

The background of the entire page is a bright yellow color. Overlaid on this are dark brown silhouettes of two men facing each other. The man on the left is shown from the waist up, with his right arm extended towards the other man. The man on the right is shown from the chest up, looking towards the first man. The silhouettes are solid and have no internal detail.

ADDING INSULT TO INJURY?

Allegations of Harassment and the use
of Lethal Force by the Security Forces
in Northern Ireland

CAJ

ADDING INSULT TO INJURY?

*Allegations of harassment and the use of lethal force
by the security forces in Northern Ireland*

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Committee on the Administration of Justice

The **Committee on the Administration of Justice (CAJ)** is an independent civil liberties organisation formed in 1981 to work for the highest standards in the administration of justice in Northern Ireland. CAJ is affiliated to the **Fédération Internationale des Droits de l'Homme**, an international human rights organisation which has consultative status at the United Nations.

CAJ's membership is drawn from both sections of the community and includes lawyers, students, community workers, trade unionists, unemployed people and academics. The CAJ is opposed to the use of violence to achieve political goals in Northern Ireland.

By carrying out research, holding conferences, lobbying politicians, issuing press statements, publishing pamphlets, circulating a monthly bulletin and alerting the international human rights community, the CAJ hopes to stimulate awareness and concern about justice issues in Northern Ireland and encourage the adoption of urgently-needed safeguards. In the Committee's view, not only are abuses of civil liberties wrong in themselves but, in the Northern Ireland context, they hinder the peaceful resolution of the conflict.

Open meetings for CAJ members and the public are held every two months to discuss a variety of civil liberties issues. Sub-groups work on an on-going basis on areas such as policing, Bill of Rights, emergency laws, international standards, use of lethal force by the security forces, juvenile justice, prisons and racism.

Membership of the Committee

Membership entitles you to receive CAJ's monthly civil liberties bulletin **Just News**, to take part in the work of the sub-groups and to use the CAJ documentation library and clippings service.

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PREFACE

This pamphlet is the fourth publication by the **Committee on the Administration of Justice** addressing issues arising out of the use of lethal force by the state in Northern Ireland. Previous publications looked at the use of plastic bullets, the inquest system and provided information designed to be of use to families who have had some killed by the security forces.

The current publication arises from contacts with relatives of those killed by the security forces in the last 11 years. The right to life is one of the most basic of human rights. International law does not allow any derogation by the state from its responsibility to protect life. One of the ways of measuring the state's regard for its responsibilities in this area is to look at how relatives are treated along with the mechanisms which are put in place to investigate complaints arising out of the death.

In this context, the current publication makes disturbing reading, listing as it does a catalogue of alleged insensitivity and abuse. The CAJ has no means of assessing the veracity of the allegations but considers that the pattern which emerges suggests that the problems require to be addressed. CAJ has previously published extensively on the inadequacy of the complaints mechanisms which are in place in Northern Ireland to investigate allegations of ill-treatment, abuse and harassment by police and army personnel. It is hoped that this publication will prompt further consideration of the need for a radical overhaul of these mechanisms.

The Executive Committee wishes to thank the Lethal Force sub-group of CAJ for producing this pamphlet and in particular John Christoffersen for conducting the research and writing the first draft of this report. An American student of peace studies, John spent a number of months meeting families and volunteering with CAJ. Also involved were Robbie McVeigh, Martin O'Brien, Paddy Kelly, Peter Tenant, Fionnuala ní Aolain, Brice Dickson and Michael Ritchie.

CAJ Executive Committee

December 1993

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CHAPTER I

INTRODUCTION

The Committee on the Administration of Justice carried out a project seeking to document harassment and other alleged abuses by security force members before and after the use of lethal force by soldiers or police. The issues surrounding the use of lethal force have been long-standing concerns for the CAJ. During the course of contacts with the families of victims killed by members of the security forces, complaints had been received detailing the kind of allegations that are contained in this report. So numerous and so consistent seemed the complaints that it was decided a more in-depth study of this harassment was required in order to test what was otherwise anecdotal information. This report contains the fruits of that research.

