

UNITED KINGDOM

Submission to the Independent Commission on Policing for Northern Ireland

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Amnesty International

Amnesty International is a world-wide voluntary movement that works to prevent some of the gravest violations by governments of people's fundamental human rights. The main focus of its campaigning is to:

- free all prisoners of conscience. These are people detained anywhere for their beliefs or because of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status- who have not used or advocated violence;
- ensure fair and prompt trials for political prisoners;
- abolish the death penalty, torture and other cruel treatment of prisoners;
- end extrajudicial executions and 'disappearances'.

Amnesty International also opposes abuses by opposition groups, including hostage taking, torture and killings of prisoners and other deliberate and arbitrary killings.

Amnesty International is impartial. It is independent of any government, political persuasion or religious creed. It does not

support or oppose any government or political system, nor does it support or oppose the views of the victims whose rights it seeks to protect. It is concerned solely with the protection of the human rights involved in each case, regardless of the ideology of the government or opposition forces, or the beliefs of the individual.

**Submission by
Amnesty International
To
The Independent Commission on Policing
for Northern Ireland**

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Introduction

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Amnesty International firmly believes that creating a fair, just and accountable police force is a fundamental protection for human rights within any society. In the case of Northern Ireland, Amnesty International is concerned that:

- _ The police force is not representative of the whole community;*
- _ There has been a failure to train the Royal Ulster Constabulary (RUC) in basic international principles which guide the conduct of law enforcement officials;*
- _ There has been a failure to monitor RUC activities to ensure that the police force operates in a manner consistent with international human rights principles;*
- _ There has been a failure to institute legislation which both protects members of the public against potential abuse at the hands of the police and makes accountable those accused of violations of human and civil rights under the law.*

As highlighted by the attached reports, there is credible evidence of patterns of human rights abuse by the RUC. Amnesty International has not been satisfied that investigations into alleged abuse have been conducted in a thorough and impartial manner. Both the nature and scale of abuse coupled with the lack of accountability lend credibility to charges that the RUC has been able to operate with virtual impunity.

Amnesty International notes the formation of the Independent Commission on Policing in Northern Ireland (the Commission) as part of the Multi-Party Agreement. Amnesty International urges that the final recommendations of the Commission include measures to ensure that future policing in Northern Ireland:

- _ is fair, just and accountable;
- _ operates within a “coherent and cooperative justice system” which is in conformity with human rights norms;
- _ has the confidence of all sectors of the community.

As we outline subsequently in this report, we believe, to this end, it is imperative that the Commission’s consultation process is inclusive, impartial and receptive to the wider community. Amnesty International believes that the process of community consultation will be as important as the eventual outcome in ensuring the success of, and public confidence in, police reforms in Northern Ireland.

Amnesty International's submission to the Commission will be presented in four sections. Following the introduction, we will provide a brief historical contextualization of the policing issue. In this section we will highlight the communal perceptions on policing.

Section 2 will outline what Amnesty International has identified as primary areas of concern regarding policing in Northern Ireland. Section 3 will address concerns regarding the community consultation process undertaken to date by the Commission. The final section will specifically focus on key issues for Amnesty International relating to the composition, training and accountability of the police. This section will evaluate current policing practices, the agreed role of the Commission under the 1998 Multi-Party Agreement as it relates to the aforementioned areas of concern, and will make specific recommendations in each category.

1. Background to Policing in Northern Ireland

In 1993, Protestant and Catholics were surveyed to determine their perceptions of equalities of opportunities and fair application of the law. The Social Attitude survey revealed that significantly more Protestants than Catholics felt that legal justice in Northern Ireland was applied equitably. Whilst both sides agreed that the courts treated those accused of non-terrorist activities evenly, only 53 percent of Catholics, compared to 79 percent of Protestants felt that equal treatment was applied to those accused of terrorist offences. Differences were most significant when questioned whether the RUC treat both Protestants and Catholics equally: 73 percent of Protestant respondents, compared to only 41 percent of Catholics felt that the RUC treated the public fairly.¹

Unsurprisingly, given the largely Protestant composition of the RUC, Catholics perceive treatment by the RUC to differ between the communities. The history of both the development and composition of the RUC lends weight to Catholic perceptions of bias. According to a 1997 publication by the Fair Employment Commission, only 868 or 7.8 percent of 11,521 RUC officers are

¹ See A.M. Gallagher, (1995), "Equality, Contact and Pluralism: Attitudes to Community Relations" in *Social Attitudes in Northern Ireland, Fourth Report: 1994-95*, eds. Breen et al., p. 23.

Catholic. Allegations of a pattern of abuse by the RUC against members of the nationalist community, coupled with the added security risks faced by Catholics, is an obvious deterrent to greater Catholic participation. As one researcher has noted:

“In the longer term, there is no doubt that the practice – intentional or otherwise – of arming one side of the population in Northern Ireland to police the other is inherently divisive. In a deeply divided society it reproduces and reinforces existing tensions.”²

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² See Robbie McVeigh, (1995), *It's Part of Life Here: The Security Force and Harassment in Northern Ireland*. Belfast: Committee on the Administration of Justice, p. 113.

Whilst some researchers support RUC claims that sectarianism is not endemic within the police, others claim sectarianism is pervasive.³ Whatever the realities, many Catholics perceive the RUC to be inherently biased and many see it as essentially unreformable. The legacy of past RUC policing practices coupled with the distinctly Protestant composition of the RUC, now solely responsible for policing, has alienated the Catholic population from the RUC in Northern Ireland. It has been suggested that the composition of the police force has fostered a sectarianization of policing; policing in Catholic (particularly working class) areas allegedly differs from policing in Protestant districts.

