



**British Irish
RIGHTS WATCH**



**SUBMISSION TO THE UNITED NATIONS
COMMITTEE AGAINST TORTURE
CONCERNING CONDITIONS IN DETENTION,
ASPECTS OF THE EMERGENCY LAWS THAT
PROMOTE ILL-TREATMENT, AND THE USE OF
PLASTIC BULLETS**

 1998 

1. INTRODUCTION

- 1.1 British Irish RIGHTS WATCH is an independent non-governmental organisation and registered charity that monitors the human rights dimension of the conflict and the peace process in Northern Ireland. Our services are available to anyone whose human rights have been affected by the conflict, regardless of religious, political or community affiliations, and we take no position on the eventual constitutional outcome of the peace process.
- 1.2 Since 1992 British Irish RIGHTS WATCH has made eight submissions to the United Nations Special Rapporteur on the Independence of Judges and Lawyers concerning the murder in 1989 of Belfast solicitor Patrick Finucane, attempts to intimidate defence lawyers in Northern Ireland, the effect of emergency laws on the role of lawyers, access to legal advice and other related matters.
- 1.3 In October 1997 the Special Rapporteur, Dato' Param Cumaraswamy, undertook an official mission to the United Kingdom to look into these problems. He delivered his report to the Commission for Human Rights on 1st April 1998.
- 1.4 His report is extremely critical of RUC practices, emergency laws, closed prison visits and the law permitting surveillance of lawyers' offices. He concluded that "... the RUC has engaged in activities which constitute intimidation, hindrance, harassment or improper interference" with lawyers¹. He found that intimidation and harassment of defence lawyers in Northern Ireland was "consistent and systematic"². He has called for an independent judicial inquiry into the murder of Patrick Finucane³, 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."⁴
He also called for an independent inquiry into intimidation of lawyers, preferably to be carried out by the new Police Ombudsman⁵.
- 1.5 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.⁶

1 Paragraph 90

2 Paragraph 38

3 paragraph 95

4 Paragraph 73

5 Paragraph 91

6 Ibid

- 1.6 The Special Rapporteur also made a number of other important recommendations:
- solicitors should have immediate access to their clients⁷;
 - solicitors should be present during police interviews⁸;
 - closed prison visits should be discontinued⁹;
 - RUC interviews should be video- and audio-recorded¹⁰;
 - the right of silence should be reinstated immediately¹¹;
 - the PACE standard for the admissibility of confession evidence should apply in all cases¹²;
 - the right to trial by jury should be reinstated, with safeguards for jurors¹³;
 - privileged communications between lawyers and clients should be respected when suspects are under surveillance¹⁴;
 - the office of Police Ombudsman should be provided with all necessary resources required so that it can meaningfully carry out its mandate¹⁵;
 - the judiciary should be trained in international human rights standards¹⁶.

1.7 In this, our ninth report on these matters, we examine the response of governments, the RUC, the Ulster Unionist Party, the professional bodies, defence lawyers themselves and NGOs to the Special Rapporteur's report. We also describe the continuing problems faced by lawyers, and set out new developments in the case of Patrick Finucane.

2. GOVERNMENT RESPONSES TO THE SPECIAL RAPPORTEUR'S REPORT

2.1 UNITED KINGDOM'S RESPONSE

The UK government, who had seen an advance copy of the Special Rapporteur's report, issued its response on the day that the Special Rapporteur delivered his report to the Commission. Its response was intensely disappointing. It contained no new proposals for action, recycling old responses in many instances, and refused to countenance a public inquiry into Patrick Finucane's murder. Below we analyse their response in detail.

2.2 Concerning the harassment and intimidation of solicitors

The UK said that it had "considered carefully" the Special Rapporteur's comments on this issue, and responded:

"This obviously is a matter of considerable concern. We would ask, however, to be provided with the specific details on which the

7 Paragraph 93

8 Ibid

9 Ibid

10 Paragraph 94

11 Unnumbered paragraph between 95 and 96

12 Ibid

13 Ibid

14 Paragraph 96

15 Paragraph 97

16 Paragraph 98

allegations are made. If there is new evidence we will want to ensure that this is looked into."

This is a wholly disingenuous response. British Irish RIGHTS WATCH has sent copies of each of its reports to the United Nations to the UK government for the past six years. We have also entered into lengthy and detailed correspondence with successive Secretaries of State concerning harassment and intimidation of defence lawyers. Other NGOs, such as Amnesty International, the Lawyers Committee for Human Rights and Human Rights Watch/Helsinki have all raised the issue with the UK government over several years and in specific detail. The UK demand new evidence because they refuse to accept the existing evidence, which is substantial. The Special Rapporteur himself expressed concern in his report¹⁷ that evidence from NGOs, instead of acting as a warning, has simply been dismissed. The UK's response completely misses the point. The way to deal with the systematic harassment and intimidation of defence lawyers in Northern Ireland is not to investigate individual complaints – although that is of course a necessary and important step – but to tackle the root causes of the problem. In our view, no attempt has been made to do so, because the UK refuses to acknowledge the existence of the problem itself.

- 2.3 The UK pointed out that a separate department within the RUC investigates complaints against the RUC, and emphasised that in serious cases the Independent Commission for Police Complaints (ICPC) supervises the investigation. However, they acknowledged that this system had failed to inspire public confidence and was due to be replaced by a Police Ombudsman. We would point out that this reform was already in place and was not made in response to complaints from, or about intimidation of, defence lawyers, nor in response to the Special Rapporteur's report. Nevertheless, when the Ombudsman scheme comes into existence on 1st March 1999 it will go some way to meeting the Special Rapporteur's recommendation that:
- "(a) the authorities, preferably the proposed Police Ombudsman, conduct an independent and impartial investigation of all threats to legal counsel in Northern Ireland."¹⁸

We are not entirely sure whether the Special Rapporteur meant that the Ombudsman should investigate individual complaints as and when they arise, or whether he envisaged a wider investigation by the Ombudsman of the problem in general. If it was the latter type of investigation that he had in mind, there has been no indication from the government that the Ombudsman will be asked to conduct such an inquiry. Furthermore, the Police (Northern Ireland) Act confers no power on the Ombudsman to conduct such an investigation; he or she may only investigate individual complaints.

- 2.4 The Special Rapporteur also recommended that:
- "(b) where there is a threat to the physical integrity of a solicitor or barrister, irrespective from whom the threat emanates, the

¹⁷ Paragraph 31

¹⁸ Paragraph 92

Government should provide the necessary protection and should vigorously investigate the threats and bring to justice the guilty party."¹⁹

As the Special Rapporteur will be aware, a series of death threats have been made against Lurgan solicitor Rosemary Nelson. She has made a number of formal complaints, which are being supervised by the ICPC. Originally these complaints were, like all complaints investigated by the ICPC, being investigated on behalf of the ICPC by RUC officers. However, after the ICPC expressed dissatisfaction with the RUC's role, an officer from the Metropolitan Police in London was appointed to act as the investigating officer. That investigation is not yet concluded. Rosemary Nelson has not asked for personal protection, because she has no confidence that the RUC, against whose officers she has complained, would in fact protect her. Given the particularly personal and obnoxious comments that certain RUC officers are alleged by her clients to have made about her, it is likely that she would find RUC protection oppressive. Despite this, it might have been expected that she would have been offered police protection, but she has not. It remains to be seen whether her complaints lead to any disciplinary action or prosecution of RUC officers.