The project involved interviewing 20 families from different areas of Northern Ireland. In each case, a family member had been killed by police or soldiers. The interviews sought to determine whether those killed had been harassed by police or soldiers before their deaths, whether they had reported being harassed and whether other family members experienced harassment, before or after the death of the family member.

The project's main goals were to determine:

- the existence or otherwise of harassment and other complaints in the context of state killings;
- the extent of the harassment and other complaints;
- the existence or otherwise of patterns and/or policy in these cases; and
- based on the findings, to develop recommendations to address reports of harassment and human rights abuses.

This report will proceed first with a background look at the issues surrounding lethal force and harassment. Then a methodology will describe how the project was carried out and the rationale for the method chosen. The next section will discuss the findings, in terms of statistics and descriptions of the incidents reported by families. Recommendations will be made aimed at addressing the findings that resulted from the interviews with the families. A separate chapter will also be devoted to the issues surrounding police and army complaints systems and what families interviewed for the project reported concerning registering complaints. The findings as reported by the families will be analyzed to establish patterns in particular cases. A conclusion will address broader concerns raised by the reports from the families.

At the outset it is important to stress that the CAJ is in no position to test the veracity or otherwise of the allegations involved. More often than not, it is a question of the word of the complainant against that of individual officers. It is CAJ's experience, however, that malicious allegations are the exception. The majority of the families interviewed for this project have been in contact with CAJ and other human rights groups and their stories have been consistent. All were aware that it was in no-one's benefit to exaggerate allegations.

The political climate in Northern Ireland may lead many to dismiss the allegations made by those related to active paramilitaries.

While the CAJ's position of opposition to the use of violence, from whatever source has been frequently stated, it should also be stressed that abuse of power by the security forces is not only wrong in itself, but is also counter-productive. CAJ therefore publishes this report in the hope that it will provoke an assessment of the way in which official agencies relate to the families of people killed by policemen and soldiers.

CHAPTER II

LETHAL FORCE

1. THE BACKGROUND

Killings by members of the security forces have been a source of major controversy in Northern Ireland since the outbreak of political violence more than two decades ago. Police and soldiers have been responsible for killing 357 people in Northern Ireland since 1969.¹ A large percentage of these killings have involved disputed circumstances. More than half the victims, or 190, were civilians uninvolved in paramilitary activity. According to CAJ's figures, of the last 80 state killings since November 1982, five were from the protestant community and the remaining 75 were from the catholic community. Many people were unarmed when they were shot dead. The worst single incident was Bloody Sunday, when members of the Parachute Regiment of the British Army shot dead 14 civilians in Derry on 30th January 1972.

The number and nature of these killings suggest that lethal force has been used in an excessive and reckless manner in many cases in Northern Ireland. Many commentators have concluded that the United Kingdom is in breach of the United Nations Basic Principles on the Use of Force by Law Enforcement Officials². Disputed killings also point toward violations of human rights under the European Convention on Human Rights. These include the right to life, the right to a fair trial, the right to liberty and security of person, the right to family life, freedom of thought, conscience and religion, freedom of expression and freedom of peaceful assembly and association with others.

State killings have prompted a number of other disturbing concerns. One of the most serious concerns that is widely felt among the public is the consistent lack of accountability on the part of authorities for their actions. Prosecutions have been rare and convictions even rarer in cases of state killings. Of all these killings, only 33 prosecutions have been brought³ of which 11 have been brought in the last 2 years, arguably as a result of campaigning pressure by families, human rights organisations and other pressure groups. Six cases have involved multiple prosecutions. Only four of these prosecutions have resulted in convictions. In the first of these, concerning the death of Theresa Donaghy, British soldier Private Davidson was convicted of manslaughter and received a suspended sentence. In the second case, British soldier Private Ian Thain was convicted of murdering Thomas Reilly and sentenced to life imprisonment. He was released after having served only two years and three months. Thain was allowed back into his army regiment. The last two convictions arose from the killing of Martin Peake and Karen Reilly in September 1990.