Unfavourable contact and perceptions of bias in security force conduct are not limited to the individual experiences of minority community members. The events of the summer of 1996 brought into focus the difficulty that the RUC faces when it attempts to police the Protestant community. During this period, colloquially referred to as the "marching season," Northern Ireland experienced acute civil unrest.⁴ A ban issued on 7 July 1996 by

³ See K. Masterson (1993) "Ready to Listen," in *Community Relations*, No. 12; R.C. Murray, (1993), "Hunt for an alternative" in *Fortnight*, 316:32-33 Belfast: Fortnight Magazine; and Angela Hegarty and Stephen Livingstone (1993) "Force of Argument," in *Fortnight*, 316:33-34, Belfast: Fortnight Magazine for contrasting views.

⁴ For a detailed chronology on events during this period see CAJ's

the Chief Constable of the RUC to prevent an Orange Order march in the town of Portadown triggered widespread condemnation by Unionists and led to blockages, confrontations, and rioting throughout Northern Ireland.⁵ The security situation deteriorated, (with allegations of an impending mutiny from some within the RUC), and on 11 July Orangemen were allowed to march down the contested Garvaghy Road in Portadown.⁶

As events unfolded in Portadown, haunting similarities between contemporary events and earlier civil rights unrest unfolded. Whilst the ban was in effect, the minority community perceived police and the later army presence as protection against potentially riotous Orange and Loyalist protestors. The atmosphere quickly changed when the ban was revoked. The capitulation by the RUC triggered counter demonstrations and rioting within republican

The Misrule of Law, October 1996, Appendix 11:79-86.

⁵ A similar but unsuccessful attempt was made to prevent an Orange Order march through the Lower Ormeau Road in Belfast. The march took place on 12 July 1996. A curfew was imposed and the access to the area was restricted, even to residents (see CAJ 1996, 48-9).

⁶ Portadown is a largely Protestant community. The Garvaghy Road cuts between two Catholic housing estates. Residents of both estates formed the Garvaghy Road Residents Association to address problems stemming from parades and marches.

areas and protests from the wider nationalist community. Human rights observers confirmed allegations by residents that police used abusive and sectarian language when policing minority community counter-demonstrations.

In the wake of these events, questions were raised regarding the disproportionate use of lethal force against the minority community. Statistics regarding the number of plastic baton rounds fired reveal that the RUC was more reserved in their application against Orange Order demonstrators.⁷ Questions were also raised regarding the affiliation and support of the Orange Order by some RUC members which further served to reinforce the alienation felt by the minority community, confirm bias and challenge the legitimacy of the police force. The details surrounding these events raise larger questions on effective and impartial policing in Northern Ireland. Amnesty International has expressed concern that both during and in the wake of Portadown⁸ there has been a failure by authorities, "to ensure that policing is

⁷ During the 1996 summer marching season, for example, the police deployed 662 plastic bullets between 7-11 July (during unionist protests), compared to the 5,340 plastic bullets discharged during nationalists protests between 11-14 July.

⁸ Smaller disturbances during this year were reported in Downpatrick, Cookstown, Moy, Newry, Lurgan and Armagh. More intense rioting was reported in Belfast, especially in North Belfast.

carried out in an even-handed manner".⁹

⁹ See Amnesty International's report, *United Kingdom: An Agenda for Human Rights Protection*, EUR 45/12/97, June 1997, p. 9.

The successful abrogation of the rule of law during the “siege of Drumcree”¹⁰ in 1996 reinforced the fears of many within the nationalist community that the largely Protestant police force was both unable and unwilling to enforce the law against *its own* community. As is so often the case, individual encounters become communal experiences. Individual incidents and grievances, when not addressed, envelop wider issues. The events of the summer of 1996 became, to both the Catholic and Protestant communities, markers or lines drawn in an ever shifting political environment. For the Protestant community, the right to march down the Garvaghy Road was a question of freedom of expression, an ability to exercise and celebrate their Unionist/Protestant identity. For Catholics, the events squarely brought to the fore wider issues of policing, legal justice and state legitimacy.

Similarly policing surrounding events during the summer marching seasons of 1997 and 1998 also raised serious questions regarding the use of force. In July 1997, the Orange Order was allowed its procession from the Drumcree Church to the Orange Order Hall along the Garvaghy Road. The Garvaghy residents were not informed of this decision and indeed were made aware that the decision to allow the march had been taken only when the police

¹⁰ Drumcree Church of Ireland located on the outskirts of Portadown that became a meeting point for Orange Order members and other protesters during this period.

force moved in during the early hours of the morning to secure the Garvaghy Road area. Statements secured by Amnesty International in the wake of the policing operation indicated that the police engaged in the excessive use of force to remove demonstrators. It was reported that when the police attempted to clear the Garvaghy Road, demonstrators were hit by batons and kicked. Observers reported that the police used sectarian language, and used threats and intimidation against both a local councillor and a defence lawyer who were present. An Amnesty International observer reported that on the day of the march, the police use of plastic bullets was not within international guidelines which govern the use of force. The batons were fired in circumstances which did not constitute "imminent threat of death or serious injury". The Amnesty International observer rejected the RUC version of events which stated that baton rounds were discharged only after petrol bombs were lodged at the RUC. In fact, our observer stated that baton rounds were discharged before the first petrol bomb was thrown.

Protestant/security force relationships have, until quite recently, been presumed to be unproblematic. In fact, the attitudes of many Protestants toward the RUC underwent a transition following the signing of the Anglo-Irish Agreement in 1985. Not only did this period mark a rise in attacks against the RUC by the Loyalist community but, concurrently, an increase in reports of security

force harassment in Protestant districts.¹¹ The 1993 CAJ study also explored the frequency of security force harassment of the Protestant community in Northern Ireland.¹² A random survey targeting youth in the 17-18 age group found that, "over one quarter of the respondents who identified harassment were Protestant".¹³ Tensions between members of the Protestant community and the RUC escalated when the newly formed Parades Commission banned the July 1998 Orange Procession along the Garvaghy Road. Whilst the Amnesty International observer noted that, in general, the police exercised restraint during the subsequent stand-off, significant questions remained regarding the discharge of plastic bullets in the Drumcree Church grounds. Our observer noted that, on a number of occasions, bullets were discharged in situations in which the police and army were not in imminent danger. The result was that, whilst limited in number, serious injuries were sustained. In at least two cases observed, injuries were sustained by individuals who were in the church grounds, but who were not participating in the disturbances.

