Given the persistence of human rights violations perpetrated in Northern Ireland, there is a particular need for the government to take action on a number of issues, including policing and emergency legislation provisions, with a view to increasing the protection of human rights in Northern Ireland.

One of the striking features about the human rights situation is the fact that there is less human rights protection for people in Northern Ireland than in the rest of the UK. The lower

Amnesty International is an independent worldwide movement working impartially for the release of all prisoners of conscience, fair and prompt trials for political prisoners and an end to torture and executions. It is funded by donations from its members and supporters throughout the world.

EXECUTIVE DIRECTOR  
WILLIAM E. SCHABER



standards in the administration of justice have resulted in a lack of accountability and impunity. The government must take measures to ensure that all laws and procedures throughout the UK conform with international standards.

### **Emergency Legislation**

Amnesty International considers that many provisions in the emergency legislation are in breach of international treaties and standards and urges the government to ensure that all legislation is in conformity with such standards.

#### **1. Special interrogation centres**

There is no statutory basis for the existence of the special police interrogation centres in Northern Ireland, which are used for the detention of suspects arrested under emergency legislation – the most notable being Castlereagh Holding Centre in Belfast. They have been the subject of many allegations of police ill-treatment and torture since the 1970s. Although the number of complaints of ill-treatment in the interrogation centres have decreased, in 1995 there were 80 formal complaints of assault lodged against the interrogating officers out of a total of 191 cases of complaint and in 1996 there were 26 out of a total of 85 cases. In many instances people have alleged that they were forced into making an involuntary or untrue confession because of ill-treatment or under duress. Amnesty International also continued to receive complaints of verbal and psychological abuse and of threats of violence, as well as complaints that detectives made comments about the suspects' lawyers which amount to harassment and intimidation, including death threats. Despite the allegations, there continue to be inadequate safeguards for the protection of suspects detained in these special centres.

Suspects detained in the special interrogation centres can be held for up to seven days without judicial scrutiny of their detention. They can be denied access to lawyers for 48 hours and then for consecutive 48-hour periods up to seven days. Interrogations are not audio-recorded and lawyers are not allowed to attend interrogations with their clients. Similar interrogation centres do not exist in the rest of the UK. Suspects arrested under emergency legislation in Britain are detained in police stations and are permitted to have their lawyers present during interrogation.

Amnesty International has urged the government to comply with the recommendation of the UN Human Rights Committee in July 1995 and the Independent Commissioner for the Holding Centres to close down Castlereagh interrogation centre. The government should detain suspects arrested under emergency legislation in designated police stations [Both of these recommendations have been repeated by Sir Louis Blom Cooper, the Independent Commissioner for the Holding Centres, in his fifth annual report released 27 March 1998. He also recommended that detainees arrested under emergency legislation should be interviewed under ordinary law regulations.]

#### **2. Access to legal counsel**

In order to protect the rights of suspects interrogated under emergency legislation in Northern Ireland, suspects must be given immediate access to legal advice and permitted to be interrogated in the presence of their lawyers. The government should guarantee these essential safeguards immediately. Not only would these measures protect suspects' rights, they would also hamper police abuse of lawyers. Full legal assistance is additionally necessary because of legislation which curbs a suspect's right to silence during interrogation and lowers the standard for the

admissibility of confession evidence in court.

The European Court of Human Rights ruled in February 1996 that John Murray was wrongfully denied access to a lawyer at Castlereagh interrogation centre in Northern Ireland. The denial violated his right to a fair hearing under Article 6 of the European Convention. The Court said that it was "of paramount importance" that John Murray should have been given access to legal advice as soon as questioning began, because of legislation which curbs a suspect's right of silence during interrogation. The European Commission of Human Rights had stated in the same case:

"Restrictions on an accused's access to his lawyer and the refusal to allow the lawyer to attend during examinations of his client may influence the material position of the defence at trial, and therefore also the outcome of the proceedings. The Court and the Commission have accordingly considered that guarantees of Article 6 [of the European Convention] normally extend to an accused the right to assistance and support by a lawyer throughout the proceedings." [European Commission of Human Rights report on the *Murray v UK* case, 27 June 1994.]

The government has still not introduced legislation in order to comply with this judgment.

Recent court judgments have rejected legal challenges to the police's refusal to allow lawyers to attend interviews [Judicial reviews: *In Re Begley's Application*, 1996; *Re Russell's Application*, 1996; *Re Floyd's Application*, 1997; *Re Palmer and Palmer's Application*, 1997]. The House of Lords stated, "The differential treatment of persons suspected of having committed offences under the terrorism provisions in Northern Ireland was plainly part of a deliberate legislative policy. It was the clearly expressed will of Parliament that persons arrested should not have the right to have a solicitor present during interview." [*R v Chief Constable of the RUC, Ex parte Begley and R v McWilliams*, October 1997]

The Special Rapporteur recommended that the right to immediate access to legal counsel should be respected and that the emergency power of deferral of legal access for 48 hours should be prohibited. He further stated:

"In the view of the Special Rapporteur, it is desirable to have the presence of an attorney during police interrogations as an important safeguard to protect the rights of the accused. The absence of legal counsel gives rise to the potential for abuse, particularly in a state of emergency where more serious criminal acts are involved. In the case at hand, the harsh conditions found in the holding centres of Northern Ireland and the pressure exerted to extract confessions further dictate that the presence of a solicitor is imperative." [See Report on the mission of the Special Rapporteur to the UK, para 47.]

### 3. Other fair trial safeguards

Further safeguards should be introduced immediately, including the audio-recording of all interrogations. Video-recording facilities are being installed in the interrogation centres, but without audio-recording as well, verbal abuse of the suspects or their lawyers cannot be detected. The government should also end its derogation of the relevant provisions of the International Covenant on Civil and Political Rights (ICCPR) and the European Convention and provide

prompt judicial scrutiny of detentions.

Another vital safeguard is the introduction of a system to investigate complaints of police ill-treatment which would ensure that allegations are promptly, thoroughly and independently investigated and that the perpetrators of ill-treatment are brought to justice. An independent review of the complaints procedures in Northern Ireland, published in January 1997, recommended the appointment of a Police Ombudsman. The duty of the Police Ombudsman would be to investigate complaints against the police by using his or her own staff of independent investigators. The government introduced draft legislation, the Police (Northern Ireland) Bill, which provides for "formal investigation" by the Police Ombudsman of serious complaints against individual members of the police force. Such a formal investigation involves the Police Ombudsman appointing an officer of the Ombudsman to conduct the investigation. This officer has the powers of a police officer. The Ombudsman also has the discretion to investigate formally any other complaint against an individual police officer, or if there is no complaint, the Ombudsman can formally investigate an incident if s/he believes it is in the public interest. Amnesty International is concerned that the draft bill does not make any provision for the Ombudsman to examine complaints about the "direction and control of the police force by the Chief Constable". There is no provision for the Ombudsman to initiate an investigation into perceived patterns of abuse. This is especially disturbing, given the various issues highlighted by Amnesty International over the years which have not been investigated independently and thoroughly. Such issues include interrogation methods, disputed killings by police officers, allegations of collusion by the Royal Ulster Constabulary (RUC) with Loyalist paramilitary groups, and methods of crowd control including the firing of plastic bullets

The Special Rapporteur has recommended that the government provide the Police Ombudsman with the necessary financial and human resources to enable him/her to carry out the work.

#### 4. Intimidation and harassment of lawyers

The Special Rapporteur visited the UK in October 1997 to investigate allegations he had received since 1994 of a pattern of police officers making abusive remarks about defence lawyers in Northern Ireland, particularly about lawyers who represent suspects arrested under emergency legislation. The Special Rapporteur described the allegations of abuse as ranging from mild forms of harassment and interference in the solicitor/client relationship, to physical abuse and/or death threats. In his report he cited examples of the harassment and intimidation of lawyers, including a recent physical assault of one lawyer. He also focussed on the killing of the lawyer, Patrick Finucane, in 1989.