2.5 The government also said that it was considering a recommendation by the Home Affairs Select Committee that the standard of proof for police misconduct should be commuted from the criminal standard of proof beyond reasonable doubt to the civil standard of the balance of probabilities. We understand that they intend to introduce a sliding scale, retaining the criminal standard for misconduct that amounts to criminality, but using the civil standard for lesser misdemeanours. British Irish RIGHTS WATCH is not satisfied with these proposals. A death threat uttered by an RUC officer against a lawyer would be a criminal offence, but if the criminal standard of proof is retained in the disciplinary context, no complaint will ever be upheld so long as the only evidence is the word of the detainee against that of two RUC officers, with the solicitor being absent from the interrogation. Our concern would be diminished, of course, if solicitors were allowed to be present, combined with audio-recording.

2.6 Concerning access to lawyers

The Special Rapporteur made two recommendations on this issue:

“(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.”²⁰

2.7 Deferral of access to legal advice for those arrested under the PTA²¹ applies throughout the UK, but practice varies between jurisdictions. As the UK pointed out in its response, deferral in England

¹⁹ Ibid

²⁰ Paragraph 93

²¹ Prevention of Terrorism (Temporary Provisions) Act

and Wales takes place very rarely. Although such deferrals in Northern Ireland are now the exception rather than the rule, between 1987 and 1991, access to lawyers was deferred in 58% of all detentions under the emergency laws, on average. This rate of deferral fell to 26% in 1992, and 14% in 1993 and 1994, apparently as a result of a number of legal challenges of deferrals. In 1995 and 1996 deferral of access to legal advice has dropped to 3%²², reflecting not only the change in policy on the part of the RUC but the fewer number of arrests since the ceasefires. However, these provisions remain on the statute books and a further change of policy could result in an increase in the number of deferrals of access. Indeed, according to the UK's response, deferrals on 1997 rose to 6%²³. In its response the UK justified the position in Northern Ireland as follows:

"The reason for this is that lawyers, however unwittingly, sometimes may be used to convey information or may be forced to reveal it under duress to the outside, which may prejudice the outcome of an investigation."

To the best of our knowledge, there has never been a single instance of an RUC investigation being prejudiced in this way. If such a risk existed, it would exist in England and Wales as well. Moreover, such a risk must also theoretically exist in other cases of serious crime. The criminal justice system depends on the integrity of lawyers to maintain confidentiality and to report any attempt to interfere with the system of justice. There is no logical basis for deferring access to legal advice in only one area of crime, or for having different practices in different jurisdictions, and even if there were it would be far outweighed by the damage done to the principle of fairness.

- 2.8 Practice also differs between jurisdictions concerning the presence of solicitors during police interrogations. In England and Wales, where PACE²⁴ applies even to cases where terrorism is alleged, solicitors are always normally present, but in Northern Ireland, where PACE does not apply²⁵, solicitors are always normally excluded. Lawyers have mounted legal challenges to their exclusion, but without success. The House of Lords has ruled that there is no right for a person detained under the emergency laws to have a solicitor present during interrogations²⁶. On this issue, the UK's response concerning the situation in Northern Ireland was as follows:

"As for solicitors' presence during interview, there is nothing in law to say that solicitors should or should not be present. On this basis,

²² All figures computed from Northern Ireland (Emergency Provisions) Acts: Statistics, Northern Ireland Office, Table 12

²³ Published statistics are only available for the first six months of 1997, but the UK clearly computed this figure for the purposes of its response.

²⁴ Police and Criminal Evidence Act

²⁵ The provisions of the Police and Criminal Evidence Order (Northern Ireland) 1989, article 66 (12), exclude the application of the PACE Code of Practice, which allows solicitors to be present during police interviews, from cases of detention under the emergency laws

²⁶ R v Chief Constable of the RUC, ex parte Begley and McWilliams, House of Lords, 16 October 1997

the police consider on its merits each individual request for a solicitor to be present."

The UK omit to say that the policy of considering each case on its merits was only introduced after successful legal challenges to the previous blanket policy of denying solicitors' presence in all cases. They also fail to mention – an omission which we consider to amount to bad faith – that in practice the RUC has scarcely ever allowed solicitors to be present during interrogations. We should be grateful if the Special Rapporteur would enquire of the UK government how often in the past year solicitors have been allowed to remain during interrogations, the age and sex of the detainee, the reason for allowing the solicitor to be present, and the firm of solicitors involved.

2.9 The UK refers to the fact that it intends to publish a consultation document on permanent UK-wide counter-terrorism legislation, which will look at all aspects of the current emergency laws, including conditions in detention. In 1995, the previous Conservative government asked Lord Lloyd to carry out a review of whether there was a need for permanent anti-terrorism laws. He reported in 1996. His main recommendations are as follows:

- a new anti-terrorism Act will cover domestic and international terrorism;
- banning of terrorist groups will continue and will be expanded to include foreign groups;
- it will be an offence to be a member of a terrorist group, whether banned or not;
- it will also be an offence to be concerned in the preparation of an act of terrorism;
- stop and search powers will remain, subject to approval by the Secretary of State;
- powers to stop people at ports will remain and be extended to non-designated ports;
- powers of entry, search and seizure will remain;
- a power will be introduced to allow for the arrest and prosecution of those planning terrorist attacks abroad (this has already been introduced);
- the rules on terrorist finances will remain and be extended to foreign terrorism, and powers for investigating such matters will be strengthened.

Of course, the government's consultation paper may not follow all these proposals exactly, but it seems likely that they will embrace most if not all of these propositions, thus embedding many of the provisions of emergency law into permanent legislation. Lord Lloyd also proposed some reforms to existing laws, which it is to be hoped will also be adopted by the government. These include:

- ending exclusion orders – in fact, the government has already stopped using these;
- ending internment without trial – this has also already been dropped;
- abolishing the Diplock courts and returning to trial by jury;

- all arrests to be dealt with under the PACE codes of practice – this would do away with the worst abuses of due process rights in Northern Ireland, such as denial of access to a solicitor;
- detention for no longer than 48 hours unless authorised by a senior magistrate or sheriff – this is better than the 7-day provisions in the PTA, but worse than PACE, which only allows 36 hours.

The White Paper has yet to be published.

2.10 Concerning closed visits

The Special Rapporteur also recommended in relation to access that the practice in England and Wales of closed visits, whereby a prisoner is separated from visitors by a perspex screen, be discontinued. The UK devoted the longest section of its response to justifying the retention of closed visits. They also said:

“Her Majesty’s Chief Inspector of Prisoners (HMCIP) has previously expressed an interest in this area [closed visits] but it is understood that he does not now intend to pursue the issue.”

British Irish RIGHTS WATCH wrote to HMCIP, Sir David Ramsbotham, asking him if this were indeed the case. He replied on 14 July 1998 in the following terms:

“Thankyou so much for copying your letter of 8 July to the Home Secretary to me. I am interested to see that the Government suggested that I am no longer interested in the question of closed visits. Nothing could be further from the truth. The reason why I have not yet completed a further inquiry is because the Prison Service told me that they were doing it anyway. I am awaiting the results of their work before I make any further moves. But the issue remains very much an open and not a closed one as far as I am concerned.”

- 2.11 Lawyers sought judicial review²⁷ of the Home Secretary's decision to designate certain prisoners as exceptional high risk category and to allow only closed legal visits in prison. The action was lost and leave to appeal was refused. The applicants sought leave to appeal from the Court of Appeal, which was granted, and the case was heard on Monday 3rd February 1997. In their decision on the appeal concerning closed visits²⁸, the Court of Appeal 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. Since then, the prison authorities appear to have discontinued closed legal visits, but it is open to them to reinstate them at any time, with the full backing of the courts.