¹¹ A report by the Helsinki Watch in 1992 referred to security harassment in Protestant areas see Helsinki Watch. 1992. *Children in Northern Ireland: Abused by Security Forces and Paramilitaries*. New York: Human Rights Watch, 31-32.

¹² See *Supra* note 3.

¹³ *Id.*, p. 117

The conduct of police during the marching season highlights what Amnesty International believes to be the consistent failure of authorities to ensure that policing is conducted in an even-handed manner. In the following section, we will detail the results of Amnesty International's research into policing and human rights in Northern Ireland.

2. Policing in Northern Ireland: A Legacy of Abuse

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Amnesty International has a well-known record of investigating and documenting human rights abuses by the RUC since the early 1970s. The following are what Amnesty International has identified as primary areas of concerns regarding policing in Northern Ireland. We refer the Commission to the attached reports of Amnesty International for additional information.

2. (i) Political Killings in Northern Ireland

a) Illegal and excessive use of lethal force in disputed killings

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From 1969 to date, members of the security forces have killed 358 people.¹⁴ Approximately half of the 358 killed were

¹⁴ 53 were killed by the RUC.

unarmed. A majority of those killed (86%) were from the minority (Catholic) community.¹⁵ In many of these cases, the circumstances surrounding these deaths are disputed. Very few prosecutions have taken place, with only six convictions. Amnesty International believes that the authorities have failed to conduct prompt, thorough, and impartial inquiries into these killings as required by international standards, such as the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

Over the years Amnesty International has investigated a number of disputed killings where evidence indicated that security force personnel deliberately killed people as an alternative to arresting them. Amnesty International remains unconvinced by government statements that these were not extrajudicial executions, because such statements have not been substantiated by any evidence of an official will to investigate fully and impartially each incident, to make the facts publicly known, to bring the perpetrators to justice or to bring relevant legislation into line with international standards.

Amnesty International's investigation identified a disturbing

¹⁵ Figures drawn from Sutton, M., (1994) *An Index of Deaths from the Conflict in Northern Ireland: 1969-1993*, Belfast and Index of Deaths database at the Linen Hall Library.

pattern which showed that disputed killings were not being investigated fully and impartially and that the results of internal police investigations were only (partially) made known publicly if a prosecution was brought. The results of one of the most extensive investigations by a British senior police officer, John Stalker, into six disputed killings in 1982, remain secret to this day. Deputy Chief Constable John Stalker believed that he had uncovered evidence to show that the six victims had been unlawfully killed by members of a specially trained anti-terrorist police squad. However, an attempt was made to discredit him (it emerged in 1995 that a secret police memo had been written in 1986 claiming that he was possibly sympathetic to the IRA) and he was removed from the inquiry before its completion. The inquiry was completed by Chief Constable Colin Sampson. No prosecutions were brought, even though prosecutions had been recommended.

In Amnesty International's investigation into political killings in Northern Ireland, the organization concluded:

"The pattern that has emerged, and that causes concern, is one of repeated allegations that suspects are arbitrarily killed rather than being arrested, that members of the security forces believe they can operate with impunity, and that this is reinforced by government failure to take steps to prevent unlawful killings. The government evades responsibility by

hiding behind an array of legal procedures and secret inquiries which serve to cloud the issues".¹⁶

b) Laws and Regulations/International Standards

Amnesty International believes that the current laws and regulations are inadequate to prevent and deter unlawful killings. The use of lethal force by the RUC is governed by section 3(1) of the 1967 Criminal Law Act (NI) which states that the standard for the use of lethal force is, "...such force as is reasonable [our emphasis] in the circumstances". However, based on a review of judicial interpretation of this law, Amnesty International concludes that the criterion for assessing what constitutes reasonable in the circumstances is too flexible to either impose standards of behaviour on security forces, which prevent the excessive use of force, or to deter excessive force. The inadequacy of the provision has been particularly highlighted in incidents of alleged "shoot to kill" in which security forces have been accused of extrajudicial executions. In a number of these cases brought to trial, security forces have alleged that the victims had appeared to have been armed and, as a result, the courts have found that the criteria established under section 3(1) had been met.

¹⁶ See Amnesty International, 1994. *United Kingdom: Political Killings in Northern Ireland*. London: Amnesty International, p. 7.

The standard for the use of lethal force is not subject to the presence of imminent danger, as required by international standards on the use of force, rather is justified merely if there is a perception of a threat. Under Principle 9 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the use of lethal force is limited to circumstances in which law enforcement officials are in "imminent threat of death or serious injury". Article 2(2) of the European Convention on Human Rights maintains that the use of force must be "no more than absolutely necessary". The standards established under both international agreements are significantly stronger than the reasonableness clause under the Northern Ireland Criminal Law Act. In a February 1991 review of the Emergency Provisions Bill, the Standing Advisory Committee on Human Rights (SACHR) recommended that, ". . . any code on the use of lethal force should reflect the more stringent rule adopted in the UN Basic Principles". This position was echoed by SACHR in its 1995 review of the Police and Criminal Evidence (NI) Order 1989. In this review, SACHR stated that it would prefer that the codes regulating the use of force be brought under the requirements of Article 2(2) of the ECHR which raised the standard necessary for the use of force from "reasonable" to that "which is absolutely necessary".¹⁷

¹⁷ See SACHR Annual Report for 1995-1996, Annex R, p. 212.

c) Investigative Procedures

Amnesty International maintains that, contrary to government claims, there has been a failure of the police to investigate thoroughly cases of excessive and lethal use of force and a further failure to interview all relevant witnesses. In some cases, evidence has shown that police investigations may have been deliberately superficial in order to protect security force personnel. In most lethal force cases, the Director of Public Prosecutions (DPP) has elected not to prosecute. Since prosecutions for killings by security forces are rare, the only remaining avenue for investigating disputed killings has been the coroner's inquest.

