

An Chartlann Náisiúnta
National Archives

Reference Code:	2022/84/7
Creator(s):	Department of the Taoiseach
Accession Conditions:	Open
Copyright:	National Archives, Ireland. May only be reproduced with the written permission of the Director of the National Archives.

Report by the Special Rapporteur on the Independence of the Judiciary to the Commission on Human Rights, 12 April 1999

cc PS to [illegible] Mr Taylor, AMB. Geneva; Rep Office — Rules W + C Y — 1 for Counsellor AI

Note for Information

1. The Special Rapporteur on the Independence of the Judiciary, Mr. Param Cumaraswamy of Malaysia, presents an annual report the Commission on Human Rights in Geneva (in common with other thematic special rapporteurs, e.g. on torture). Both this year and last year Cumaraswamy has included a section on the intimidation of defence lawyers in Northern Ireland. This year's report has been available in Geneva for the past few weeks (the CHR is currently holding its six week annual session) and today's media coverage arises from the CHR plenary debate on Cumaraswamy's report. The section on Northern Ireland, already circulated, is attached for ease of reference.

2. Ambassador Hayes, as our head of delegation, made a statement on the Cumaraswamy report this morning (attached). This followed the lines of the Minister of State's address to CHR on 24 March 1999 (extract attached) and takes account of current exchanges with the British side on the Finucane and Nelson cases. The British response to Cumaraswamy's report is also attached. This takes a fairly predictable line in seeking to rebut many of his points but does have a positive reference to the relevance of the Patten Commission to his concerns (pgs.6/7) and appears to leave open the possibility of an inquiry, or some further action, on the Finucane case (pg. 8). It may echo indications we have received privately of the Secretary of State's wish to "do something". The British also draw attention to the making available of the Stevens report on collusion and of the Stalker/Sampson report to the Patten Commission (pg. 8).

3. Cumaraswamy himself was scheduled to address the CHR at about 3pm today. In his remarks introducing his report (attached) he devotes a significant portion to Northern Ireland and expresses the hope that the involvement of the RUC in the investigation into Rosemary Nelson's murder "will not affect and taint the impartiality and credibility of the investigation". He repeats his call for an inquiry into the Finucane murder. Finally, he notes that he will be meeting the Secretary of State in London on Wednesday of this week and the Patten Commission on Thursday.

4. The CHR delegation have been asked to forward a report on today's debate which will be circulated separately.

Security and Justice Section
12 April 1999

©TSCH/2022/84/7

Extract from Special Rapporteur's Report

Observations

184. The Special Rapporteur thanks the Government for its responses, but he has not been able to verify the information transmitted by the Government.

United Kingdom of Great Britain and Northern Ireland

185. In his report to the Commission on Human Rights at its fifty-fourth session on his mission to the United Kingdom (E/CN.4/1998/39/Add.4), the Special Rapporteur raised several matters of concern and made recommendations. The Government of the United Kingdom did respond. The Special Rapporteur wishes to deal with just two issues, namely, intimidation and harassment of defence lawyers and the murder of Patrick Finucane.

Intimidation and harassment of defence lawyers

186. In paragraph 38 of his report, the Special Rapporteur asserted that he was satisfied that there had been harassment and intimidation of defence lawyers by Royal Ulster Constabulary (RUC) officers. The Government responded by stating, inter alia: "This obviously is a matter of considerable concern. We would ask, however, to be provided with specific details on which the allegations are made. If there is new evidence, we will want to ensure that that is looked into". The Chief Constable of the RUC was reported to have said, "All of his complaints relate to hearsay. I'm not saying that they should not be taken seriously, but he has come to conclusions without any firm evidence". (The Sunday Business Post, 10 October 1998).

187. Special Rapporteurs on mission have no powers to compel witnesses to appear before them and record evidence on oath to substantiate any allegation, if that is what the Chief Constable meant when he called for substantiation of allegations. During his mission the Special Rapporteur listened to various personalities and studied the materials supplied to him. The fact remained that the RUC was fully aware of these complaints through NGO reports, both domestic and international. It failed to take note. In the view of the Special Rapporteur, the RUC showed complete indifference to the allegations contained in the reports from NGOs. The lawyers concerned were only about 30 of the 1,700 solicitors in Northern Ireland and could easily be identified. The Chief Constable could easily have called them for a meeting and inquired why they were complaining to the NGOs and not the RUC. Through such a dialogue, confidence in the RUC investigation mechanism could have been restored. This the Chief Constable failed to do and allowed the situation to deteriorate.

188. Recently a solicitor made a number of formal complaints, the investigations of which were supervised by the Independent Commission for Police Complaints (ICPC). The Special Rapporteur received information that ICPC expressed dissatisfaction with the manner in which these complaints were investigated. As a result, the Metropolitan Police of London were appointed to investigate them. The investigation is yet to be completed. This once again illustrates the lack of confidence in the RUC investigation mechanism and demonstrates further why the lawyers concerned refused to complain to the RUC.