2.12 Concerning video and audio-recording of police interviews

As the UK point out in their response, silent video recording of police interrogations in Northern Ireland was introduced in March 1998, and

²⁷ R v Secretary of State for the Home Department and the Governor of Belmarsh Prison, ex parte Liam O’Dhuibhir and R v Secretary of State for the Home Department, ex parte Michael O’Brien

²⁸ R v Secretary of State for the Home Department, ex parte O’Dhuibhir and O’Brien, 1997, unreported, Court of Appeal

audio-recording is soon to follow. These reforms were already in the pipeline, and do not constitute a specific response to the Special Rapporteur's report. References to the silent video-recording are beginning to appear in instructions taken from clients held at Castlereagh, and show that some RUC officers have merely incorporated this reform into their array of abuse:

"... One of CID men said he would box my ears for me and didn't care about video... One of the detectives is in my ear shouting, talking at my ear. He keeps saying for me to work for them. When he's shouting at me he's disguising it..."²⁹

"... They said they'd [pass] video tapes to the prods³⁰, maybe next week we'll be investigating your murder..."³¹

"... He said that if the cameras were not on he would beat the shit out of me..."³²

"... One of them said he'd kick my bollocks in if these cameras weren't there..."³³

Hopefully, once audio recording is introduced such abuse will fade away. However, video- and audio-recording are insufficient safeguards against abuse by themselves, since they can only provide a remedy once abuse has actually occurred. In our opinion, such recording can only be really effective when it is coupled with the presence of the solicitor during the interview.

- 2.13 The Special Rapporteur recommended that tapes of such recordings should be available to counsel on request. As the UK explained, tapes will be made available where they would otherwise have to be disclosed in criminal or civil proceedings. Where a person wants the tapes examined in order to establish whether he has grounds for a complaint, he or she must give written details of the nature of the potential complaint and when it occurred. Only the relevant portion of the tape will then be disclosed. We can foresee some problems with this provision - for example, in a situation where a solicitor finds a client with injuries apparently sustained during an interrogation, but the client is unable to pinpoint the time when the injury was sustained because of intoxication, drugs or mental incapacity. It seems to us that if a lawyer suspects his or her client may have been subject to illegal duress he or she ought to be able to review all of the tapes. Our concerns would be greatly diminished if solicitors were entitled to be present during police interrogations.

²⁹ Case 286, February 1998 – although these comments and the next two examples were recorded in February, shortly before video-recording was officially introduced at Castlereagh, RUC officers were clearly referring to the new system, and, as the fourth example shows, continued to do so

³⁰ Protestants, in this context loyalists

³¹ Case 288, February 1998

³² Case 283, February 1998

³³ Case 299, August 1998

2.14 Concerning the murder of Patrick Finucane

The UK's response to this very serious matter was particularly disappointing. They denied that the murder of Patrick Finucane raised any "matter of urgent public importance" sufficient to justify a public inquiry, and declined to open such an inquiry unless new evidence comes to light. This is a cynical and self-serving response, since the UK government is in possession of all the evidence relating to the murder, has been refusing to make it public, and has an obvious interest in suppressing the truth about this murder.

2.15 Their attitude displays a wilful refusal to face the facts. At least the following persons and organisations have considered this murder and have supported the call for an independent inquiry:

- 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;
- Sir Louis Blom-Cooper QC, Independent Commissioner for the Holding Centres;
- 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;
- BBC journalist John Ware;
- 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.

The American State Department has also raised the murder in consecutive years in its country reports to Congress on human rights in the UK.

2.16 The reason for this international concern is not the failure to prosecute the actual perpetrators, although a public inquiry might bring to light evidence that was sufficiently compelling to ground prosecutions. The aspect of the murder of Patrick Finucane which is most troubling is the allegations of official collusion in his death. The charge of which the UK government stands accused is that a prominent lawyer was murdered with the active participation of an MI5 employee, Brian Nelson; that Brian Nelson's superiors knew of the assassination plot; that nothing was

done to protect Patrick Finucane or prevent his death; that remarks made by a government minister actively encouraged the murder; and that reports by English police officer John Stevens concerning his death have been suppressed. These are extremely serious allegations. If they do not represent matters of urgent public importance, we do not know what does. It is vital, not only to the friends and family of Patrick Finucane, but for the Northern Ireland peace process itself, that these issues are examined and that, if the allegations are true, reforms are put in place to prevent such a thing from ever happening again. The UK is a democracy. It claims to be committed to the human rights principles to which it formally subscribes. It must recognise that this murder has implications for the rule of law and for public confidence in the roles of government and the security forces that demand to be answered.

2.17 Concerning the emergency legislation

In its response the UK claims that the law allowing the drawing of inferences from a suspect's exercise of the right to remain silent,

“... has made a significant contribution to dealing with serious crime, both terrorist and non-terrorist.”

We are not aware that there is any evidence for that proposition. In our experience, its use in Northern Ireland has been almost exclusively directed towards cases of alleged terrorism, and we have been unable to detect any diminution in the incidence of terrorism that can be attributed to the rules on the right of silence. Nor has there been any obvious increase in the rate of convictions. We can, on the other hand, point to convictions which in our view are unsafe and unsatisfactory because of the application of this law.

2.18 Regrettably, the right of silence has been further eroded by the terms of the Criminal Justice (Terrorism and Conspiracy) Act 1998, which was rushed through Parliament in the wake of the Omagh bombing. Under its provisions, a statement by a police officer of the rank of superintendent or above that a person is a member of a proscribed organisation is admissible in evidence, without further corroboration, and the failure of a defendant to mention any material matter under police questioning can be used by the court to infer membership of that organisation.

2.19 The UK in its response said that it was still considering how to respond to the finding by the European Court of Human Rights in the case of John Murray v UK that the drawing of inferences from silence in the absence of legal advice violated the right to a fair trial. The Criminal Justice (Terrorism and Conspiracy) Act 1998 does include a safeguard based on Murray, in that inferences of membership of a proscribed organisation can only be drawn if the suspect has received legal advice before being questioned. However, this safeguard only applies to the offence of membership of a proscribed organisation. For all other offences, the government has done nothing at all in response to the Court's judgment. Furthermore, we do not accept that the provision in relation to proscribed membership is an adequate

response to the Murray judgment. In a situation where the mere opinion of a police officer, without more, is admissible as evidence of such membership, we do not believe that the European Court of Human Rights would vindicate the admissibility of such evidence simply because a suspect had been allowed to consult a solicitor before being questioned, because the solicitor could not be expected to anticipate every question that might be put to the suspect and advise accordingly. All in all, therefore, we contend that the UK is still in breach of Article 6 of the European Convention on Human Rights because it has failed to implement the Court's ruling.

2.20 Concerning the lower standard of admissibility of confession evidence in the Diplock courts, the UK says that the law is under review, and claims that in practice the courts apply the higher PACE standard of admissibility. This is simply untrue. We have observed many trials in the Diplock courts that hinge on the admissibility of confession evidence, and have witnessed the courts vigorously applying the lower standard, as indeed they are entitled to do by law. The UK goes on to say:

"The Government attaches the greatest importance to the protection of the rights of those held in custody. A significant range of statutory and administrative safeguards to protect persons in custody are in place."

They go on to cite the following safeguards:

- video- and audio-recording – please see remarks above;
- thorough investigation of allegations of police ill-treatment by the RUC with supervision by the ICPC in serious cases. Despite a consistent pattern of around 400 complaints about detention under the emergency laws against the police annually until 1994, falling to over 200 in 1995 and over 100 in the past two years, only five complaints have ever been upheld and none of these was confirmed by the subsequent disciplinary panel³⁴, leaving detainees with no confidence that there is any official concern about what goes on in holding centres. In a recent case, David Adams was awarded £30,000 in personal, aggravated and exemplary damages after the court found that he had been assaulted by RUC officers while in Castlereagh and that some of those officers had lied to the court. His original complaint to the ICPC was discontinued by them because his solicitor advised him not to make a statement to RUC officers investigating on behalf of the ICPC until his civil claim was over. After the court judgment, the ICPC had to re-open his case and appoint police officers from Strathclyde to investigate his claims.
- the system of inspection of the holding centres by the Independent Commissioner for the Holding Centres and his deputy, whose reports, they say, show "yet again that neither he nor his deputy have found any cause for concern." By his own admission, the

³⁴ Annual reports of the Independent Commission for Police Complaints, 1988 to 1997. In one case in 1992, the ICPC recommended disciplinary charges be brought against two police officers. They were both exonerated by the disciplinary panel. The other four disciplinary charges, arising from 2 cases brought by one individual in 1995, were all dismissed by a disciplinary panel.