Amnesty International is very concerned that the government is failing to protect the fundamental right to life because it is not meeting its obligation to effectively review the lawfulness of the use of lethal force by State authorities in Northern Ireland. The inquest system in Northern Ireland has been so severely restricted, first through legislation, and then through judicial interpretation of the law and the rules, that it can no longer fulfil any useful role in determining the full circumstances of a disputed killing. Nor can it inquire into the legality of the actions taken by the security forces. In addition, the systematic use of Public Interest Immunity Certificates blocks the disclosure of crucial evidence and contributes to the lack of accountability of the security forces. These practices

contravene international guidelines adopted in the United Nations Principles on Effective Prevention and Investigation of Extra Legal, Arbitrary and Summary Executions. Under Articles 9 and 10 of these Principles, states are required to thoroughly investigate cases where extrajudicial executions are suspected and to compel officials suspected of involvement in such acts to testify.¹⁸ Amnesty International believes that the inquest procedure in Northern Ireland also violates Article 2 of the European Convention on Human Rights by failing to provide effective legal and public scrutiny of possible unlawful killings.

Amnesty International urges the Commission to recognize the government's responsibility in contributing to cover-ups of unlawful killings and to ensure that procedures are put in place to prevent future reoccurrence. The organization urges the Commission to recommend the establishment of a wide-ranging judicial inquiry whose remit would be to recommend a different public judicial

¹⁸ Article 9 states:

There shall be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions....

Article 10 states:

The investigative authority shall have the power to obtain all the information necessary to the inquiry....They shall also have the authority to oblige officials allegedly involved in any such execution to appear and testify.

procedure to examine disputed killings/deaths, a procedure which would be in conformity with international standards and which would meet the needs of accountability and justice.

As we have detailed, Amnesty International has not been satisfied that police investigations into cases of disputed killings by the security forces have been conducted in a thorough and impartial manner. But the organization has also been concerned about police investigations into incidents in which the police have been indirectly involved. We draw the Commission's attention to the case of Robert Hamill who was killed one year ago in Portadown. Robert Hamill and three of his relatives were returning from a Catholic dance hall through the centre of Portadown on 27 April 1997 when they were confronted by a large group of Protestants who attacked them. The two men were beaten and kicked savagely, while the large crowd shouted sectarian abuse. Robert Hamill, a 25-year-old father of two, died of his head injuries ten days later. The relatives stated that four RUC officers, who were sitting in a Landrover in the centre of town, and who were within view of the incident, had not intervened to stop the attack. The initial RUC statements after the incident were totally misleading in that they referred to a fight between rival factions and claimed that the police had come under attack. No one was arrested that evening or in the immediate days afterward for the violent attack. It was only after Robert Hamill died that six people were arrested and charged with his murder. Charges against five of the six have subsequently been dropped. No

one was ever charged in connection with the assault on Gregory Girvan, the relative of Robert Hamill, who suffered facial cuts and severe bruising. No police officer was suspended pending the investigation.

Amnesty International notes there was an alleged failure by the RUC officers to protect those involved; that misleading press statements were issued afterwards by the RUC; and that there was a failure by the RUC to make arrests and to secure forensic evidence promptly. In this case, the family of the victim believes that the investigation into Robert Hamill's killing was not conducted in a thorough or impartial manner. As a result, the family has initiated its own criminal proceedings.

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Amnesty International recognizes that, particularly in cases involving alleged police misconduct, police investigation procedures have often failed to gain public confidence. Therefore, Amnesty International urges the Commission to recommend the creation of a civilian body which could step in and immediately review an investigation if the victim or family believe that the investigation is not being carried out in an impartial and prompt manner.

2. (ii) Collusion between security forces and armed groups

Following the 1989 murder by the Ulster Freedom Fighters (UFF) of Patrick Finucane,¹⁹ allegations of collusion between loyalist forces and the British Army emerged.²⁰ During 1988, a client of Finucane reported to Amnesty International that during interrogation the RUC told him that his solicitor would be shot dead by loyalist paramilitaries. The credibility that collusion may have played a role in Finucane's murder was strengthened by evidence as a consequence of Brian Nelson's arrest. Nelson had served as a double agent for the Ulster Defence Association (UDA) and the British Army.²¹

¹⁹ Finucane was a prominent Belfast-based defence lawyer.

²⁰ Allegations of collusion range from direct involvement of security force personnel in Loyalist death squads, complicity by authorities in such killings, to aiding and abetting such actions through the passing on of intelligence information.

²¹ See Amnesty International. 1991. *United Kingdom: Human Rights Concerns*. New York: Amnesty International, p. 56.

During 1989-1990 an inquiry by Deputy Constable John Stevens from Cambridgeshire in England investigated allegations of collaboration between the RUC and loyalist paramilitaries. The Stevens inquiry followed the killing of Catholic, Loughlin Maginn, by the UFF. The UDA/UFF alleged that information derived from police files facilitated the murder. Two hundred and fifty names of Republicans along with personal data from security force documents were subsequently leaked to the media. The Stevens inquiry concluded that security forces had passed information to paramilitaries. Two UDR soldiers were subsequently charged with passing on information that led to Maginn's murder. In the subsequent trial of one UDA officer, Brian Nelson, it emerged that this practice was commonplace (although the conclusions made by the Stevens inquiry rejected this claim).²²

²² See Amnesty International's publication, *United Kingdom: Human Rights Concerns*, June 1991, AI Index: EUR 45/04/91, pp. 52-56. Also *Human Rights in Northern Ireland*, Helsinki Watch, October 1991, p. 61. The British Government has rejected claims that a policy of collusion exists. In an NIO letter dated 26 November 1992 to the then Secretary General of Amnesty International, the government acknowledged that collusion contributed to the death of Loughlin Maginn but in citing the Stevens' report, maintained that the practice "was neither widespread nor institutionalized," a point contested by international human rights organisations (see references above). Following revelations from the Nelson trial, the DPP for Northern Ireland reviewed the question of collusion. In August 1993, the Stevens' inquiry was reopened.