The Special Rapporteur stated that he viewed with concern allegations that solicitors acted on behalf of paramilitaries. He illustrated this concern with the following account of his discussion with the Chief Constable of the RUC:

"The Chief Constable alluded to an agenda in which the paramilitary organizations ensured that detainees remain silent and alleged that solicitors may be involved in conveying this message to the detainees. Further, he stated that there is in fact a political divide in Northern Ireland and part of the political agenda is to portray the RUC as part of the unionist tradition. These allegations concerning police intimidation and harassment of solicitors is part and parcel of this political agenda." [ Report on the

mission of the Special Rapporteur to the U.K. para. 21 |

The Special Rapporteur concluded "that the RUC has engaged in activities which constitute intimidation [of lawyers], hindrance, harassment or improper interference" and that such practices were systematic. He also expressed particular concern that the RUC identifies lawyers who represent those accused of terrorist-related offences with their clients or their clients' causes as a result of discharging their functions [ See Report on the mission of the Special Rapporteur to the U.K. para. 90.]. He urged the authorities to conduct an independent and impartial investigation of all threats to legal counsel in Northern Ireland, preferably through the proposed Police Ombudsman.

On 14 January 1998, 33 lawyers from Northern Ireland issued a statement expressing "grave concern at the failure of the rule of law and the relative immunity from prosecution of members of the security forces who have violated basic human rights and contravened national and international laws". The statement addresses a series of issues, including the "intimidation and abuse of solicitors by police officers via their clients in detention centres. We are all too aware of this continuing problem, which is one we face in our daily lives". [ For the full text of the lawyers' statement, see Appendix to this document.].

#### *The Killing of Patrick Finucane*

Patrick Finucane, a prominent criminal defence and civil rights lawyer, was killed in 1989 by a Loyalist armed group, the Ulster Defence Association/Ulster Freedom Fighters. Their assertion that he had been an "IRA member" was refuted by the police.

The killing of Patrick Finucane took place in the context of frequent allegations that police officers made threats against, or derogatory comments about, defence lawyers to detainees held in special interrogation centres. There was evidence that Patrick Finucane was one of several lawyers being particularly targeted by the security forces in the late 1980s. After his murder, strong evidence emerged which suggested official collusion by members of military intelligence with Loyalist paramilitaries in his killing [ For details about the killing of Patrick Finucane, see *United Kingdom: Political Killings in Northern Ireland*, February 1994, AI Index: EUR 45/01/94.]. No one has been brought to justice to date.

The 33 Northern Ireland lawyers stated in January, "We remain particularly concerned at the circumstances of the murder of our esteemed professional colleague, Pat Finucane. It is simply unacceptable, that faced with compelling evidence of state involvement in the killing of a defence lawyer, no action has been taken. Serious allegations of collusion between members of illegal loyalist organisations and members of the security forces have yet to be properly investigated."

Amnesty International supports the Special Rapporteur's recommendation that the government initiate an independent and thorough judicial inquiry into the circumstances of the killing of Patrick Finucane. Such an inquiry is inextricably linked to the need for a thorough, independent and wide-ranging inquiry into collusion. Fresh evidence has emerged of collusion between military intelligence officers and Loyalist paramilitaries in the killing of suspected IRA members. Reports in the media [ Sunday Telegraph, 29 March 1998. ] revealed that a covert unit of military intelligence, the Force Research Unit, recruited Loyalist Brian Nelson in 1987 and infiltrated him into the Ulster Defence Association (UDA). His role in the UDA was to ensure that "only legitimate targets" (ie. IRA members) were killed. Files which have been disclosed detail

accounts of meetings between Brian Nelson and his army handlers, and demonstrate the complicity of the handlers in killings. One account, dated 3 May 1988, stated that the Loyalists' "targeting has developed and is now more professional" The army's records reportedly show that Brian Nelson was involved in at least 15 murders, 15 attempted murders and 62 conspiracies to murder. It has previously been alleged that Brian Nelson told his army handlers that Patrick Finucane was being targeted by the UDA [ See *United Kingdom: Political Killings in Northern Ireland*, February 1994, AI Index: EUR 45/01/94. See also Report on the mission of the Special Rapporteur to the UK, paras. 63-66.].

#### 5. Diplock Courts

"Diplock Courts" were established under emergency legislation in 1973 to try serious offences linked to alleged terrorist activities. These single-judge and juryless courts do not exist in England, even though people in England are tried for the same offences. There are a number of people who have been convicted in these courts who claim to be victims of miscarriages of justice. Amnesty International has been concerned that lower standards for the admissibility of confession evidence, lack of full disclosure by the prosecution to the defence of crucial evidence, and the curtailment of the right of silence have resulted in unfair trials. The Special Rapporteur recommended that the standards in emergency legislation for admitting confession evidence should be abolished. He further recommended that the "restoration of the jury system, which has been a culture within the criminal justice system in England, would help restore public confidence in the administration of justice" [ See Report on the mission of the Special Rapporteur to the UK, para. 83 ]

#### 6. Other fair trial concerns in the United Kingdom

Amnesty International believes that the historically recognized right to remain silent both during initial police interviews and during trial should be re-instated [ See *United Kingdom: Fair trial concerns in Northern Ireland: the right of silence*, November 1992, AI Index: EUR 45/02/92]. The organization believes that the current laws which curtail the right of silence violate Article 14(3)(g) of the ICCPR which guarantees the right not to be compelled to testify against oneself or confess guilt and Article 14(2) which guarantees the presumption of innocence. The Special Rapporteur recommended that the right to silence should be immediately re-instated.

New legislation, the Criminal Procedure and Investigations Act 1996, reduces defence lawyers' access to information, held by the prosecution, about all the potential evidence in a case and how it was collected. Recent miscarriages of justice, including the Bridgewater Four, the Guildford Four and the Ballymurphy Six, have shown the importance of allowing the defence to have full disclosure of all the evidence. The lack of full disclosure may violate the international fair trial principle of equality of arms to both parties in criminal proceedings. The withholding of information by the prosecution from the defence is contrary to the UN Guidelines on the Role of Prosecutors and the UN Basic Principles on the Role of Lawyers.

#### 7. "Closed" visits in England

Amnesty International is concerned that the Special Security Units (SSUs), in which "exceptional escape risk" Category A prisoners [ Prisoners, on remand or convicted of serious offences, can be categorized as Category A if their escape is considered as highly dangerous to the public or the police or to the security of the state. Category A prisoners are divided into three sub-categories: standard risk, high risk and exceptional risk (of escape) ] are held, constitute cruel, inhuman or degrading treatment and deny remand prisoners

their right to a fair trial in violation of the United Kingdom's obligations under international treaties [ For more detailed information, see *United Kingdom: Special Security Units: Cruel, inhuman or degrading treatment*, March 1997 (AI Index: EUR 45/06/97)]. The SSU is a prison within a prison.

The conditions within the SSUs have seriously impeded remand prisoners' right to a fair trial, both because they undermine the defendants' mental and physical capacity to prepare their defence and because they restrict the facilities for the preparation of the prisoners' defence through "closed" legal visits. A "closed" visit means that the defendant is separated from the lawyer by a glass barrier and communication is via a telephone or grill. Lawyers have stated that such legal visits severely hampered their ability to communicate with their clients and to prepare their clients' defence in an effective and constructive way.

The Special Rapporteur found that "in the absence of evidence that solicitors are abusing their professional responsibilities, the closed visits within the SSUs constitute an undue interference with the lawyer/client relationship and create unnecessary impediments for adequate trial preparation" [ See Report on the mission of the Special Rapporteur to the UK, para. 53.].