1 According to figures compiled by CAJ.

2 Amnesty International Report on the United Kingdom 1991 and Helsinki Watch Human Rights in Northern Ireland (1991). For the text of the UN Principles, see Appendix C of this report.

3 According to figures compiled by CAJ.

Two members of the Paratroop Regiment, Privates Lee Clegg and Barry Aindow were convicted of murder and attempted murder respectively. Clegg was sentenced to life imprisonment while Aindow received a seven-year sentence.

This state of affairs has led to widespread concern that members of the security forces in Northern Ireland have killed with virtual impunity. Indeed, there is a strong feeling amongst ordinary people in Northern Ireland that the security forces receive institutional protection from the rule of law when involved in fatal incidents.

The lack of prosecutions in so many disputed killings in Northern Ireland lends credence to the suggestion that structures to deal with this situation in Northern Ireland contravene the U.N. Basic Principles on the Use of Force by Law Enforcement Officials referred to earlier. Principle 7 states:

Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.

2. PLASTIC BULLETS

Another prominent concern has been the use of plastic bullets by security forces. It has been widely alleged that plastic bullets have been used in situations where life was not seriously at risk. During the course of the Troubles, 17 people, eight of whom were children, have been killed by plastic or rubber bullets. Only one member of the security forces has ever been charged in connection with these incidents and that police officer was acquitted. This is despite the fact that in 11 out of 14 deaths caused by plastic bullets, army and police claims that the victim was rioting have been contested either by witnesses or by the judge or coroner conducting an inquiry into these incidents.⁴

The use of plastic bullets in Northern Ireland appears to contravene Principle 3 of the U.N. Basic Principles on the Use of Force by Law Enforcement Officials which states:

The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.

These principles also call for prohibiting the use of those firearms and ammunition that cause unwarranted injury or present unwarranted risk.

3. SHOOT-TO-KILL ALLEGATIONS

Another serious issue involves allegations that authorities operate a shoot-to-kill practice, if not actually a policy. This involves concerns of a strategy on the part of authorities to assassinate suspected republican paramilitaries. This has been an ongoing concern. Between late 1977 and late 1978, the number of selective assassinations increased

⁴ Cullyhana Report of the public inquiry into the killing of Fergal Caraher and the wounding of Miceal Caraher, 30 December 1990, p. 26.

dramatically as 10 individuals were killed by the security forces in covert operations. Not long before, the Secretary of State had announced that the SAS would be strengthened.⁵

Shoot-to-kill operations apparently intensified in the early 1980's. Between 1982 and 1985, 23 individuals were shot dead by the security forces in covert operations.⁶ The nature of these killings raised disturbing concerns. In one case authorities fired 109 bullets at three suspected I.R.A. men, 56 of which hit their car. This and other cases raise the issue not only of the use of lethal force but of excessive force. These cases appear at odds with the U.N.'s Basic Principles on the Use of Force by Law Enforcement Officials. Principle 5 calls for law enforcement officials to exercise restraint when use of lethal force is unavoidable and to act in proportion to the seriousness of the offence and the legitimate objective to be achieved.

Public outcry concerning these issues sparked the Stalker Affair, in which John Stalker, then Deputy Chief Constable of Greater Manchester, conducted an inquiry into six killings in County Armagh within a month of each other in 1982. Allegations surfaced that the R.U.C. obstructed Stalker's investigation. Stalker concluded:

*"The killings had a common feature: each left a strong impression that a type of pre-planned police ambush had occurred, and that someone had led these men to their deaths. The circumstances of those killings pointed to a police inclination, if not a policy, to shoot suspects dead without warning rather than to arrest them."*⁷

Despite Stalker's findings, the then-Attorney General, Sir Patrick Mayhew, announced in January 1988 that R.U.C. officers involved in a conspiracy to pervert the course of justice and responsible for obstructing the Stalker inquiry would not be prosecuted for reasons of "national security".⁸ Internal disciplinary hearings were later held against 20 RUC officers.