The internal inquiries carried out by senior police officer John Stevens have not allayed concerns of official involvement in the killing of Patrick Finucane; indeed the refusal by the government to publish the results of these inquiries contributes to allegations of an official cover-up of the killing not just of Patrick Finucane, but of many others. It has been alleged, for example, that John Stevens recommended the prosecution of army handlers of Brian Nelson, the military intelligence agent and UDA member, for their role. It is not known whether the Northern Ireland Director of Public Prosecutions recommended that prosecutions should be brought; it is not known whether the Attorney-General decided that prosecutions should not be brought, or indeed whether the Cabinet was involved in making this decision. Information recently revealed from the classified files, detailing meetings of Brian Nelson and his army handlers between 1987-90, raise further questions about the role of Brian Nelson and the official cover-up of his actions. Brian Nelson was charged and convicted of five conspiracies to murder; however, the files indicate that he was involved in 15 murders, 15 attempted murders and 62 conspiracies to murder. This is a much larger number than what was declared publicly in 1992: it raises serious questions about official involvement in 92 cases. It is not known why Brian Nelson was only charged in five cases, nor what role the Attorney-General played in deciding on the prosecutions, especially given that it was the Attorney-General's office that prosecuted Brian Nelson. It is not known what consultations took place with Cabinet members. The

families of the victims of the 15 murders should be given full files on everything related to these deaths. There are too many questions unanswered, questions which will not go away. A public accounting for this extent of possible security force involvement in murders is desperately needed.

It is also not known whether John Stevens was given full access to all police intelligence files on police contacts with Brian Nelson and other informers within the UDA at the time of the murder of Patrick Finucane. As the UN Special Rapporteur on the independence of judges and lawyers, Param Cumaraswamy stated in his report, "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". Amnesty International urged the government to establish an independent judicial inquiry to examine the full circumstances surrounding the killing of Patrick Finucane and to explain the role of all official authorities in relation to his death. This inquiry should have the powers to examine all the available evidence on these matters and should present a public report of its findings.

Questions surrounding this case, coupled with alleged anti-Catholic bias within the RUC have fuelled allegations that there is collusion between the RUC and loyalist paramilitaries. The failure to prosecute police officers or intelligence agents for collusion contributes to a perception that agents of the state operate illegally

with impunity.

2. (iii) *Ill-treatment during detention and interrogation*

Since the 1970s, Amnesty International has investigated and documented allegations of ill-treatment and torture in special police interrogation centres in Northern Ireland, most notably Castlereagh Holding Centre in Belfast. As we have argued, there is no statutory basis for these holding centres. In 1996 there were 85 cases of complaint made by persons arrested under emergency legislation out of a total of 111 allegations of abuse during detention and in 1997 there were 108 cases out of 140 allegations.²³ Amnesty International has called on the government to close all interrogation/holding centres and to detain suspects arrested under emergency legislation in designated police stations. As noted in a recent Amnesty International report on emergency law practices in the United Kingdom:

“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 amounts to harassment and

²³ Statistics obtained from the 1996, 1997 Annual Reports of the Independent Commission for Police Complaints in Northern Ireland.

intimidation, including death threats. Despite the allegations, there continue to be inadequate safeguards for the protection of suspects detained in these special centres.’²⁴

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Under emergency powers, detainees can be held up to seven days without judicial review of their detention and can be denied access to legal counsel for up to the first 48 hours of detention and for intervals of 48 hours thereafter. Interrogations have not, to date, been audio-recorded. The denial of legal assistance during interrogation contravenes both Article 14(3) of the International Covenant on Civil and Political Rights (ICCPR) and Principle 8 of the UN Basic Principles on the Role of Lawyers. Whilst the right of full legal assistance is afforded to those arrested under the 1989 Prevention of Terrorism Act (PTA) in Britain and under ordinary law throughout the United Kingdom, it does not apply to those arrested under emergency powers in Northern Ireland.

²⁴ See Amnesty International, *United Kingdom: UN report criticizes emergency law practices in Northern Ireland*, EUR 45/06/98, April 1998, p.2.

A 1996 decision by the European Court of Human Rights (ECHR) found that the denial to legal assistance during interrogation violated a right to fair trial under Article 6 of the European Convention.²⁵ The United Kingdom has yet to introduce legislation to comply with this ruling. Amnesty International has called on the government to allow those held to have immediate access to legal advice and to be interrogated only in the presence of their lawyer. This view was reiterated in a report by the UN Special Rapporteur on the independence of judges and lawyers, Param Cumaraswamy. The UN Special Rapporteur undertook a fact-finding mission to Northern Ireland in October 1997 to investigate allegations of intimidation and harassment of defence lawyers. In a review of the emergency legislation in the United Kingdom, he states:

“In the view of the Special Rapporteur, it is desirable to have the presence of an attorney during police investigations 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

²⁵ See *Murray v. UK*, decision by the ECHR, 27 June 1994.

pressure exerted to extract confessions further dictate that the presence of a solicitor is imperative.’²⁶

2. (iv) Intimidation and Harassment of Lawyers

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Members of the legal community have reported subjection to varying forms of intimidation and harassment by the RUC including: death threats; anonymous threats; false propaganda campaigns alleging paramilitary connections; interference with lawyer/client relationships; and interference with the right to choose legal counsel. Patrick Finucane's murder should be viewed in this broader context of a pattern of intimidation and harassment of defence lawyers.