Amnesty International has urged the government to carry out a review of the "security" measures which have been implemented within the British prison regime, in order to ensure that such measures do not amount to cruel, inhuman or degrading treatment of prisoners

#### **Amnesty International's reaction to the UK Government's response to the Special Rapporteur's Report**

Param Kumaraswamy delivered his report to the UN Commission on Human Rights on 1 April 1998. The government human rights body in Northern Ireland, the Standing Advisory Commission on Human Rights [ In the statement dated 1 April 1998, SACHR said "Many of the wide range of issues covered by the report have previously been highlighted as matters of concern . . . In particular, SACHR's long-standing recommendations for increased safeguards for those detained and prosecuted under emergency legislation." ], and non-governmental organizations all welcomed the Special Rapporteur's report. The UK delegation to the Commission did not make an oral response to the Special Rapporteur's report [ The Irish delegation to the Commission made an oral statement on 2 April which reiterated the government's concerns about the circumstances of the killing of Patrick Finucane and reports of intimidation of defence lawyers. The statement thanked the Special Rapporteur "for his detailed observations and his specific recommendations which deserve very close attention". ]. In a written response, which was circulated at the Commission, the government stated that it would: introduce audio-recording in special interrogation centres; introduce a system of independent investigations into individual complaints against the police; and initiate training programmes for the judiciary prior to the incorporation of the European Convention into national law. In addition, the government will be introducing a proposal for permanent counter-terrorism legislation which will address issues of legal access, the lower standard of proof for admissibility of confession evidence, and others.

The government, however, rejected the Special Rapporteur's call for a judicial inquiry into the killing of Patrick Finucane. In its statement the government denied that the killing of Patrick Finucane was "a matter of urgent public importance" and stated that the past internal inquiries had concluded that there was insufficient evidence to warrant the prosecution of any person for the murder. Amnesty International is concerned that the government rejected the call for a judicial

inquiry. The organization believes that the killing of Patrick Finucane raises serious matters of urgent public importance including: the practice by RUC detectives of targeting and threatening defence lawyers; the ability of the legal profession to carry out its work without fear of intimidation or harassment; and serious allegations that there was collusion between military intelligence agents and a Loyalist paramilitary group in his murder.

The government acknowledged that it was concerned about the Special Rapporteur's conclusion that the RUC engaged in activities which constitute "intimidation, hindrance, harassment" of defence lawyers. However, Amnesty International is concerned that rather than ensuring the implementation of systemic changes recommended by the Special Rapporteur to prevent such abuse by its agents, the government limited its undertakings to examining closely the comments, requesting "specific details on which the allegations are made", and looking into "any new evidence" on individual cases. This response lacks credibility given the documentation received by the government from human rights organizations over the years of such abuses [ In particular, detailed documentation has been submitted by British Irish Rights Watch and the Lawyers Committee for Human Rights. SACHR stated that "on a number of occasions since 1992, SACHR has urged government to take all reasonable steps to eliminate the circumstances which give rise to allegations of intimidation of defence lawyers". ] and the detailed documentation set out in the Special Rapporteur's report.

Amnesty International regrets that the government also rejected a number of other important recommendations by the Special Rapporteur. The government did not agree to introduce legislation forthwith to allow immediate access to lawyers and for lawyers to be present at interrogations in Northern Ireland; and did not agree to re-instate the right to jury trials in Northern Ireland. Furthermore, the government refused to end "closed" visits in England, and to re-instate the right of silence throughout the UK.

Amnesty International urges the government to re-consider its initial reaction to the UN report and to implement all of the recommendations of the UN Special Rapporteur on the independence of judges and lawyers which aim to improve protection of human rights in the United Kingdom.

*Source: Amnesty International, International Secretariat,  
1 Easton Street, WC1X 8DJ, London, United Kingdom*

## **Summary of the United Nations Special Rapporteur's Report on Human Rights in Northern Ireland**

In a report presented to the United Nations Human Rights Commission on April 1, 1998, the Special Rapporteur on the Independence of Judges and Lawyers has offered a persuasive and comprehensive description of serious violations of human rights occurring in Northern Ireland. The report is based on extensive interviews with defense lawyers, human rights groups, and senior government officials (including the Chief Constable of the Royal Ulster Constabulary and the Lord Chief Justice of Northern Ireland) during a fact-finding trip in October of 1997. What follows is a brief summary of the Special Rapporteur's report's main findings and recommendations.

The report confirms much of what human rights groups and others have been saying for some time about the justice system in Northern Ireland. In short, the conduct of the police toward suspects, detainees, and defense lawyers is frequently atrocious. In addition, aspects of the legal system, such as limitations on the right to silence, create structural incentives for human rights abuses and the unfair administration of justice.

### **Intimidation and Harassment of Lawyers**

- ◆ The Special Rapporteur found that the Royal Ulster Constabulary ("RUC") has engaged in a pattern of intimidation and harassment of solicitors who defend individuals charged with terrorism-related offenses. This conduct ranges from questioning the integrity of lawyers to issuing death threats against lawyers to their clients. The Special Rapporteur emphasized that he interviewed numerous lawyers, all of whom confirmed the existence of this sort of conduct.
- ◆ The report recommends that all threats to legal counsel be investigated impartially, for example through the proposed police ombudsman. The report also recommends that barristers and solicitors who have been threatened be given government protection.
- ◆ The Special Rapporteur criticizes the Northern Ireland Bar Council and Law Society for not taking a sufficiently active role in defending their members and complaining to the authorities about abuses. In order for these organizations to do a better job, however, the report also states that barristers and solicitors will have to report their complaints more systematically.
- ◆ Finally, the Special Rapporteur recommends the establishment of training programs for RUC officers to help them understand the importance of the role of defense lawyers in the justice system.



### **The Murder of Patrick Finucane**

- ◆ The Special Rapporteur devotes an entire section of his report to the murder of Patrick Finucane, a prominent lawyer for individuals detained under Northern Ireland's emergency legislation. Mr. Finucane was shot 14 times in his home, in front of his wife and children. Prior to the murder, Mr. Finucane had received death threats from RUC officers. Since the murder, credible evidence has come to light suggesting collusion by government officials.
- ◆ The report calls for the appointment of an independent body to investigate the questions surrounding the murder of Mr. Finucane. Specifically, the report urges the government to invoke the provisions of the Commissions of Inquiry Act as was done in the case of the Bloody Sunday investigation.

### **Access to Counsel**

- ◆ The report indicates that the Prevention of Terrorism Act ("PTA") and the Emergency Provisions Act ("EPA") provide for the deferral of a detainee's right to see counsel under certain circumstances. Given the critical importance of access to counsel to guarantee a fair trial and protect against police abuse, the Special Rapporteur recommends that the PTA be amended to better guarantee the right to counsel.
- ◆ In addition, the report emphasizes the critical importance of the right to have counsel present during all interrogations. This is particularly important given the importance of confessions in the prosecution of suspects in Northern Ireland and the history of police abuse.
- ◆ The report also describes the procedure by which certain high risk prisoners are required to consult with their lawyers through a screen. The report concludes that this procedure is an unnecessary infringement on the ability of defense lawyers to prepare their cases, at least in the absence of evidence of abuse. However, the report notes that the government has indicated that it will discontinue the practice.

### **Audio and Video Recording of Police Interviews**

- ◆ Recording of police interviews has long been a contentious issue in Northern Ireland. However, the Special Rapporteur recommends, as have human rights groups before him, that such recordings are an important component of any effort to improve the human rights situation for detainees. He notes that such recordings would not only protect detainees against abusive treatment, but would also protect the police against false accusations of abuse.
- ◆ The report welcomes the government's plan to institute such recordings and urges its speedy implementation.