Commissioner and his deputy can attend only a fraction of all interviews in the holding centres³⁵, and doubtless RUC officers are on their very best behaviour on those rare occasions when they do so. Furthermore, the government omits to say that the Commissioner's comments about finding no cause for concern have been limited to the uniformed RUC staff who act as gaolers in the holding centres, rather than the plain clothes detectives. They also ignore the Commissioner's repeated calls in successive annual reports for the closure of Castlereagh.

2.21 The UK says in its response that it agrees in principle with the Special Rapporteur's recommendation for the abolition of the Diplock courts and a return to trial by jury. However, they say that,

"...the time has not yet come for a return to jury trials although the matter is kept under continual review."

The reasons they give for the introduction of the no-jury Diplock courts are "significant levels of intimidation against jurors and the returning of perverse verdicts". However, they cite no evidence for these assertions, and we are not aware of any authoritative research supporting their contentions. Jury trials operate in the ordinary criminal courts in Northern Ireland, where serious non-terrorist crimes are tried. British Irish RIGHTS WATCH has never received any complaint of intimidation of jurors, nor are we aware of any perverse jury decisions in those courts. This is not to say that such problems never occur, but they certainly do not occur frequently enough to warrant the removal of trial by jury from those courts.

2.22 The UK goes on to say,

"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... There is no evidence whatever 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."

We beg to differ. In the Diplock courts a single judge acts as the tribunal of both fact and law. This leads to a quite untenable situation when the admissibility of a confession is contested. As with a jury trial, a voir dire is entered upon during which the validity of the confession and the means by which it was obtained are subjected to scrutiny. However, whereas a jury would be excluded from hearing these arguments, a Diplock judge not only hears them but adjudicates upon them. Should he decide that a confession is admissible, he must formally warn himself to disregard anything he heard during the voir dire that would in itself have been inadmissible in the trial proper. Should he decide that the confession is inadmissible, he must warn himself to disregard everything he heard during the voir dire, much of which may have been highly prejudicial to the defendant. Most voir dire in Diplock cases are very lengthy, and completely supersede the trial itself to the point where the voir dire becomes the forum in which

³⁵ In his *Third Annual Report*, which described his work in 1995, the Commissioner and his deputy had observed just 5 interviews

the case is actually decided. Many confessions are made in the absence of any access to a lawyer, and this is often cited as a ground, among others, for challenging the admissibility of the confession. In an ordinary criminal case, the chances of conviction before a jury on the basis of a contested confession made in the absence of legal advice and of any other corroboration would be very low indeed. In the Diplock Courts, convictions on such a basis are a commonplace occurrence. While someone charged with an identical offence in England would have the benefit of trial by jury, which is seen as an essential adjunct of the adversarial system of criminal justice developed over the past thousand years in Britain and widely adopted throughout the world, in Northern Ireland trial is by a relatively small number of judges sitting alone. While the Diplock judiciary are undeniably public-spirited and courageous, living as they have under constant threat of terrorist attack, it would be miraculous if some, if not all, of them were not case-hardened, given the small population of Northern Ireland, the even smaller number of people accused of involvement in terrorism, and how few such judges there are. We have observed trials where we do not believe a jury would have convicted but a Diplock judge has done so. Some, but not all of these convictions have been overturned on appeal. The UK cites the automatic right of appeal to a three-judge Court of Appeal and the requirement for written judgments by Diplock judges as precluding perverse verdicts or lower standards of justice. However, these are only mechanisms for remedying such problems once they have occurred, they do not in themselves prevent them from happening.

2.23 Concerning the issue of “bugging”

The proposals contained in the Police Act which would permit bugging of lawyers' offices in certain circumstances have not yet been brought into force. A Code of Practice is about to be laid before Parliament, and we understand that some amendments to the law are currently under consideration in relation to telephone tapping.

2.24 Concerning the Police Ombudsman

The Special Rapporteur called upon the Government to provide the institution with the necessary human and financial resources to meaningfully carry out its mandate. We understand that the Independent Commission for Police Complaints (ICPC), which will be replaced by the Ombudsman, has still not been told whether its existing staff will be transferred to the new office, nor whether the Ombudsman will operate with the level of resources allocated to the ICPC or with an enhanced budget that reflects the augmented role to be played by the Ombudsman. They are concerned that the budget recommended for the Ombudsman's office of £2m falls far below the current costs of the ICPC and those parts of the RUC's complaints system that the Ombudsman will replace, which together cost some £8m. They are also concerned that the appointment process for the new Ombudsman is taking place so slowly that there will be no opportunity for a proper hand-over of functions. So dissatisfied are the ICPC that, although they have formally resolved to hand over their

powers to the staff in the run-up to the new scheme, they are refusing to implement the resolution until such time as the staff receive confirmation that they will be remunerated at a rate appropriate to their enhanced responsibilities.

2.25 Concerning the judiciary

The Special Rapporteur recommended that the government implement training programs for the judiciary 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. In its response the government said that the Judicial Studies Board will be devising training on the European Convention on Human Rights well in advance of its incorporation into domestic law. They also said that their commitment to other international human rights standards is under review. Since the UK has not adopted the Optional Protocol to the International Covenant on Civil and Political Rights, its citizens have no right of individual petition to the Human Rights Committee. We doubt, therefore, that training on the Committee's jurisprudence is under contemplation.

2.26 THE RESPONSE OF THE IRISH GOVERNMENT

In contrast to the response of the UK government, that of the Irish government was far more positive. In a statement delivered to the Human Rights Commission on 2nd April 1998, the Irish Ambassador, Anne Anderson, said:

"... My Government continues to have serious concerns about the circumstances surrounding the killing of Mr Pat Finucane and reports of the intimidation of other defence lawyers in Northern Ireland. We thank the Special Rapporteur for his detailed observations and his specific recommendations which deserve very close attention. The issues addressed in his report have, of course, been previously discussed between the Irish and British Governments within the framework of the Anglo-Irish Intergovernmental Conference. My Government believes that the Special Rapporteur's work 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. We urge all concerned to accept it in this spirit and we thank Mr Cumaraswamy for his contribution."

David Andrews TD, the Irish Minister for Foreign Affairs, put out a press release on 1st April 1998 expressing very similar sentiments.

2.27 RESPONSE OF THE AMERICAN GOVERNMENT

On 29th September 1998 the House Subcommittee on International Operations and Human Rights, chaired by Congressman Christopher Smith, held a meeting in Washington to discuss the Special Rapporteur's report. In his opening remarks, Chairman Smith said:

"... The response thus far to the Rapporteur's report by the British government is frankly disappointing... the government's response is largely dismissive both in tone and 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 on the Administration of Justice and British Irish RIGHTS WATCH."

His sentiments were echoed by remarks made by Congressman Ben Gilman, chair of the House International Relations Committee, who attended the meeting.