²⁶ See Report on the mission of the Special Rapporteur to the UK, para. 47.

In his 1997 mission to Northern Ireland to investigate allegations of abuse against lawyers, the UN Special Rapporteur found that systematically, "the RUC has engaged in activities which constitute intimidation, hindrance, harassment or improper interference". Complaints by members of the legal community that they have been the subject of death threats, and verbal harassment, continue to be received and investigated by Amnesty International. Lawyers have not had sufficient confidence in the RUC investigations to make complaints to the RUC.²⁷

Amnesty International supports the recommendations of the UN Special Rapporteur, which include:

- _ a call for an independent and impartial investigation into threats against lawyers in Northern Ireland;
- _ an independent judicial inquiry into the 1989 murder of prominent defence lawyer, Patrick Finucane;
- _ recognition of the right to full access to legal assistance;
- _ restoration of the right to remain silent;
- _ and rigorous human rights training for Northern Ireland's police force and judiciary.

²⁷ See *Supra* note 28, Appendix.

2. (v) Plastic and Rubber Bullets

“Amnesty International is concerned about the indiscriminate firing of plastic bullets by security forces, a method of crowd control used only in Northern Ireland. The organization is also concerned that the guidelines regulating the use of such bullets are less rigorous for the RUC than for the British Army and for the police forces in the rest of the UK.”²⁸

Since 1969, seventeen people have been killed by the use of plastic or rubber bullets. Eight of the victims have been children under the age of 16 years. Eighty-six percent of all civilians killed from 1969 to date have been Catholic. Of the 14 persons killed by plastic bullets, nine were killed in West Belfast and four were children under the age of 16.

Amnesty International’s concerns regarding the use of plastic bullets are based on the following:

²⁸ *Statement by Amnesty International to the House Committee on International Relations Sub-Committee on International Operations and Human Rights, October 1997.*

- _ Past instances where batches of baton rounds have been deemed faulty
- _ Inability to properly aim bullets
- _ Disproportionate use of bullets against the minority community
- _ Lack of rigorous guidelines for the firing of the bullets
- _ Lack of accountability for the firing of such bullets.

In August 1997 the guidelines regulating the use of plastic bullets by the RUC were published. These guidelines were not consistent with those of the Association of Chief Police Officers (ACPO) and were less stringent than the British Army's Rules of Engagement for the use of plastic baton rounds. As we have previously noted:

“The ACPO and the British Army guidelines limit the range of circumstances: plastic bullets can only be fired to prevent a serious risk to loss of life, whereas the RUC guidelines allow the firing of plastic bullets to protect property or in the detection of a crime. The ACPO and British Army guidelines require a more senior officer to authorize the use of plastic bullets, whereas the RUC guidelines allow individual officers to use their own judgment.”²⁹

²⁹ See Amnesty International's Comments to the House Committee on International Relations Sub-committee on International Operations and Human Rights, October 1997, p.6.

The RUC guidelines state that rounds cannot be discharged “indiscriminately at the crowd...and should be aimed so that they strike the lower part of the target’s body”. Rules also state that the bullets should not be fired less than 20 metres “unless the safety of police officers or others is seriously threatened”. Despite these restrictions, most deaths caused by plastic bullets were the result of head and chest injuries, in clear violation of these guidelines. In 10 of the 14 deaths resulting from the use of plastic bullets, security force contentions that the victim had been involved in rioting have been refuted by eyewitnesses or by the judge or coroner conducting the inquest.³⁰ This suggests that bullets were used in violation of these guidelines, and further highlights the question of the ability of these bullets to be properly aimed. Despite the questionable circumstances surrounding these cases, only one member of the RUC has ever been charged in connection with deaths resulting from the use of plastic or rubber bullets (he was subsequently acquitted).³¹

³⁰ See Human Rights Watch report, (1991) *Human Rights in Northern Ireland*. New York: Human Rights Watch, Appendix D.

³¹ This case involved the 1984 killing of Sean Downes. Downes was shot in the chest with a plastic bullet whilst attending an internment rally in West Belfast. The evidence produced indicated that the officer had violated Rules of Engagement 2 and 4 as Downes had been shot in the chest from a range less than 20 feet. However the court felt that just cause had been established under Rule 4. In his decision, Mr. Justice Hutton argued that the officer felt his fellow officers were in immediate danger and that:

We would also wish to draw the Commission's attention to the disproportionate use of plastic bullets against the minority community. During the 1996 summer marching season, for example, the police deployed 662 plastic bullets between 7-11 July (during unionist protests), compared to the 5,340 plastic bullets discharged during nationalists protests between 11-14 July.

Amnesty International notes that during the 4½ days of unionist protests, there was a substantial threat to public order. During this period, there were 758 attacks on the police, which resulted in 65 officers injured. Roads were closed, vehicles hijacked, and property damaged. The decision to allow the Orange Order to march along the Garvaghy Road also led to serious disturbances within nationalist communities. However, according to the RUC guidelines the amount of force employed must "be in proportion to the seriousness of the case". Amnesty International finds it difficult to explain why it was necessary for the security forces to discharge 8 times as many plastic bullets during the 3½ days of nationalist disturbances as had been previously fired in 4½ days of unionist rioting. The disproportionate use of plastic bullets against the minority community during this period raised significant questions regarding the RUC's ability to act in a fair and impartial manner.

"It [was] probable that the accused did act almost instinctively to defend his comrade without having time to assess the situation in light of his knowledge of the police regulations".