### **Emergency Legislation**

- ◆ The report strongly criticizes existing limitations on the right to silence in Northern Ireland. It notes that limitations on this right lead to human rights abuses and do not necessarily have benefits in terms of increased conviction rates. It calls for the immediate reinstatement of the right to silence, including a prohibition on judges and juries drawing adverse inferences at trial from a defendant's failure to respond to police questions.
- ◆ The report unequivocally calls for an end to the "Diplock" juryless court system and the reinstatement of the right to trial by jury. It states that this would help to restore public confidence in the justice system.
- ◆ Finally, the report criticizes the standards for admitting at trial confessions induced through psychological pressure and other forms of coercion. The Special Rapporteur emphasizes that changing these standards is particularly important given the poor conditions that many detainees are subjected to.

### **Other Issues**

- ◆ **Bugging:** The report finds that the law governing bugging is too vague and can be used to intercept privileged communications between an attorney and client. It calls for clarification of this law to protect such communications.
- ◆ **Police Ombudsman:** The Special Rapporteur expresses support for a bill in Parliament that would create a Police Ombudsman. However, he also calls upon the British government to provide the institution with the resources it will need to do its job effectively.
- ◆ **European Convention of Human Rights:** The report commends the British Government for introducing a bill to incorporate the European Convention of Human Rights into UK law. However, it suggests implementing training programs on international human rights standards and jurisprudence for the judiciary to help incorporate these standards into British law.



Committee on the Administration of Justice  
 45-47 Donegall Street, Belfast BT1 2FG  
 Telephone (01232) 232394 Fax 246706  
 International 44 1232 232394 Fax 246706

## **A briefing on the Criminal Justice (Terrorism and Conspiracy) Act 1998**

**Prepared by the Committee on the Administration of Justice (CAJ) and British Irish Rights Watch.**

The Committee on the Administration of Justice (CAJ) and British Irish Rights Watch are deeply concerned about the threat to respect for human rights posed by the Criminal Justice (Terrorism and Conspiracy) Act 1998 which the British government introduced in the wake of the Omagh atrocity.

It is undoubtedly incumbent upon governments to take steps to protect society from criminal acts and to bring those responsible to justice in the course of proceedings which meet international standards of fairness. Measures taken in the immediate wake of atrocities are rarely effective in achieving this goal. History has shown that they frequently lead to miscarriages of justice and undermine public confidence in the rule of law.

The Committee on the Administration of Justice (CAJ) and British Irish Rights Watch believe that the new legislation introduced in the wake of the Omagh atrocity is not only "draconian" but violates the government's human rights obligations under international law. Furthermore we believe that the proposals conflict with the soon to be enacted Human Rights Act which will incorporate the European Convention on Human Rights into British law.

### *Changes to the right to remain silent, Sections 1 and 2*

These provisions essentially involve a relaxation of the rules of evidence to make it easier to obtain convictions for membership of certain specified proscribed organisations. Section 1 of the Act provides that in future the word of a police officer of the rank of superintendent or above will be admissible evidence against a suspect charged with membership of a proscribed organisation. In addition, if the accused fails to mention either before being charged or on being charged, a fact which is material to the offence and which s/he could reasonably be expected to mention, then the court may draw inferences of guilt from the failure. While the Act makes clear that an accused will not be returned for trial, found to have a case to answer or convicted on the basis of the statement by the police or the inferences, the clear intention of this legislation is to allow one to corroborate the other.

CAJ works for a just and peaceful society in Northern Ireland where the human rights of all are protected

Website [http://ourworld.compuserve.com/homepages/Comm\\_Admin\\_Justice/](http://ourworld.compuserve.com/homepages/Comm_Admin_Justice/)

We believe that these provisions are contrary to the right to be presumed innocent until proven guilty beyond a reasonable doubt, as recognised in Articles 14 (2) of the International Covenant on Civil and Political Rights (ICCPR) and Article 6 (2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention). These provisions also violate the right not to be compelled to testify against oneself or to confess guilt, as guaranteed by Article 14 (3) of the ICCPR.

Full respect of the right to silence is so fundamental that only a short time ago 120 states, including the UK, voted for the establishment of an international criminal court which would guarantee this right to persons suspected or accused of the worst crimes in the world: genocide, other crimes against humanity and war crimes. Similarly, the Rules of Procedure and Evidence of the International Tribunals for the former Yugoslavia and for Rwanda guarantee this fundamental right to persons suspected or accused of these crimes.

Sections 1 and 2 of the Criminal Justice (Terrorism and Conspiracy) Act unacceptably shift the burden of proof from the prosecution to the accused and they violate the right not to be compelled to incriminate oneself. This is unacceptable and could lead to the conviction of innocent persons.

In July 1995, the United Nations Human Rights Committee, (the body of experts which monitors the implementation of the ICCPR), concluded that "the provisions of the Criminal Justice and Public Order Act of 1994, which extended the legislation originally applicable in Northern Ireland, whereby inferences may be drawn from the silence of persons accused of crimes, violates various provisions in article 14 of the [ICCPR], despite the range of safeguards built into the legislation and the rules enacted thereunder." The Committee recommended that the UK bring its legislation into conformity with the Covenant.

Similarly, the European Court of Human Rights in its February 1996 judgment in *Murray v. UK* concluded that these provisions, coupled with the restrictions on access to legal advice, violated the European Convention.

While the Act makes clear that no convictions will arise from it unless the suspect first has the right to consult with his/her solicitor, the European Court of Human Rights stated that future judgements on cases involving adverse inferences being drawn from silence would depend on all of the circumstances of the case, "having particular regard to the situations where inferences may be drawn from silence, the weight attached to them by the national courts in their assessment of the evidence and the degree of compulsion inherent in the situation." (*Murray v UK* 1996)

The aim of this Act is to impose such a degree of compulsion on suspects that they are forced to answer questions put to them by the police. This could lead to situations where there is a considerable degree of compulsion on a person detained or charged, where the only evidence proffered is the suspicion of the police, and where the courts will attach significant weight to the inference drawn from the suspect's silence. In these circumstances we are concerned that the provisions will violate the ICCPR, the European Convention and the Human Rights Act.

While these provisions relate to membership of proscribed organisations, they are targeted against only certain proscribed groups. The groups which the Secretary of State has specified as being susceptible to the Act are the INLA, LVF, "real" IRA and Continuity IRA. Three of these groups have now declared cease-fires. While of course it is the intention of the framers of the legislation that it should not be used against those from the mainstream paramilitary groups who are operating

cease-fires, its use will be subject to the discretion of the RUC. Given the history of the RUC and its involvement in widespread and egregious violations of human rights, we are particularly concerned that this legislation is going to be entrusted to them.

*Provisions allowing for the seizure of land, section 4*

Section 4 of the Criminal Justice (Terrorism and Conspiracy) Act 1998 allows for the courts in Northern Ireland to order the seizure of property belonging to an accused person who has been convicted of membership offences under the Act. Any property or money may be seized if the court is satisfied that the accused had it in his/her possession or under his/her control at the time of the offence and it has been used in the furtherance of or in connection with the activities of the specified organisation or the court believes it may be so used if not forfeited.

While we are concerned at any provisions which introduce a punishment in addition to loss of liberty for a criminal offence, we also believe that certain safeguards should have been put in place. Section 4 (5) establishes that the standard of proof in relation to the forfeiture of such property is civil, that is, on the balance of probabilities. In other words, property can be seized if the courts feel it more likely than not that it may at some point in the future be used in connection with the activities of a specified organisation. We believe that this test is much too wide, particularly when one considers that there is no obligation on the courts to have regard to the impact of a forfeiture order on other individuals, for instance the children of the accused.

*Conspiracy to commit Terrorist Offences Abroad: violations of the rights to freedom of expression and association, sections 5,6 and 7.*

The Act also criminalises conspiracy to commit terrorist offences abroad. While we fully support the need to take measures to prevent atrocities such as those which have recently occurred, such measures must also be taken within the framework of respect for internationally protected human rights.