- 2.28 Following the meeting, a letter was sent to the Prime Minister under the signatures of 20 members of Congress, including Congressmen Smith and Gilman. It said:

"The issues of intimidation of defense lawyers and the murder of Patrick Finucane have been before Congress now for several years... The Special Rapporteur's report gives independent confirmation to the reports we have received from members of the Finucane family, from lawyers, and from human rights groups. It seems to us that the time is now right to grapple with these issues and put them where they belong, *in the past* [their emphasis].... The British Government took a courageous step when it established a new public inquiry into the events of Bloody Sunday. The murder of Patrick Finucane is another such case which requires similar action and courage... We respectfully urge the government to... establish an independent, transparent, judicial inquiry into the murder of Patrick Finucane, and to implement the Special Rapporteur's other recommendations in order to rid the criminal justice system in Northern Ireland of the problems of abuse and harassment of defense lawyers. We believe that in doing so the government would be taking a major step forward in promoting a just and lasting settlement."

- 2.29 The same Congressmen also wrote to the Independent Commission on Policing for Northern Ireland urging the implementation of all the

Special Rapporteur's recommendations. Concerning the murder of Patrick Finucane they said:

"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."

3. RESPONSE OF THE ROYAL ULSTER CONSTABULARY

3.1 The Chief Constable issued an extraordinary press statement, dated 19th 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.

3.2 However, the RUC press release criticises the report as if these changes had not been made, and launches an attack on the Special Rapporteur's integrity, saying:

"The Royal Ulster Constabulary considers the report of Mr Dato' Param Kumaraswamy to fall short of the objectivity, accuracy and fairness which might have been expected from an investigation carried out through the offices of the United Nations Commissioner for Human Rights... As a supposed 'fact-finding mission' it gives scant regard to measurable facts or evidence to support allegations. Indeed, its language and tone throughout give claims and anecdotes the status of facts without the apparent need for evidence or proof..."

3.3 In a discussion with the UK mission we were assured that the Chief Constable's press release does 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 is not an "official" press release. However, in June 1998 the RUC wrote to the Committee on the Administration of Justice (CAJ) in Belfast setting out some points made by the Chief Constable to the Special Rapporteur in response to his report. This letter was sent in response to one signed by CAJ on behalf of a number of NGOs, endorsing the Special Rapporteur's findings and recommendations. The RUC's letter repeated the contents of their press release, suggesting that it did after all reflect their official views.

3.4 The press release did include some positive responses to the Special Rapporteur's recommendations. In particular, it accepted the proposal that the Police Ombudsman should investigate complaints of threats to lawyers, and that the RUC should organise training for its officers, in conjunction with the Law Society and the Bar Council, on the role of defence lawyers. (Please see paragraph 6.5 below concerning the Law Society's response to the Chief Constable's invitation.)

3.5 Following the Special Rapporteur's meeting with the Subcommittee on International Operations and Human Rights in Washington, the Chief Constable reiterated his criticisms of the report. In an interview published by the *Sunday Business Post*³⁶, he said:

"All of his complaints relate to hearsay. I'm not saying they should not be taken seriously but he has come to his conclusions without any firm evidence... The Cumaraswamy Report is full of conclusions reached without firm evidence. In relation to the report's conclusions I am in touch with the Law Society and I have invited them to be involved in our training programme."

3.6 In the meantime, RUC officers in the holding centres continue to utter threats and abuse against lawyers. Please see section 8 below.

4. THE RESPONSE OF THE ULSTER UNIONIST PARTY

4.1 The response of the Ulster Unionist Party was given in an undated press release³⁷ signed by Ken Maginnis MP. It was dismissive, inaccurate, and offensive to both the Special Rapporteur and the High Commissioner for Human Rights. We reproduce it here in full, not in order to compound that offence, but because it illustrates the entrenched prejudice against defence lawyers in Northern Ireland that underpins the ethos of the RUC.

4.2 The text of the press release was as follows:

"While the Ulster Unionist Party does not intend to dismiss the Cumaraswamy Report out of hand but will give proper consideration to any substantive issues raised, it is equally

³⁶ On 4.10.1998

³⁷ Quoted in part in the *Irish News* on 1.4.1998

appropriate that it should consider the basis on which conclusions were predicated.

Mr Cumaraswamy appears content to rely on and to rehearse mere hearsay but has failed to produce any substantive evidence, a trait which has currently left him facing a series of legal challenges in Malaya [sic] for libel and slander, with claims for damages that amount to more than RM¼ billion.

He allegedly asserts that he should be able to exercise his predisposition to speak and write in such a manner and defends himself on the basis, not of the veracity of his allegations but, rather, by claiming that he enjoys immunity against such suits in his capacity as a U.N. official. This is a view which has been rejected by the Federal Court of Malaya [sic].

Among the most staunch of Mr Cumaraswamy's defenders is the ex-Irish Republic President and current U.N. High Commissioner for Human Rights, Mary Robinson. [their emphasis]

Such matters should, at least, not go unnoticed by the UK Government when it responds to the Cumaraswamy Report and there should be insistence that, without evidence being produced, there can be no cognisance given to vague allegations.

Two other points should be considered in respect of the Report:

The core issue seems to revolve around alleged police intimidation of lawyers who major in defending terrorist suspects, yet Belfast solicitor, Mr Barra McGrory, has publicly admitted on the BBC that the only evidence of this comes, not from these lawyers, but second-hand from 'clients'.

One might reasonably have expected that a Profession comprising some of the most able minds in this society would, since these alleged threats have been made over many years, have brought their complaint as a matter of routine through their professional body, the Law Society. One might reasonably ask why this not happen? [sic]

KEN MAGINNIS MP"

5. NGO RESPONSES TO THE REPORT

- 5.1 Five of the world's leading human rights NGOs – 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 in response to the Special Rapporteur's report on 1st April 1998. They welcomed the report, endorsed all its findings, and urged the UK government to implement

all its recommendations. In particular, they highlighted their support for:

- an independent judicial inquiry into the murder of Patrick Finucane
- an independent and impartial investigation into threats against lawyers
- joint training seminars for the RUC on the role of defence lawyers
- the right of immediate access to legal advice and to have a solicitor present during police interrogations
- the reinstatement of the right of silence
- a return to trial by jury
- human rights training for the judiciary.

5.2 Four of these NGOs – Amnesty International, the International Federation of Human Rights, the Lawyers Committee for Human Rights and the International Commission for Jurists – made oral statements to the Human Rights Commission supporting the report.

5.3 All of these NGOs, together with the relevant domestic NGOs - British Irish RIGHTS WATCH, the Committee on the Administration of Justice, the Irish Council for Civil Liberties, Liberty and the Scottish Human Rights Centre – continue to have serious concerns about the issues underlying the Special Rapporteur's report and to support the implementation of its recommendations.

6. RESPONSE BY THE PROFESSIONAL BODIES

6.1 The Special Rapporteur recommended that,
“(c) both the Bar Council and the Law Society should be more vocal in its 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.”³⁸

6.2 The Law Society of Northern Ireland, which represents solicitors, responded positively and promptly to the Special Rapporteur's visit. Before his report was even published, they put in place a complaints procedure for solicitors who had been abused. The following advertisement was placed in the December 1997 issues of the Law Society's magazine, *The Writ* :

³⁸ Paragraph 91

Intimidation – Complaints by Solicitors

In the context of renewed debate about allegations of verbal intimidation of solicitors, or their clients, by members of the RUC, the Society has confirmed its concern to ensure that solicitors are not subject to any treatment in the course of their professional duties which would impugn or threaten their independence, professionalism and integrity. 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.

Accordingly any solicitors with complaints about the RUC, Prison Service or any agency within either the criminal or civil justice system may wish to write with details to the President.

We understand that the President has in fact received about half a dozen complaints this year.