Amnesty International is also concerned with procedures for testing plastic bullets before they are issued. We note that in June 1997 the government revealed that a batch of plastic baton rounds issued from early 1994 had exceeded velocities above the upper recommended limit. Since the faulty bullets were issued in May 1994, the RUC had fired a total of 7,437 bullets and the British Army had discharged 1,424 bullets, which resulted in 94 alleged injuries during this period. It was also revealed that since 1996 the Ministry of Defence had knowledge that "some of the rounds were going marginally faster than the specified velocity, but the tests were not considered conclusive". The question remains as to why these faulty bullets were not removed until a full year later. Amnesty International recommends an urgent review of the use of plastic bullets. The organization also recommends the urgent introduction of training of the security forces in methods of public order policing consistent with internationally recognized standards regarding the use of force and firearms as expressed in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

3. Building Public Confidence: The Consultation Process

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The aforementioned factors - the sectarian composition of the policing force, coupled with the perception of bias within the RUC and the legacy of RUC abuse - has negatively impacted on public

confidence in the policing force in Northern Ireland. As we have stated, Amnesty International believes that the establishment of a policing force in Northern Ireland which has the confidence of all sections of the community must, necessarily, begin with a consultation process that is fair, transparent and accessible. Indeed the terms of reference of the Commission on Policing set out by the 1998 Multi-Party Agreement emphasize the central role of the public in establishing a police force which “can enjoy widespread support from, and is seen as an integral part of, the community as a whole”.

The unavoidable late submission by Amnesty International has provided the opportunity for preliminary assessment of the Commission’s consultation process to date. Whilst we understand that the Commission has scheduled (and is continuing to schedule) additional consultation meetings, nonetheless Amnesty International has received representations from a number of community groups and individuals expressing concern regarding the consultation process. Amnesty International wishes to take this opportunity, respectfully, to raise several concerns regarding the Commission’s operations to date.

3. (i) Staffing of Commission’s Secretariat

As you are undoubtedly aware, significant questions and concerns were raised following the 4 October 1998 article in the *Sunday Business Post*. The article in question raised two issues: the appointment of an RUC officer to 'liaison' between the RUC and the Commission, and the subsequent statements by the Commission and the Chief Constable regarding the role of this person. Since the article was printed, Amnesty International has written to the Commissioner to request clarification of the role of the RUC officer in question. The Commission has confirmed that an RUC officer has been seconded to liaise between the Commission and the RUC. Amnesty International is very concerned about this appointment. Notwithstanding the impact revelations regarding this officer have had on public confidence in the neutrality of the Commission's undertaking, Amnesty International also has concerns regarding RUC access to written submissions, private correspondence and discussions of the Commission, and material from oral hearings and focus groups.

The appointment of an RUC officer to the Secretariat raises further questions regarding the transparency of the process. It is our understanding from the Commission that, apart from the RUC officer in question, Secretariat staff are privy to written submissions as well as private correspondence to the Commission. Therefore, the composition and background of Secretariat staff is a matter of public interest, and should be made readily available to the public.

3. (ii) Public Consultation

Amnesty International requested from the Commission a list of visitations undertaken by the Commission to date. Through contact with various community groups and interested others, Amnesty International has been made aware of a growing concern, particularly within the minority community, that the consultation process undertaken by the Commission, to date, has not been inclusive. Specifically, there was concern that the Commission had allocated a significant amount of time to consultation with the police, with a smaller number of consultations with the wider community.

We are aware that the Commission intends to continue the consultation process in Northern Ireland until 11 December. We are also aware that the Commission is continuing to add venues for public consultation. However, our concerns regarding the consultation process with the public are threefold. First, the consultation process with the wider community process is, in our opinion, short and has (to date) not been well publicized. The first community consultation was on 14 October. The commission has undertaken only 4 general public consultations to date with additional meetings scheduled until the process draws to a close on

December 11.³² However, according to correspondence from the Commission's secretariat to Amnesty International, the Commission has already undertaken "dozens" of visitations to RUC stations and intends to visit "every one of the 38 police subdivisions within Northern Ireland as well as key Head Quarters".³³

Additionally, the organizers of recent public consultations in North and West Belfast have indicated that they were confronted with a number of logistical difficulties. Organizers complained that they had a very short time-frame for planning and publicizing meetings, and a limited selection of dates and times - provided by the Commission - for holding venues.

Amnesty International is also concerned regarding the Commission's emphasis that this consultation process with the community must be on future policing arrangements. In copies of correspondence from the Commission's Secretariat to various community groups, individuals and other human rights organisations which have been received by Amnesty International, the Commission has clearly defined its role as one "charged with"

³² We are also aware that during this period, the Commission has made one visitation to a Belfast school, and has had two meetings with business leaders.

³³ Letter from the Secretariat to Amnesty International dated 3 November 1998.

recommending "future [your emphasis] policing arrangements". In our view, to negate or in any way discourage written or oral submissions which detail past RUC abuse will be to eliminate a vital voice in this process - that of the "policed". Many of the submissions to the Commission will be from community members most affected by past abusive policing practices. It is, in our opinion, logical that whatever new "future" policing arrangements are made, they must be guided and informed by past policing practices.

Lastly, Amnesty International is concerned that research on relevant policing issues, undertaken to date for the Commission, has been conducted solely by the Commission's secretariat. It is our understanding from the terms of reference for the Commission laid out in the Multi-Party Agreement, that there would be widespread consultation, "including with non-governmental expert organisations". Amnesty International believes that the Commission should draw on the expertise available to it in the wider legal, academic and human rights community to conduct independent research. Amnesty International suggests that this research should examine, in part, how best to implement the recommendations which we lay out in the next section of this report.

4. The Future of Policing: Composition, Training, and Accountability

Under the Policing and Justice section of the 1998 Multi-Party Agreement the policing service in Northern Ireland should be:

“[P]rofessional, effective and efficient, fair and impartial, free from partisan political control; accountable, both under the law for its actions and to the community it serves; representative of the society it polices; and operates within a coherent and cooperative justice system, which conforms with human rights norms.”