We are concerned that the legislation is drafted in such a manner that it fails to set out a recognisable criminal offence, with a clear definition of terrorist offences and specification of acts which would constitute conspiracy. Additionally, we believe that the provisions violate international law, including solemn treaty commitments of the United Kingdom under Articles 19 and 22 of the International Covenant on Civil and Political Rights and Articles 10 and 11 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, guaranteeing rights to freedom of expression and association.

Although Articles 10 and 11 of the European Convention permit state parties to limit the exercise of these freedoms when such limitations are prescribed by law and are necessary in a democratic society in the interests of national security, territorial integrity or public safety, such limitations must be narrowly construed so that they limit the exercise of these fundamental rights to the minimum extent necessary and for the shortest time possible. Similar limitations clauses in Articles 19 and 22 of the International Covenant on Civil and Political Rights must also be narrowly construed to ensure that the essence of these fundamental rights is not eviscerated in the name of such nebulous concepts as national security, territorial integrity and public safety.

**CONCLUSION:**

The Good Friday Agreement, in its commitment to human rights, recognised that past human rights abuses have been part of the problem and have exacerbated the conflict. Indeed, the Agreement looked to the early removal of emergency powers. The Criminal Justice (Terrorism and Conspiracy) Act is the antithesis of this approach. The governments of the UK and Ireland have publicly recognised that the intention of those who planted the bomb at Omagh was to undermine the search for peace and the Agreement. That must not be allowed to happen. A future for all the people of Ireland, underpinned by the human rights protections of the Agreement and international standards, is too precious a prize to risk by repeating the mistakes of the past.



Committee on the Administration of Justice  
 45-47 Donegall Street, Belfast BT1 2FG  
 Telephone (01232) 232394 Fax 246706  
 International 44 1232 232394 Fax 246706

## **A briefing on the Human Rights and Equality Provisions of the Northern Ireland Bill 1998**

**Prepared by the Committee on the Administration of Justice (CAJ)**

The Northern Ireland Bill is the draft legislation which the government has published in order to implement the Good Friday Agreement. It has already passed through the House of Commons and will be introduced into the Lords in early October. The Committee on the Administration of Justice (CAJ) believes that there are serious problems with several aspects of the equality and human rights provisions of the Northern Ireland Bill as it stands.

This briefing aims to set these reservations out and point to ways in which the Bill should be improved if it is to conform with the spirit and ethos of the Belfast Agreement. In brief, the improvements suggested include the following:

### *The Human Rights Commission*

The Good Friday Agreement promised an independent human rights commission for Northern Ireland. CAJ believe that the legislation should be drafted in such a way as to ensure that the Commission is sufficiently independent of the Northern Ireland Office, particularly in terms of its budget, in order to effectively discharge its functions.

In considering the adequacy of the budget, it will be important that significant tasks, such as the consultation on a new Bill of Rights, and litigation, are not starved of adequate funding.

The Human Rights Commission (HRC) should, where it considers that there is evidence of human rights violations, have the power to take cases in its own name without having to find an individual victim. The Agreement envisaged this but the Bill currently makes no provision for it. Additionally in this context, the Bill does not permit the Commission to assist complainants who wish to commence proceedings under the anti-discrimination provisions of the Bill. It should do so.

The Human Rights Commission should have the power to carry out investigations into human rights abuses or patterns of abuse. In order to do this effectively it will need to be able to discover documents and call witnesses. The Agreement is silent on this issue but the list of powers for the Commission was not crafted as an

CAJ works for a just and peaceful society in Northern Ireland where the human rights of all are protected

Website [http://ourworld.compuserve.com/homepages/Comm\\_Admin\\_Justice/](http://ourworld.compuserve.com/homepages/Comm_Admin_Justice/)

exhaustive one. The Agreement does however say that the new HRC should have an enhanced role to that currently played by the Standing Advisory Commission on Human Rights. The power to carry out investigations is essential if this requirement is to be met. The UN sponsored Paris minimum standards for Human Rights Commissions clearly stipulate that a HRC should have the power to investigate any situation involving violation of human rights. If the Bill goes ahead without the power to investigate human rights violations it will fail to meet minimum international standards.

The Bill should provide that the new Northern Ireland Assembly would refer all draft legislation automatically to the Commission, which would then have the discretion to choose on which pieces of legislation it would comment.

#### *Equality of Opportunity*

The Agreement envisaged a clear duty on public authorities to prepare statutory equality schemes. The Bill does not currently do this. Bodies will only have to prepare schemes if the Equality Commission requests them to do so. This problem should be rectified. In order to prevent endless debates about what a scheme should look like the Bill should lay down the requirements for schemes and in particular for impact assessments. These should be contained on the face of the Bill and not left to be dealt with in the form of guidance which will be developed at a later date and, in all probability, will have less legal effect.

The amalgamation of the existing equality commissions should not take place at this point in time. The decision to amalgamate is contrary to the views of the vast bulk of those responding to the recent consultation on this matter, including all of the groups which experience the inequalities referred to in the legislation. The Agreement stated that the issue of establishing a new equality commission was subject to the outcome of public consultation. As it currently stands, the Bill flies in the face of the results of that consultation process. The issue of amalgamation should be considered by the new HRC and in the meantime there should be enhanced co-operation between the existing Commissions, the Fair Employment Commission, the Equal Opportunities Commission, the Commission on Racial Equality and the Northern Ireland Disability Council.

The Bill should be inclusive in its approach to the grounds on which discrimination is prohibited. At the moment the Bill takes an exclusive approach and only prohibits discrimination on the grounds of religion and politics. Indeed the failure to include other categories of discrimination could conflict with the European Convention, which will soon be part of domestic law. In addition the definition of discrimination in the Bill should prohibit "indirect" discrimination and protect certain affirmative action measures.

The Bill needs to be amended to conform to the recent Tinnelly judgement from the European Court of Human Rights. The Court found that the legislation permitting Ministers to issue certificates allowing religious or political discrimination on the basis of national security, without any right to appeal, was contrary to the European Convention on Human Rights.





First Floor, 20 - 21 Took's Court,  
Cursitor Street, London EC4A 1LB  
Tel: 0171 405 6415

Fax: 0171 405 6417

E-mail: BIRW@compuserve.com

SPONSORS: Kader Asmal MP  
Michael Mansfield QC  
Baroness Kennedy of the Shaws QC

REGISTERED OFFICE 240 HIGH HOLBORN LONDON WC1V 7DH

## DIRECTOR'S REPORT AUGUST 1998

### OMAGH

Last month I expressed the hope that the aftermath of Drumcree, especially the deaths of the little Quinn brothers, would be the swansong of those who wanted to wreck the peace process. That wish was extinguished by the horrific bombing of Omagh, may all its many victims rest in peace. Nevertheless, the peace process itself is intact, and may even be stronger as a result of these wicked attacks. The following factors all bode well for continuing progress towards peace: the large vote in favour of the peace agreement in the referendum in both Northern Ireland and the Republic; the high number of supporters voted in as Assembly members; the universal condemnation of the Real IRA and the refusal of local communities to shelter them; the Real IRA's announcement of its suspension of violence and INLA's ceasefire; the propulsion of Sinn Féin further into the democratic process after Omagh and the partial detachment of the UUP from the Orange Order in the wake of Drumcree.

### NEW EMERGENCY LAWS

How very sad it is, then, that both the British and Irish governments have reacted to Omagh by bringing in yet more repressive laws. In Britain, evidence from a senior police officer will be enough to convict someone of membership of a prescribed organisation, and suspects' silence under police questioning will be taken as corroborative of that evidence. In Ireland, similar provisions will apply. Ireland will also be bringing in for the first time a whole tranche of provisions that mirror those that have been in place in Northern Ireland for many years, including wider restrictions on the right of silence, extended detention without production before a court, and the creation of many new offences such as collecting and withholding information. These measures are a recipe for potential miscarriages of justice. We have always argued that there was no need for the panoply of emergency laws in the past, and there is certainly no rational case for bringing in extra laws at this stage of the peace process. We understand the pressure both governments are under after such an atrocity, but we are depressed that they have not learnt from past experience that hasty law making in the wake of such disasters leads to bad laws and rough justice. Ironically, those accused of terrorism here in Britain in past years have been convicted by juries (which are still denied suspects throughout Ireland) on the basis of good police detection and forensic evidence, rather than special laws. Repressive laws do not deter terrorists, as the evidence of the past 30 years graphically demonstrates, all they do it distort the criminal justice system and recruit martyrs to the cause.