©TSCH/2022/84/7

189. The Special Rapporteur trusts that when the audio/video recording of interrogation is fully operational and the police Ombudsman scheme comes into existence on 1 March 1999, cases of harassment and intimidation of defence lawyers will be minimized. However, these mechanisms can only be effective if those who are entrusted with their implementation are committed and adequately trained to respect the rights of suspects under investigation and the role of lawyers representing them. The Special Rapporteur hopes that the Chris Patten Commission will address this issue.

The murder of Patrick Finucane

190. With regard to the murder of a prominent lawyer, Patrick Finucane, the Special Rapporteur in his report expressed his conviction that there were compelling reasons for an independent judicial inquiry. He in fact called on the Government to invoke the provisions of the Commission of Enquiry Act as was done in the case of the Bloody Sunday incident.

191. The Government's response was that there was no new evidence to justify such an inquiry. The Special Rapporteur is of the view that the Government may have misunderstood the reason for his call for such an inquiry. His concern over this murder was over doubts as to whether there was State collusion, i.e. military and/or RUC collusion, in this murder. From the materials seen by the Special Rapporteur, there is at least prima facie evidence of such collusion. His conclusion to this effect is fortified by the refusal up to now by the Government to make public the report of John Stevens' second inquiry. Even a summary of the report was not made public as was done in the earlier inquiry. The Special Rapporteur was not calling for the prosecution of anyone for the murder, in which event new evidence may be necessary.

192. In this regard, the Special Rapporteur was surprised to learn from a news report of a statement attributed to the Chief Constable of the RUC. He was reported to have said, "There never was a suggestion of RUC collusion. What John Stevens (the British Chief Constable who succeeded John Stalker to investigate RUC collusion) found was that part-time military regiment (RIR) people had been involved. There was no hint of collusion by the RUC with paramilitaries" (The Sunday Business Post, 4 October 1998).

193. The Special Rapporteur finds such a statement coming from the Chief Constable surprising. At the end of the mission in Belfast, the Special Rapporteur sought another meeting with the Chief Constable, Mr. Ronnie Flanagan. At this meeting the Special Rapporteur requested answers on this issue. The Chief Constable said that as he was not the Chief Constable at the time of the investigation he could not provide the answers and directed the Special Rapporteur to Mr. John Stevens. The Chief Constable even volunteered to call Mr. John Stevens to give him the green light to answer the Special Rapporteur's questions. When the Special Rapporteur wrote to John Stevens posing some questions (see E/CN.4/1998/39/Add.4, para. 70), he (Stevens) declined on the grounds, inter alia, that "The reports are highly classified and the authority of the above persons will be required before information is released" (E/CN.4/1998/39/Add.4, para. 71).

©TSCH/2022/84/7

194. What is puzzling here is that the Chief Constable, at the meeting with the Special Rapporteur, volunteered to instruct John Stevens to answer the Special Rapporteur's questions. But John Stevens declined to answer unless he obtained permission from the Secretary of State and/or the Chief Constable. But the Chief Constable is reported to have divulged at least part of the John Stevens report to the Sunday Business Report. If a salient part of that report, considered highly classified, could be divulged to the press by the Chief Constable then why could not the entire report be made public?

195. Since the report of the Special Rapporteur was issued, his attention has been drawn to an illuminating article written by a journalist, Mr. John Ware, in the New Statesman of 24 April 1998. In the article, Mr. Ware gives details of British army collusion in murders such as that of Patrick Finucane. The article also deals with the Patrick Finucane murder. The Special Rapporteur met Mr. John Ware in London and discussed with him the contents of the article. The Special Rapporteur considers that the revelation in the article further substantiates his conclusion that there was possible security force collusion in the murder of Patrick Finucane. If new evidence is needed, there appears to be ample in the article referred to. The Chief Constable's reported disclosure to The Sunday Business Post "that part-time military regiment (RIR) people had been involved" adds further substance to the Special Rapporteur's conclusion.

196. The Special Rapporteur therefore reiterates his earlier call for a royal commission of inquiry into this murder. Only such an inquiry could finally lay to rest the lingering doubts about this brutal murder, which had a chilling effect on the independence of the legal profession in Northern Ireland.

Communication to the Government

197. On 12 August 1998, the Special Rapporteur sent a communication to the Government concerning the alleged assault of Miceal Caraher, Martin Mines and Bernard McGinn by the police following a court appearance in the Craigavon Magistrates Court in Northern Ireland. Of particular concern was the fact that the alleged assault occurred in the precincts of the court building. Further, according to the source, the allegations were raised by the solicitors of the above-named individuals with the resident magistrate, Mr. Ken Nixon. The source reported that the resident magistrate indicated to the solicitors that he had not seen anything and therefore he would not take the matter any further. The source also reported that the above-named individuals claim that their visits to court are the occasion of regular minor assaults and verbal abuse. In this regard, the Special Rapporteur had been informed by the Special Rapporteur on torture, Mr. Nigel Rodley, that he had transmitted on 28 April 1997 prior allegations concerning Mr. McGinn and Miceal Caraher. The Special Rapporteur on torture had also provided a copy of the Government's response dated 30 June 1997, in which it indicated that the allegations were the subject of an internal investigation of complaints against officers of the Royal Ulster Constabulary supervised by the Independent Commission of Police Complaints.

Observations

198. The Special Rapporteur awaits a response on the investigation into these allegations.

©TSCH/2022/84/7