It is, therefore, the charge of the Commission to ensure that its recommendations on both structure and accountability secure these objectives. Amnesty International believes that new policing arrangements should not only institute "positive" changes which reflect "policing in a normal peaceful society" (ie. downsizing and diversifying). Rather, we argue that there must be accountability for past abusive policing practices, and the development of mechanisms designed to prevent future human rights violations by the RUC. To this end, Amnesty International submits the following recommendations.

4. (i) Composition

A vital step towards creating a police force that enjoys the support of the wider community is to ensure that the composition of the police reflects all sectors of the community. The terms of reference for the Commission clearly state the recommendations should include proposals that address the composition of the police force. Statistics provided by the Northern Ireland Statistics and Research Agency for the combined three-year period from 1995-98 indicate that the demographic breakdown for Northern Ireland, by religious status, is 42 percent Catholic and 54 percent Protestant. However, as afore-mentioned, currently the number of Roman Catholics serving in the RUC is less than 8 percent. Creating a police force that is representative of the Northern Ireland community is, therefore, a vital first step in building a force that will have the confidence of the general public. To this end, Amnesty International recommends:

- Set a recruitment timetable and targets for attracting under-represented community sectors including those from the nationalist community as well as those from other minority groups and women;
- ⑩ Undertake evaluation to determine why RUC recruitment of minority groups is so low and, in particular why, whilst the numbers of applicants from the Catholic community increased in the wake of the respective ceasefires (according to RUC statistics), the number of candidates hired did not reflect this increase;

- ⑩ Establishment of a vetting system, which will ensure that no police officers involved in past abusive practices could continue to work in the police force.

4. (ii) Training

Central to the training curriculum of police officers must be principles of international human rights laws and standards. Specifically, we recommend that training received by the police force be in accordance with principles on policing as expressed in the following international documents:

- UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- UN Code of Conduct for Law Enforcement Officials; and
- UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;
- UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

Additionally, police officers should be familiar with provisions contained within international human rights treaties including the European Convention on Human Rights and the International Covenant on Civil and Political Rights. Such training should have relevance to the impact of these instruments on everyday policing.

To this end, Amnesty International recommends that the police force draw from all available professional resources, including from the academic, legal and human rights communities, to conduct this training in a rigorous and informed manner.

4. (iii) Accountability

Amnesty International has strongly stated that the present mechanisms for police accountability are ineffective and unsatisfactory. In order for any policing service to have public confidence, it must be seen to operate under the rule of law. Thus the actions of state agents must be accountable under law and to the public in a transparent manner. Amnesty International urges the Commission to review the legacy of policing in Northern Ireland with a view to ensuring that the patterns of past human rights violations cannot be repeated in future by making recommendations for new forms of accountability. In particular, the organization recommends:

- The establishment of mechanisms to ensure that all serious human rights violations are investigated fully and impartially and the findings of such inquiries are made public;
 - Empowering the NI Police Ombudsman with full investigatory powers into alleged patterns of abuse by police officers;
 - The establishment of an independent, civil body which could, in controversial cases regarding police conduct, be directed to review police inquiries;
 - Ensure that all police personnel and vehicles have identification numbers and that they are visible.
- All legislation governing the use of force, including lethal

force, is in conformity with international human rights standards.

- That the Commission recognize the government's responsibility in contributing to cover-ups of unlawful killings and to ensure that procedures are put in place to prevent future reoccurrence;
 - The publication of the Stalker/Sampson report;
 - The publication of the Stevens report;
 - Establish an independent judicial inquiry to examine the full circumstances surrounding the killing of Patrick Finucane, including the role of all official authorities in relation to his death.
- Establish a civilian oversight body of the operations of police and military intelligence agents and their use of informers.
- That the Commission recommend the establishment of a wide-ranging judicial inquiry whose remit would be to recommend a different public judicial procedure to examine disputed killings/deaths, a procedure which would be in conformity with international standards and which would meet the needs of accountability and justice;

specifically we recommend:

- Police should disclose all available evidence to lawyers representing families at all stages of the investigation;
- Police must be compelled to testify during judicial investigative proceedings or coroners' inquests;

- *Inquest juries must be allowed to bring in a verdict.*

As the Multi-Party Agreement notes, new policing structures and arrangements must not only be fair, impartial and accountable but they must operate within a coherent and cooperative criminal justice system which conforms to human rights norms. Thus a review of policing must operate within the context of a review of the whole criminal justice system, including emergency legislation, and the functioning of the judiciary and the prosecution authorities. In particular, various aspects of emergency legislation have given police officers greater opportunities for human rights violations and should be removed. Thus recommendations for policing must go hand in hand with other changes in the criminal justice system. Amnesty International believes that only a holistic approach to the inter-related components of the criminal justice system will be able to address the underlying pattern of failing to bring perpetrators of human rights violations to justice. Amnesty International recommends:

- *The implementation of the recommendations of the UN Special Rapporteur on the Independence of Judges and Lawyers;*
- *All legislation governing the treatment of suspects held under emergency legislation should be in conformity with international human rights standards. Specifically we recommend:*

- *Withdrawal of derogations from the relevant provisions under both the ECHR and the ICCPR;³⁴*
- *The closure of all interrogation detention centres;*
- *Legislation be introduced giving lawyers immediate access to their clients, as well as allowing lawyers access to interrogations;*
- *Withdrawal of the latest emergency provisions which allow the opinion of a senior RUC officer to form the basis for prosecution when an individual is charged with membership of specified organizations;*
- *Remove emergency legislation which allows lower standards for the admissibility of confession evidence.*

³⁴ In December 1988, just one month after the European Court's ruling in *Brogan v UK*, the United Kingdom submitted another notice of derogation (original derogation withdrawn in 1985) with respect to the extended power of detention allowed under Northern Ireland emergency legislation.