## APPRENTICE BOYS' PARADE IN DERRY

The 8<sup>th</sup> August march – which seems like a decade ago – went off without serious incident after the Bogside Residents and the Boys reached a historic agreement. It is to be hoped that next year's marching season will be played to new ground rules in the light of the progress made this year.

## SEAMUS LUDLOW

We have been contacted by the family of Seamus Ludlow, who was murdered near Dundalk in May 1976. For years it was claimed that he had been murdered by the IRA as an informer – a dreadful stigma for his family, who never believed it. New evidence has recently emerged which suggests that in fact he was killed by up to four UDR soldiers who were also members of the Red Hand Commandos. It also appears that there may have been a cover-up by both the RUC and the Garda Síochána in order to protect one of the perpetrators, who may have been working for military intelligence. We have written to both governments asking them to open the books on this very murky case.

## ELAINE MOORE

Elaine Moore, who was arrested in London last month and charged with being involved in a dissident republican fire bombing campaign and then held in an all-male jail, has been freed on bail. Further evidence has emerged that suggests that she may have been innocently involved with some of the other suspects.

## DESMOND LINDOP

Desmond Lindop was convicted in Northern Ireland of possession of ammunition in suspicious circumstances after the RUC raided his brother's home, where he was staying on holiday with his family. His brother had been manufacturing arms for use by loyalists. Desmond Lindop, an amateur gun enthusiast, denied all knowledge of his brother's illegal activities, and has always denied the charges against him. He is still trying to clear his name. Last year he was devastated when Durham police charged him with illegal ownership of weapons which formed part of his private collection. It was clear to us that there was absolutely no merit in these new charges against him, which appear to have been brought in an attempt to obscure the unprofessional way English police had handled their side of the original investigation against him. We are glad to report that earlier this month the court dismissed all the new charges as an abuse of process.

## CRAIGAVON MAGISTRATES' COURT

We have spent some time investigating allegations that three defendants were assaulted by RUC officers in the precincts of Craigavon Magistrates' Court in June. We have asked the Lord Chancellor to investigate allegations by the men's lawyers that the Residential Magistrate refused to intervene when he was informed that the assault had taken place. We are taking up the assault itself with the United Nations.

**WELCOME BACK, ERICA**

Erica Wald, who spent some time with us as an intern last January, has returned to London from the USA and has very kindly offered her help with drawing up our chronology of the human rights aspects of the conflict and peace process. We are delighted to have her back.

**WINTER DESCENDS ON FRANCE**

The RIGHTS WATCH office will be closed for the first two weeks in September while I have my "summer" holiday. Normal service will be resumed on 14<sup>th</sup> September. I very much regret that this means I will miss President Clinton's visit to Ireland, because it means I will not get to see any of our American friends who are coming with him. I will think of you all on my French beach!

Jane Winter,  
27<sup>th</sup> August 1998.



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 A COMPANY LIMITED BY GUARANTEE. REGISTERED IN ENGLAND NO. 3489181  
 70N

First Floor, 20 - 21 Took's Court,  
 Cursitor Street, London EC4A 1LB  
 Tel: 0171 405 6415

Fax: 0171 405 6417

E-mail: BIRW@compuserve.com

SPONSORS: Kader Asmal MP  
 Michael Mansfield QC  
 Baroness Kennedy of the Shaws QC

REGISTERED OFFICE: 348 HIGH HOLBORN, LONDON WC1V

## ABOUT British Irish RIGHTS WATCH

### LEGAL STATUS

British Irish RIGHTS WATCH is an independent non-governmental organisation (NGO) that monitors the human rights dimension of the conflict in Northern Ireland. It is registered as a not-for-profit company and is a registered charity.

The organisation was formally established in 1992, although those involved in its work have been so since 1990. Its objects are:

1. the promotion by means of education and research of the proper observance and maintenance of human rights in Britain and Ireland and elsewhere in the world with particular reference to the conflict in Northern Ireland;
2. the promotion and dissemination of knowledge, information and understanding of such human rights by writing, publishing and distributing articles, reports, books and other documents and assisting in the same, by arranging and providing lectures and seminars, and by all other means of providing and exchanging information.
3. to procure the abolition of torture, extra-judicial executions, and arbitrary arrest, detention and exile.

### HISTORY

British Irish RIGHTS WATCH arose out of the concern of a small group of people from England, Ireland and America, all of them based in London, about the human rights violations stemming from the conflict in Northern Ireland. Their work began informally in 1990, and consisted originally of organising seminars for lawyers, firstly in London and then in Belfast and Dublin. Gradually, lawyers and then campaign groups and individuals whose human rights had been affected began to regard them as a resource. In 1992 they played a key role in organising the Northern Ireland Human Rights Assembly in London, which attracted 254 written submissions alleging human rights violations arising from the conflict and over 250 participants. A panel of seven international human rights experts heard evidence over three days and produced a substantial report, *Broken Covenants*, that severely criticised the United Kingdom government for its failure to protect human rights. This Assembly generated even more demand for the group's

services, and in May 1992 British Irish RIGHTS WATCH was formally established as a not-for-profit company. In 1995 the organisation achieved charitable status.

Until August 1994 its primary role was to monitor alleged human rights violations arising from the conflict in Northern Ireland. Since the ceasefires, it has enhanced its activities to include ensuring that proper respect for human rights is established in Northern Ireland in the wake of the conflict, with particular emphasis currently on the role of human rights in the emerging peace process.

British Irish RIGHTS WATCH's services are available free of charge to everyone, regardless of their religious or political affiliations or opinions, and we are proud that our services are requested by individuals and groups on all sides of the community. We take no position on the eventual constitutional outcome of the peace process and we are entirely independent of any other organisation, although we work very closely with other domestic and international NGOs who share our concerns.

Until February 1995 all our work was carried out on a voluntary basis by unpaid volunteers. At that point, we had raised enough funding to enable us to open an office and employ a full-time director for one year. With the peace process at such a crucial moment we did not hesitate, but deployed our existing funding in full and resolved to raise enough further financial support to enable us to see our task through to its conclusion.



## OUR IMPACT

For such a small organisation, we have had a considerable impact in the field of human rights in Northern Ireland. Here are just a few examples of situations where our work has made a difference.



### INTIMIDATION OF DEFENCE LAWYERS AND THE MURDER OF PATRICK FINUCANE

Since 1990 British Irish RIGHTS WATCH has been investigating allegations of attempts by police officers to intimidate defence lawyers in Northern Ireland. Defence lawyers' fears were greatly exacerbated when Belfast lawyer Patrick Finucane was murdered in 1989 by loyalists, apparently acting in collusion with the British security services. After we highlighted this problem internationally and submitted a series of seven reports to the United Nations, their Special Rapporteur on Judges and Lawyers made the UN's first ever official visit to the United Kingdom in 1997. In March 1998 he called for numerous reforms in the criminal law and a public inquiry into the murder of Patrick Finucane's murder. We continue to research his death and to monitor lawyers' complaints.



### BLOODY SUNDAY

In 1992 we were approached by the relatives of those who died on Bloody Sunday, 30<sup>th</sup> January 1972, when British troops opened fire on unarmed civilians in Derry, the worst loss of civilian life at the hands of the security forces in any single incident of the Troubles. Insult was added to injury when an official public inquiry, headed by the then Lord Chief Justice, exonerated the army and failed to give a true account of the tragedy. The relatives had tried unsuccessfully to re-open their case for the past twenty years. Five years later, in large part as a result of our efforts, the Irish government called upon the British government to overturn the original inquiry. In January 1998 the British government announced a new public inquiry into the events of that fateful day. We will be advising the families and their lawyers throughout the inquiry.