Political assassinations are specifically prohibited under the U.N. Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Execution⁹. The numerous killings during covert operations, and the alleged blocking of the Stalker investigation, raise concerns that these principles are routinely violated.

With Northern Ireland in mind, it is worth noting that the U.N. principles on summary execution state:

Exceptional circumstances including a state of war, internal political instability or any other public emergency may not be invoked as a justification of such executions.

4. INVESTIGATIONS INTO STATE KILLINGS

Investigations into state killings in Northern Ireland likewise appear to contravene the U.N. principles. In a submission in 1991, Amnesty International cited cases where authorities in Northern Ireland have not examined all the relevant evidence, prevented prosecutions, failed to investigate reports of destruction of evidence or conducted investigations in a

5 Anthony Jennings, *Justice Under Fire: The Abuse of Civil Liberties in Northern Ireland*, Pluto Press, 1988, p. 113.

6 Jennings, p. 113.

7 Jennings, pp. 119,120.

8 Mayhew has since become Secretary of State for Northern Ireland.

9 see Appendix D.

manner likely to lead to or to facilitate fabrication of evidence or perjury.¹⁰ The international human rights body also cited cases where authorities have unreasonably delayed investigations or hindered immediate access to suspects. Amnesty International alleged that the government contravened U.N. Principles which require governments to conduct thorough, prompt and impartial investigations into state killings.

The authorities have also failed to live up to a promise to have an outside police force investigate shooting incidents by the R.U.C. The clear inadequacy of investigations into state killings, the routine refusal to seek prosecutions and the inability to secure convictions have led Amnesty International to call for an independent judicial inquiry into the legislation and the procedures used in these cases and to provide recommendations in order to prevent future possible unlawful killings. CAJ has also called for a public inquiry.

5. THE INQUEST SYSTEM

Because of the inadequacies of these investigations and the lack of prosecutions, the holding of inquests into state killings has become the only potential means for relatives of the deceased to gain information about the circumstances of the killings. But the rules governing inquests in Northern Ireland contain a number of serious flaws that make them clearly inadequate for dealing with disputed killings:

- Inquests have such a narrow remit that they do not establish the full facts surrounding disputed killings;
- There is no compelling of witnesses involved in the killings. The persons responsible for killings are allowed to submit a written statement only, so their version of events cannot be challenged by the family of the deceased or their solicitor;
- Inquests no longer have the power to issue verdicts;
- There is often a considerable delay in the holding of an inquest. The inquests in respect of the Armagh killings in November 1982 have still not been completed and it is routine for at least a year to pass before an inquest is even thought about;
- Finally, while state funds are provided for state lawyers, there is no legal aid provision for the families of the deceased. An earlier CAJ report into the inquest system in Northern Ireland concluded that inquests fail to meet U.N. criteria and called for a radical review of the operation of the system¹¹.

6. THE NEED FOR SAFEGUARDS

A number of other safeguards have been frequently proposed by CAJ and other interested parties to eliminate the unnecessary use of force by police and soldiers and to make authorities accountable when disputed killings do occur. One proposal involves changing the law governing the use of force by the security forces in Northern Ireland. The current law is Section 3 of the **Criminal Law Act (Northern Ireland) 1967**. This provides:

10 Cullyhana Report, p. 34.

11 CAJ Pamphlet No. 18 Inquests in Northern Ireland.

A person may use such force as is reasonable in the circumstances in the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.

The key phrase, "reasonable in the circumstances," has been widely criticized as excessively vague and more permissive than the international standard.