- 6.3 The same issue of *The Writ* reproduced an address by the incoming President, Antoinette Curran, to the Law Society's annual dinner. In her speech she included the following remarks:

"Throughout all the black years of what are euphemistically called 'The Troubles' this profession has never shirked its responsibilities, pursuing to the House of Lords or the European Court, cases of those convicted of bombings, shootings or even murders. The diligence of our profession has restored more than just 'burglars to their friends and their relations'. Our colleagues on the criminal side have fought assiduously for the rights of all creeds and classes and have frequently made new law in the process. This devotion to duty, sometimes in the face of unwarranted sneers, should and must be recognised."

- 6.4 While these moves on the part of the Law Society are welcome, defence lawyers have told us that there is still a long way to go before the culture within the Law Society changes. They feel that these steps represent concessions rather than heartfelt reforms, and point out that the Law Society has yet to call for an inquiry into the murder of its member Patrick Finucane. When the English magazine *The Lawyer* sought a quote from the Northern Ireland Law Society in response to the Special Rapporteur's report, its spokesman Alan Burnside said:

"We deplore Finucane's murder as a deliberate attack on the legal system. But there are over 3,000 murders in Northern Ireland in very murky circumstances. Where do you stop in regards to legal inquiries?"³⁹

These remarks, made four months after the President's remarks at the annual dinner, are felt by defence lawyers to more accurately represent the attitude of most of their colleagues within the Law Society.

- 6.5 The Special Rapporteur also recommended that:

³⁹ *The Lawyer*, 7.4.1998

“(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 defense lawyers play in the administration of justice.”⁴⁰

We understand that the Law Society has met the RUC at least twice to discuss this proposal, and that the Chief Constable requested the Law Society to participate in training of police officers but the Society declined this invitation, saying that because the Northern Ireland jurisdiction is so small they fear that conflicts of interest may arise if they are training officers one day and cross-examining them the next. The reform of policing in Northern Ireland has been placed at the heart of the peace process by the terms of the Good Friday Agreement. It may be that the Law Society is concerned that training on such sensitive matters should not be bolted on to a police force whose culture and ethos are inimical to the role of defence lawyers, and do not want their own participation to appear to lend their imprimatur to an organisation which is basically flawed in this regard. Certainly some NGOs have refused to become involved in RUC human rights training for similar reasons, while some academics who did become involved withdrew on those grounds. It is to be hoped that, if the radical reform of policing that is so badly required in Northern Ireland comes about, the Law Society, and NGOs, may be prepared to reconsider this question. It may also be the case that the professional bodies in England could assist with such training.

- 6.6 The General Council of the Bar of Northern Ireland has not, so far as we are aware, made any public response to the Special Rapporteur's report. The response of the Bar Council to our reports over several years has been to formally deprecate any abuse of solicitors and to assert that they have received no such complaints from any barrister, implying that no such problem exists within the Bar. The tone of their response has been one of regret that some barristers have chosen to voice their fears and indignation, and their sense of isolation from their colleagues, to an NGO such as ours rather than raising it within the Bar itself. They seem unwilling to confront the implications of such a situation in terms of what it says about the culture within the Bar. The extent of their reaction to the murder of Patrick Finucane was to write to his widow expressing their sympathy, and to write to the Attorney General expressing concern at the remarks made by Douglas Hogg MP⁴¹. Like the Law Society, they have not supported the call for an independent inquiry into the murder.
- 6.7 The professional bodies in England have been more proactive than their Northern Ireland counterparts in their responses to the Special Rapporteur's report. The English Law Society wrote to the Prime Minister in June 1998, referring to its own mission to Northern Ireland in 1995 and endorsing the Special Rapporteur's findings and recommendations. The Prime Minister replied by sending a very

⁴⁰ Paragraph 91

⁴¹ Please see paragraph 9.7 below

detailed response, which reiterates its formal response to the Special Rapporteur's report, described and criticised in section 2 above. The Human Rights Committee of the English Bar wrote to the Secretary of State in July 1998 saying:

"It is our view that the [Special Rapporteur's] report raises a number of very serious issues relating to the independence and protection of the legal profession in Northern Ireland which the Government response document simply fails to answer."

Their letter went on to ask a number of searching questions concerning the harassment and intimidation of defence lawyers, access to lawyers, video- and audio-recording, the murder of Patrick Finucane, and resources for the Police Ombudsman. They received a reply from the Minister of State's private secretary which replicates that sent to the English Law Society. It does not reply to any of the questions raised by the Human Rights Committee, and in repeating the government's formal response to the report it does not meet the Committee's criticism that the formal response failed to answer the issues raised by the Special Rapporteur. We understand that the Committee is pursuing the lack of answers to their questions.

7. RESPONSE BY DEFENCE LAWYERS

7.1 In January 1998, thirty-three defence lawyers signed an open letter expressing serious concern about the apparent immunity of members of the security forces from prosecution in cases where they had allegedly violated basic human rights. In their letter they said:

"... 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. Similarly no action has been taken about the continuing 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..."

They went on to call on the Secretary of State to

- order an immediate inquiry into the death of Pat Finucane, and release the full Stevens report
- institute a root and branch review of policing and the administration of justice with a view to creating a framework which is accountable, democratic and representative
- repeal emergency legislation, close the detention centres, restore the right of silence and allow for the presence of solicitors during interrogation of clients.

7.2 In August 1998 thirty-nine lawyers, twenty-nine of them from Northern Ireland and ten from England, signed another open letter deprecating the emergency laws brought in very hurriedly in the wake of the

Omagh bombing. This letter mentioned the Special Rapporteur's report and pointed out that it had been critical of RUC practices.

7.3 Two lawyers from Northern Ireland took the time and trouble to travel to Washington in September 1998 in order to support the Special Rapporteur's report and to inform the House Subcommittee on International Operations and Human Rights about their own situations. Peter Madden established his firm together with Patrick Finucane. Before and particularly since his partner's murder, he and his colleagues have suffered a catalogue of threats and abuse. In his submission to the Subcommittee, he said:

"... 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... 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... We are now in a time of relative peace in the north. We are on the verge of great change. But unless there is fundamental change it will be difficult to maintain that peace... 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 Patten must understand that unless there is major change in policing... it will be very difficult to achieve lasting peace... 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..."

Rosemary Nelson has also suffered very serious abuse, including assault and death threats by RUC officers reported to her and to NGOs by her clients. In her submission she said:

"... Since I began to represent such clients [those held under emergency laws] 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... my clients have reported an increasing number of incidents when I have been abused by RUC officers, including 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 my staff. No lawyer in Northern Ireland can forget what happened to Patrick Finucane or 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 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..."

7.4 It is some years since lawyers in Northern Ireland have been prepared to make public statements about the aspects of the legal system of which they are critical. We believe that the Special Rapporteur's mission to Northern Ireland and his detailed findings and recommendations have enabled lawyers to find their voice again.

7.5 The Special Rapporteur recommended that:
“(d) Lawyers themselves must lodge formal complaints with the authorities...”⁴²

We have noticed an increase in the number of occasions when lawyers who have complained to us have also lodged a complaint with the RUC and the ICPC. We have been encouraging lawyers to also complain to the Law Society, and while they may not have been wholly consistent in making sure that they complain to all three bodies, they have certainly been making more formal complaints generally. We understand that the ICPC has received 17 such complaints in the past six months. They have decided to supervise the investigation of all such complaints, and we welcome this positive response to the Special Rapporteur's report on their part.

8. CONTINUING PROBLEMS FACED BY LAWYERS

8.1 Since our last report to the Special Rapporteur, British Irish RIGHTS WATCH has continued to monitor problems faced by lawyers in Northern Ireland. We regret to report that, despite the protestations of the UK government and the RUC, RUC officers in the holding centres continue to utter threats and abuse against lawyers while interrogating their clients in the holding centres⁴³ in the absence of their solicitors.