### THE RIGHT TO REMAIN SILENT









British Irish RIGHTS WATCH co-ordinated a joint third party intervention to the European Court of Human Rights in the first case it considered on rules in Northern Ireland that allow courts to draw adverse inferences if suspects exercise their right to remain silent under police questioning or fail to testify in their own defence. The Court ruled that the defendant, John Murray's right to a fair trial had been violated because he had to decide whether to remain silent in the absence of any legal advice. This winning point was first raised by ourselves. We are working on a number of other cases on this question.

### ROISIN MCALISKEY

When Roisin McAliskey was arrested on extradition charges she was in frail health and was pregnant. Having categorised her as being an exceptionally high escape risk, despite her condition, the British authorities claimed to have no suitable accommodation for females of that category, and placed her in a high security all-male jail, where she was kept in isolation in a filthy cell. British Irish RIGHTS WATCH made an urgent complaint to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, who also received representations from other NGOs. Within days she was assigned a lower category and moved to a female prison. Her case concluded when, after representations from ourselves and other NGOs, the British government refused to extradite her. Recently, another woman, Elaine Moore, was also detained in an all-male jail. We went into action again, and she has now been release on bail.



### KEY ACTIVITIES

In fulfilment of its charitable objects, British Irish RIGHTS WATCH:

-  researches alleged human rights violations arising out of the conflict
-  sends independent observers to trials, inquests and inquiries
-  provides consultancy services for lawyers
-  makes representations to international human rights bodies and organisations such as the United Nations
-  organises seminars for lawyers and others
-  makes third party interventions in human rights cases and provides expert testimony
-  publishes articles and reports
-  organises conferences.

### PERSONNEL

British Irish RIGHTS WATCH is managed by a Management Committee made up of four women, all of whom give their time and expertise free of charge:

-  Angela Hickey, from London, who works as an investigator for the Local Government Ombudsman
-  Fiona Murphy, from Belfast, who is a solicitor

- Mary McKeone, from Omagh, who is a barrister, and
- Maureen Donnelly, from Dungannon, who is a telecommunications consultant.

The Director is Jane Winter, from London, who is a founder member of British Irish RIGHTS WATCH, and who has six years' experience of working on the human rights dimension of the conflict in Northern Ireland. She has previously worked as a researcher and as an adviser and advocate in the Citizens Advice Bureau service and the law centre movement.

British Irish RIGHTS WATCH has volunteers based in London, Belfast and Dublin who make a valuable contribution to its work. It has also benefited from the input of interns from many parts of the world.



## SPONSORS

British Irish RIGHTS WATCH is fortunate to be sponsored by three leading human rights lawyers:

- Professor Kader Asmal, MP, Minister of Water Affairs and Forestry in the South African government, is also a professor of human rights law and the former Chair of the Irish Council for Civil Liberties;
- Helena Kennedy QC is a campaigner for women's rights and a distinguished lawyer who has been involved in many leading civil liberties cases. Baroness Kennedy has recently been made a member of the House of Lords.
- Michael Mansfield QC is a highly successful barrister who has been involved in remedying many of the notorious Irish miscarriages of justice, including the cases of the Birmingham Six and the Guildford Four.



## FUNDING

British Irish RIGHTS WATCH gratefully acknowledges the financial support of

- the Joseph Rowntree Charitable Trust;
- the John Merck Fund
- the Hilda Mullen Foundation
- the Polden-Puckham Charitable Foundation
- the Catherine Scorer Trust Fund;
- the Patrick Finucane Memorial Trust;
- Garden Court Chambers;
- Took's Court Chambers;
- the trade union UNISON; -
- under the auspices of the American Ireland Fund: Bob, Jack and Jerry Dunfey, Loretta Brennan Glucksman, Dennis Smith, Bill McNally and John T Sharkey; and
- many individual lawyers in Britain, Ireland and America.

**DONATIONS ARE ALWAYS WELCOME, ACKNOWLEDGED, AND PUT TO GOOD USE**



## **DELIVERING HUMAN RIGHTS IN NORTHERN IRELAND**

A briefing by the Committee on the Administration of Justice (CAJ) in Belfast and British Irish RIGHTS WATCH (BIRW) in London on the human rights aspects of the Northern Ireland peace Agreement

### **HUMAN RIGHTS AND THE PEACE PROCESS**

The Good Friday Agreement and its commitments to human rights promised a new future for the people of Northern Ireland. Despite the horrific events in the wake of Drumcree and at Omagh, the Agreement and the peace process are intact and may even be stronger as a result of these terrible attacks. It was widely recognised that the intention of those who planted the bomb at Omagh was to undermine the peace process. In fact their actions have strengthened the resolve of people in Ireland, north and south, to pursue it. CAJ and BIRW believe that the peace process will continue to make progress if all those involved recognise the need to build on a solid foundation of respect for human rights.

Unfortunately, recent developments suggest that not everyone involved in the peace process fully understands the positive role that human rights can play in helping to achieve a lasting peace and a just society.

### **NEW EMERGENCY LAWS**

Regrettably, both the British and Irish governments have reacted to the Omagh bombing by bringing in yet more repressive laws. In Britain, evidence from a senior police officer will be accepted as evidence that a suspect is a member of a proscribed organisation, and the suspect's silence under police questioning will be taken as corroborative of that evidence. A detailed briefing on these provisions is attached.

In Ireland, similar provisions will apply. Ireland will also be bringing in for the first time a whole range of provisions that mirror those that have been in place in Northern Ireland for many years, including wider restrictions on the right of silence, extended detention without production before a court, and the creation of many new offences such as collecting and withholding information.

These measures are a recipe for potential miscarriages of justice. We have always argued that there was no need for the panoply of emergency laws in the past, and there is certainly no rational case for bringing in extra laws at this stage of the peace



process. We understand the pressure both governments are under after such an atrocity, but we are depressed that they have not learnt from past experience that hasty law making in the wake of such disasters leads to bad laws and rough justice.

#### **HUMAN RIGHTS AND THE NORTHERN IRELAND BILL**

The Northern Ireland Bill is meant to give effect to the terms set out in the Agreement reached on Good Friday. Unfortunately, as drafted the Bill is disappointing in some key aspects so far as the human rights elements of the Agreement are concerned. In particular, the proposed Human Rights Commission is insufficiently independent and does not have all the powers it needs to investigate patterns of human rights abuses or to litigate in its own right. The Bill also proposes to amalgamate all existing anti-discrimination bodies despite strong representations to the contrary from the bodies themselves and, crucially, from those on the sharp end of discrimination, such as ethnic minorities and people with disabilities.

We are also concerned that the Bill fails to incorporate all the pledges in the Agreement to give meaningful expression to the vital concept of equality between communities. The Standing Advisory Commission on Human Rights carried out widespread public consultation in conducting an in-depth review of fair employment laws, so the government is well aware of what is needed to lend reality to the rhetoric, but the Bill falls far short of that aspiration.

Given the crucial role that human rights reforms must play if the Agreement is to be successful in the long term, if the Bill is passed as it stands it will not deliver the human rights promises contained in the Agreement. We hope that the government will think again and accept the amendments being put forward in order that this important opportunity is not lost.

#### **REFORM OF POLICING**

A review of policing is currently underway, and both CAJ and BIRW have made detailed submissions to the review team. We believe that the Royal Ulster Constabulary (RUC) must change from being a quasi-military police force focussed on combating paramilitary violence to a police service that is acceptable to all communities in Northern Ireland and that reflects the composition of the whole of society, in terms of religion, gender and ethnic origin. This is not simply a downsizing issue but which one which requires fundamental, imaginative and radical reform.

#### **REFORM OF THE CRIMINAL JUSTICE SYSTEM**

We are disappointed that the government has not chosen to appoint an independent body to overhaul the criminal justice system, but has opted instead for an internal review with independent assessors. This review will exclude those parts of the criminal justice system relating to emergency laws, and policing. This means that the scope for learning important lessons on how not to organise criminal justice, gleaned from the operations of the Diplock courts and the holding centres such as Castlereagh, may not be drawn. Although the review will cover some very important issues, including the appointment of judges and the potential for setting up a Department of Justice, we fear that divorcing it from other key issues will not enhance its results.

#### **DEALING WITH THE PAST**

We welcome the new public inquiry into the tragic events of Bloody Sunday, 30<sup>th</sup> January 1972, when British troops opened fire on unarmed civilians in Derry. However, the government has refused to hold a similar inquiry into the murder of Belfast solicitor Patrick Finucane, murdered by loyalists in 1989 apparently with the collusion of members of the security forces. These cases, and others - such as the murder of Catholic Robert Hamill by a loyalist mob in full view of four RUC officers, who allegedly failed to intervene - need to be investigated and justice needs to be done before the peace process can take hold fully and the past can be laid to rest.

#### **ON-GOING HUMAN RIGHTS VIOLATIONS**

Meanwhile, despite the atmosphere of reform, with almost all the old emergency laws still in place and with new ones on the statute books, the conditions that give rise to human rights violations are still in place. CAJ and BIRW are concerned to find that new cases continue to arise. In particular we are disturbed by on-going reports of threats and abuse of defence lawyers by RUC officers and continuing claims that the Diplock courts are giving rise to miscarriages of justice.

#### **HONOURING THE HUMAN RIGHTS ASPECTS OF THE AGREEMENT**

The majority of people in Northern Ireland have clearly expressed their desire for peace and their will that the Agreement should form the basis of that peace. CAJ and BIRW do not want to see progress towards peace undermined by a failure to fully implement the human rights promises contained in the Agreement. Respect of human rights in Northern Ireland has been woefully absent for the past 30 years. Getting the human rights aspects of the Agreement right can only enhance the peace process itself. We hope that Americans who have done so much to support the peace process until now will add their voices to ours in calling for full and inspirational implementation of the human rights dimensions of the Agreement.

**SEPTEMBER 1998**

**Congress of the United States**

Washington, DC 20515

October 23, 1998

Mr. Chris Patton  
Chairman  
Independent Commission on Policing for Northern Ireland  
Interpoint  
20-24 York Street  
Belfast BT151AQ

**Intimidation of defense lawyers in Northern Ireland and the murder of Patrick Finucane**

Dear Mr. Chairman:

On Tuesday, September 29, the House Subcommittee on International Operations and Human Rights met to discuss the findings of the recent report of the Special Rapporteur on the Independence of Judges and Lawyers, Param Cumaraswamy. He had conducted an investigation into the harassment and intimidation of defense lawyers in Northern Ireland by the RUC, and into allegations of state involvement in the murder of the Belfast lawyer, Patrick Finucane.

The Special Rapporteur reported to the House Subcommittee that he had spent some time in Belfast investigating these allegations, and having done so, he was "satisfied that there was truth in the allegations that lawyers were harassed." In relation to the murder of Patrick Finucane, he stated that in respect to the surrounding allegations, he was "convinced that there were compelling reasons for an inquiry." This, he said, was because of "prima facie evidence that there could have been security forces collusion."

The report of the Special Rapporteur is of the utmost concern to those of us in Congress who have been actively supporting the peace process in Northern Ireland. We are most perturbed that the Special Rapporteur found the allegations of RUC involvement in the murder of Patrick Finucane to be credible to the point that they warrant a full independent inquiry. In our view, such an inquiry must be carried out without delay.

All police services play a pivotal role in all societies. In order for them to be effective, they must enjoy the full confidence of the community in which they serve. The only way that this will happen in Northern Ireland is if the current problems within the RUC are fully

Chairman Chris Patton  
October 23, 1998  
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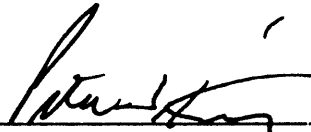
addressed. At the very least, the recommendations contained in the report of the Special Rapporteur must in be implemented. We hope that you agree that to ignore these recommendations would ensure that serious issues remain unresolved – issues which, in and of themselves, continue to undermine the confidence of the community in the peace process and the prospects for a just and lasting settlement.

We thank you for your time and consideration and wish you well in the difficult and all-important task which lies ahead.

Sincerely,



CHRIS SMITH, M.C.  
CHAIRMAN, SUBCOMMITTEE ON  
INTERNATIONAL OPERATIONS  
AND HUMAN RIGHTS



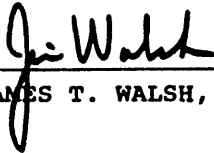
PETER KING, M.C.



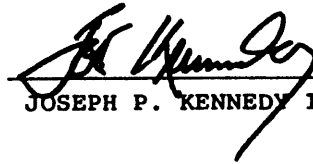
BENJAMIN A. GILMAN, M.C.  
CHAIRMAN, INTERNATIONAL  
RELATIONS COMMITTEE



MICHAEL P. FORBES, M.C.



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JOSEPH P. KENNEDY II, M.C.



DONALD M. PAYNE, M.C.



RANDY "DUKE" CUNNINGHAM, M.C.

Bob B1.  
ROBERT A. BORSKI, M.C.

Steven Rothman  
STEVEN R. ROTHMAN, M.C.

Eliot L. Engel  
ELIOT ENGEL, M.C.

Maurice D. Hinchey  
MAURICE D. HINCHEY, M.C.

William O. Lipinski  
WILLIAM O. LIPINSKI, M.C.

John M. McHugh  
JOHN M. MCHUGH, M.C.

Gerald B. H. Solomon  
GERALD B. H. SOLOMON, M.C.

Michael Pappas  
MICHAEL PAPPAS, M.C.

James P. McGovern  
JAMES P. MCGOVERN, M.C.

Rick Lazio  
RICK LAZIO, M.C.

Richard E. Neal  
RICHARD E. NEAL, M.C.

Thomas J. Manton  
THOMAS J. MANTON, M.C.

<b>INDEPENDENT COMMISSION ON POLICING FOR NORTHERN IRELAND</b>
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67 Tufton Street  
LONDON  
SW1P 3QS  
Telephone: 0171 210 2625  
Fax: 0171 210 2628  
E-mail: polcomm1@belfast.org.uk

3/F Interpoint  
20-24 York Street  
BELFAST BT15 1AQ  
Telephone: 01232 258848  
Fax: 01232 258843  
E-mail: polcommb@belfast.org.uk

Mr Chris Smith MC  
Chairman  
Sub-Committee on International Operations  
and Human Rights  
Congress of the United States  
WASHINGTON, DC 20515

11 November 1998

*Dear Chris,*

Thank you for your letter of 23 October about policing in Northern Ireland and for your support for the work of this Commission.

You draw attention to the Cumaraswamy report and I can assure you that the Commission will be taking account of this and other reports on aspects of policing in Northern Ireland over the years.

Our aim is to achieve the new beginning for policing that is called for in the Good Friday Agreement, with policing arrangements that attract widespread community support.

I have sent a similar letter to Benjamin Gilman and would be grateful if each of you would pass copies to your Committee colleagues.

*It was good to hear from you.*

*Chris*



Chris Patten

Chairman: The Rt Hon Christopher F Patten CH	Secretary: Robert N Peirce
Members: Dr Marjorie Hayes, Dr Gerald Lynch, The Hon Kathleen O'Toole, Professor Clifford Shearing, Sir John Smith QPM, Peter Smith QC, Mrs Lucy Woods	