8.2 In the course of the past year, we have received a number of complaints from several different firms of solicitors throughout Northern Ireland. With the permission of the lawyers concerned, these complaints have been forwarded to the Special Rapporteur for his information. Many of these complaints have concerned abusive remarks reported to solicitors by their clients as having been made by RUC officers while the clients were detained in one of the holding centres. However, they have also concerned:

- serious libel of defence lawyers by a Sunday newspaper

⁴² Paragraph 91

⁴³ Special police stations used to detain suspects arrested under the emergency laws

- the stopping of a legal clerk outside his firm's office by the army, who searched him and attempted to peruse a confidential legal file
- abusive comments uttered by RUC officers in a solicitor's presence during PACE interviews
- a death threat sent through the post to a solicitor.

8.3 One solicitor who has been subjected to a campaign of death threats and vile abuse, some of it sexual in character, by RUC officers is Rosemary Nelson from Lurgan. This campaign started when she became identified as the solicitor acting for Colin Duffy, and it has intensified since she began acting for the Garvaghy Road Residents Association. In 1997 she was reportedly assaulted by RUC officers while attempting to represent the residents' interests; her action for damages is pending. Hers is clearly a case of her being identified with her clients and their causes, contrary to the United Nations Basic Principles on the Role of Lawyers. We have transmitted a number of complaints on her behalf to the Special Rapporteur during the past year, and also conducted extensive correspondence with the Secretary of State. The situation in the area where Rosemary Nelson practices remains volatile and we call on the UK government to accept responsibility for her safety and for bringing this despicable campaign to an end.

8.4 We have been monitoring the instructions taken by a firm of Belfast solicitors for the past seven years, which have displayed a constant pattern of abuse and threats against both clients and lawyers. That pattern has continued, although we have noticed a diminution in the number of death threats made by RUC officers against lawyers. We believe that the drop in the number of death threats merely reflects the drop in the level of violence generally in Northern Ireland, and that if violence were to increase, so would such threats. In our view, it is the regime maintained in the holding centres that allows such abuse to flourish. Clients are interviewed by two RUC officers in the absence of their solicitor. Interviews are not yet being audio-recorded, and the silent video-recording that is in place has not so far deterred RUC officers from making threats, as we have set out in paragraph 2.12 above.

8.5 We include at Appendix A a dossier of remarks made to the firm's clients between August 1997 and August 1998. The firm had instructions from 26 clients who were detained in the holding centres during that period. 19 of them reported abuse against their solicitors. We have analysed the reported abuse as follows:

	CLIENTS	INSTANCES
solicitors are republicans	9	12
general abuse of solicitor	9	12
solicitor only interested in making money	7	9
solicitor is incompetent/ unprofessional	5	9
choice of solicitor queried	5	4
solicitor does not care about client	4	5
client should ignore legal advice	4	4
solicitor will wrongly advise client to remain silent	3	3
frequent consultations with solicitor indicate guilt	3	3
sexual abuse of solicitor	3	3
solicitor will pass information to/from terrorists	2	2
client must be a republican because of choice of solicitor	2	2
solicitors have schooled clients	2	2
reference to Patrick Finucane	1	2
asking/speculating about solicitor's advice	1	2
outcome of trial will be affected by choice of solicitor	1	1
client is in solicitor's pay	1	1
derogatory reference to another firm of solicitors	1	1
client interviewed despite request for solicitor on the premises at the time	1	1
solicitor accused of intimidating identification witness	1	1
solicitor will alert other suspects	1	1

This is a familiar and depressing picture. Some RUC officers are systematically identifying solicitors with their client's alleged crimes and causes. Although we found only one direct reference to Patrick Finucane, it was particularly shocking:

"... They said about me not answering questions and I must be a terrorist. They mentioned about solicitor not telling me to talk. Said I couldn't have picked a bigger cunt of a solicitor. Mentioned Pat Finucane, ok I'll get it honey, boom boom. They were talking about Pat getting killed..."⁴⁴

This graphic reference to the murder, which displays intimate acquaintance with its details, seems pathological almost ten years after the event. The constant reference to the solicitors concerned as "Provie bastards" and the like shows just how ingrained is the prejudice some RUC officers entertain against lawyers. The sexual nature of some of the abuse, particularly against female solicitors, is also distressing, both for the lawyers concerned and their colleagues to whom it is relayed. For example:

"... They said in relation to my solicitors the following '[obscene variation on name of solicitor's firm] solicitors provie bastards'. They went on about [female solicitor's first name] and said [she] loves it up the bum. They said [her name] 'tut tut'..."⁴⁵

All in all, the picture painted by these instructions continues to be one of police officers who are extremely unprofessional in their attitude

⁴⁴ Case 276, October 1997

⁴⁵ Case 278, November 1997

towards lawyers. It does not appear that any instructions have been issued to RUC officers following the Special Rapporteur's report to modify their language or refrain from abusing solicitors, or that, if such an instruction has been issued it is being ignored wholesale.

- 8.6 In December 1996 Patricia Coyle, a solicitor with Madden & Finucane, was allegedly assaulted by an RUC officer, Sergeant (now Inspector) Reid while attending her client at Grosvenor Road RUC station. Her client, contrary to her advice, had indicated that he intended to resist the taking of DNA samples. In such circumstances, the RUC is entitled to take such samples by force. Sergeant Reid ordered Ms Coyle, who wished to remain with her client in order to ensure that only the minimum necessary force was used against him, to leave the room. When she asked him why, he said that it was for her own safety. She told him that she would indemnify him against any threat to her safety, and asked for his authority for excluding her. At this point, without warning, she says that he forcibly ejected her from the room. Sergeant Reid denies assaulting her and says that he merely escorted her from the room. Ms Coyle's action for assault was heard by the High Court⁴⁶ commencing on 12th September 1998. British Irish RIGHTS WATCH sent an observer to the first two days of the hearing and monitored the rest of the case via discussions with Ms Coyle, her lawyers, and observers sent to the hearing by the Committee on the Administration of Justice. Judgment was reserved. We are concerned that the only two complaints of actual assault of lawyers by RUC officers that have come to our attention have involved female lawyers. We expect the court to award Ms Coyle exemplary damages if they find in her favour.

9. THE MURDER OF PATRICK FINUCANE

- 9.1 Since the publication of the Special Rapporteur's report, new evidence has come to light concerning the role of Brian Nelson and the security services in the murder of Patrick Finucane. Journalist John Ware, who made the June 1992 BBC *Panorama* programme about Brian Nelson, has published an article⁴⁷ alleging that the documents examined by John Stevens during his first enquiry into collusion prove that Brian Nelson was infiltrated into the Ulster Defence Association by army intelligence specifically for the purpose of helping the UDA to target IRA suspects, thus implicating the army in loyalist assassinations. These documents, called contact forms, record Brian Nelson's weekly meetings with his army handlers. According to the article, a contact form dated 3rd May 1988 reads:

"6137 (Nelson's code number) wants the UDA only to attack legitimate targets and not innocent Catholics. Since 6137 took up his position as intelligence officer, the targeting has developed and is now more professional."

⁴⁶ After the defendants' application to have the case remitted to the Crown Court was dismissed

⁴⁷ *Time to come clean over the army's role in the "Dirty War"*, New Statesman, 24.4.1998

Interviewed by Vincent McFadden, John Stevens' deputy, Brian Nelson's handler, known as Colonel J, confirmed that he had recruited Nelson to

“persuade the UDA to centralise their targeting through Nelson and to concentrate on known PIRA activities.”

Another contact form, dated 6th February 1989, less than a week before Patrick Finucane was killed, reads:

“6137 initiates most of the targeting. Of late 6137 has been more organised and he is currently running an operation against selected republican targets.”

- 9.2 John Ware says that Stevens found a “wealth” of detailed intelligence in the files he examined, but only summaries were passed to RUC Special Branch, whose role should have included warning potential victims. Ware alleges that these summaries had been “deliberately diluted”. He also says that the failure to keep the RUC fully informed contravened a directive issued by the army's Commander Land Forces in 1986.
- 9.3 Brian Nelson's method of assisting the UDA to target its victims included compiling personality, or P cards, which recorded the target's address, associates, identification details and a photograph. When a target was selected for assassination the P card was passed by Brian Nelson to the murder squad. The P cards were stored in a suitcase in a safe house under the control of his army handlers.
- 9.4 Brian Nelson compiled such a P card on Patrick Finucane. A contact form dated 2nd March 1989 records a report from Nelson to his handler that Patrick Finucane met Gerry Adams at the Beechlawn Hotel in the week prior to his assassination. The contact form says that this information was recorded on “Finucane's personality card”. However, when the Stevens team received Nelson's suitcase, it did not contain a personality card on Patrick Finucane. John Ware says:

“This suggests that either it had been removed by Nelson's handlers to conceal their role in – or knowledge of – Finucane's murder; or Nelson himself had already handed it over to the assassins... The simple fact that Nelson had compiled a ‘P’ card on Finucane indicates that the army knows more than it is saying.”

The journalist alleges that within a week of the announcement of the Stevens Inquiry, Nelson's handlers removed the suitcase from the safe house and locked it away in army headquarters to prevent the Stevens team from finding it. British Irish RIGHTS WATCH understands that the existence of the suitcase came to light because Brian Nelson threatened to talk about his clandestine work in an effort to extricate himself from a civil claim against him.
- 9.5 John Ware reports in the article on an interview he conducted with Tommy “Tucker” Lyttle, head of the UDA at the time of the murder, shortly before Lyttle's death. He told Ware that the information included on Patrick Finucane's P card concerning the alleged meeting with Gerry Adams had

“played a big part in the final decision to go ahead with Finucane's assassination”.

He also said that Brian Nelson had played an active role in the conspiracy to murder, ascertaining Patrick Finucane's home address by following him home from his office.

- 9.6 Lyttle also alleged that the impetus for the murder came not from Nelson or the UDA, but from the RUC:
- “Lyttle also confirmed that the original idea to murder Pat Finucane came from two RUC detectives. While a prominent UDA gunman was being held in Castlereagh, an officer entered the interrogation room and said to his colleague: ‘Have you put it to him yet?’ They then suggested that the UDA shoot Finucane. Lyttle said that he was so astonished at this suggestion that he informed a regular contact in the RUC Special Branch: ‘I told him: “What the hell is going on in Castlereagh? Why is Finucane being pushed?”’ The officer said that it would be ‘a bad blow for the Provos [the IRA] to have Finucane removed.’ Did that amount to approval that he should be shot? ‘Put it this way,’ said Lyttle, ‘He didn’t discourage the idea that he should be shot.’”

- 9.7 The RUC, however, denies that it had any involvement in the murder. In an interview with Chief Constable Ronnie Flanagan published in the *Sunday Business Post*⁴⁸, he said:
- “There never was a suggestion of RUC collusion. What John Stevens... found, was that part-time military regiment... people had been involved. There was no hint of collusion by the RUC with paramilitaries.”

Of course, the Chief Constable has an advantage over everyone else in that not only is he the joint owner of the Stevens report⁴⁹, but he has been able to read what it says. However, it is not only Lyttle's allegations that implicate the RUC. Respected journalist and commentator Tim Pat Coogan, in his book *The Troubles*⁵⁰ says that he understands that Stevens' second report, commissioned after the revelations in John Ware's *Panorama* programme,

“... squarely implicate[s] four named members of the RUC as being involved in sectarian killings”.

Sean McPhilemy in his book *The Committee*⁵¹ reproduces part of the transcript of a filmed interview with Jim Sands, a loyalist who claimed that loyalist assassinations were planned and sanctioned by a committee drawn from the security forces, Northern Ireland businessmen, loyalist paramilitaries and others. Sands alleged:

“Representatives from the Inner Force [an alleged loyalist grouping within the RUC]... advised that maybe the time was right to remove Pat Finucane, who, according to files that had come from Knock [RUC] Headquarters, that Pat Finucane was very prominent within

48 On 4.10.1998

49 According to John Stevens' letter to the Special Rapporteur of 14.1.1998, quoted at paragraph 71 of the Special Rapporteur's report

50 Hutchinson, 1995, p.264

51 Roberts Rinehart, 1998, p.57

the Provisional IRA. They felt that the time was right now to remove him, even though he was a solicitor, he was still very much like with the Provisional IRA and they felt that the time was right to remove him."

We have already alerted the Special Rapporteur to evidence from Patrick Finucane's widow, colleagues and clients that RUC officers made death threats against him and that these escalated towards the time of the murder. There is also the matter of the accounts by members of the Finucane family and neighbours of theirs that an RUC roadblock that had been in place near the Finucane home until shortly before the murder was lifted, enabling the assassins easy access to and an easy getaway from the house. While this may have been a coincidence, it is a factor that may suggest police collusion. The extent of RUC involvement in the murder is a matter which can only be resolved by a public inquiry with full judicial powers of discovery and the ability to compel witnesses.

- 9.8 Patrick Finucane was murdered shortly after a Home Office minister, Douglas Hogg MP, had remarked⁵² under the cloak of parliamentary privilege that,

"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."

We now understand that Douglas Hogg visited Belfast in January 1989 and met RUC officers during his visit. We request the Special Rapporteur to ask the government to give him details of the date and extent of this visit, whom he met, and what was discussed.

- 9.9 On 11th February 1992 Patrick Finucane's widow lodged civil proceedings against the Ministry of Defence and Brian Nelson for negligence over the murder. On 22nd January 1998 her solicitors wrote to the Crown Solicitors alleging that full and proper discovery had not been made by the defendants. To date they have received no reply to their letter. An application to compel replies has now been lodged. We understand that very few documents have been disclosed so far, and that the few that have been made available are heavily redacted.

- 9.10 In July 1995 Mrs Finucane lodged an application to the European Commission on Human Rights alleging that her husband's murder constituted a violation of his right to life. The UK responded by seeking an adjournment on the grounds that the civil proceedings were still ongoing. In March 1998 the Commission refused an adjournment. Finally,

⁵² In a Committee stage debate on the Prevention of Terrorism (Temporary Provisions) Bill on 17.1.1989

in June 1998, nearly three years after the application was lodged, the UK submitted its response. We understand that they are seeking to have the application declared inadmissible for non-exhaustion of domestic remedies, as being out of time, and as being manifestly ill-founded. They deny that there has been any violation and ask again for an adjournment on the basis of the civil proceedings.

9.10 This is a pattern of obstruction that is familiar to British Irish RIGHTS WATCH in other cases where there has been suspected collusion. The limitations of the civil proceedings and the European application mean that, even if Mrs Finucane is successful in both cases, she still may not ascertain the full truth about her husband's assassination. Only a full judicial inquiry can deliver that, and for the reasons we have given at paragraph 2.16 above, we believe that only such an inquiry can fully explore the very serious implications of this case for the rule of law and the role of the security forces and government.

10. CONCLUSION

10.1 We thank the Special Rapporteur for visiting the UK and producing such a detailed report and such a useful set of recommendations.

10.2 While there has been some positive response to his report, the response of the UK government has been bitterly disappointing. We respectfully request the Special Rapporteur to continue to monitor the situation in the UK, and especially in Northern Ireland, and to continue to urge the government to act on his recommendations.

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