The vagueness of the "reasonable" standard has led to broad interpretations on "reasonableness" by the courts. One judge, for instance, alluded to the relevance (when lethal force has been used by a British soldier) of evidence of previous I.R.A. activity in the area in which the incident occurred and to the "war or quasi-war" situation."¹²

Lord Diplock even speculated that the "reasonable" standard could be applied by the security forces on the grounds that the imminent threat posed by the deceased was that:
*If he got away (he) was likely sooner or later to participate in acts of violence.*¹³

These rulings have offered the security forces an unjustifiably wide scope in using lethal force leading one commentator to conclude that:

*The law in its present state patently fails to protect the citizen from the deliberate or reckless use of firearms by the security forces. Most disturbingly, the law's vagueness and impression led the security forces being granted a virtual unlimited license to kill.*¹⁴

In contrast to the "reasonable" standard, Article 2(2) of the **European Convention for the Protection of Human Rights and Fundamental Freedoms** states:

Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary.

The European Commission stressed in **Stewart v. UK** that its own standard is not so flexible as the "reasonable" standard and that the adverb "absolutely" suggested that "a stricter and more compelling test of necessity must be applied."¹⁵

The relevant U.N. standard comes in the **International Covenant on Civil and political Rights**. Article 6.1 says:

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his (sic) life.

This formulation has been interpreted as requiring a much stricter test than that applying in UK law.

CAJ has concluded that the "reasonableness" standard on the use of force in Northern Ireland should be tightened to one of "absolute necessity" to conform with international standards agreed to by the United Kingdom¹⁶. Consideration also should be given to

12 Sean Doran, "The Use of Force by the Security Forces in Northern Ireland: A Legal Perspective," *Legal Studies*, Vol. 7, 1987, p. 296.

13 Jennings, p. 109.

14 Jennings, p. 112.

15 Doran, p. 297.

16 See CAJ's proposed Bill of Rights for Northern Ireland

spelling out in more detail under what circumstances force is permitted and when it is inappropriate. These changes could have an impact on the actual decision by authorities to resort to opening fire in contrast to the present vague guideline. Courts also would be provided with clearer guidelines as to whether the use of force was legal.

A second safeguard involves the possibility of establishing a new offence. Under the present system, the only available charge is that of murder. Currently a manslaughter charge can be brought only for an inadvertent killing or when death resulted from the accidental discharge of a firearm. In the context of a deliberate discharge resulting in death, only a charge of murder can be brought. Judges and juries throughout the world have shown their reluctance to convict soldiers and policemen who kill someone when on duty and then are charged with murder.¹⁷

One alternative that has been proposed is to provide for the possibility of a conviction for manslaughter where an accused person has acted honestly though in excess of what the circumstances warranted. Allowing a charge of manslaughter may resolve some cases of disputed killings in Northern Ireland that do not clearly fall into the categories of "murder" or "acquittal". Consideration also needs to be given as to whether another new offence should be created, such as "inappropriate or unlawful discharge of a firearm."

Another safeguard that deserves consideration is to change the security force instructions (ie. the "Yellow Card") for opening fire to make them more specific as well as legally binding. Parallel with tightening up the Yellow Card is the question of a statutory Code of Conduct detailing in greater detail procedures for and circumstances which do and do not warrant the discharge of a firearm. The government-appointed **Standing Advisory Commission on Human Rights** has published a draft Code which would deal with some of the difficulties which have arisen.

Even if some or all of these safeguards were enacted, a serious concern remains as to the lack of will on the part of the authorities in Northern Ireland to hold police and soldiers accountable when they kill people. A number of other factors prevent public confidence in the system of justice on these issues:

- The need still remains for properly independent investigations. The authorities have shown themselves unwilling to adhere to an undertaking given that police officers outwith the RUC would be brought in to investigate disputed killings. The supervision of the government-appointed Independent Commission for Police Complaints in those cases where members of the RUC have killed people has not been enough to quell public concern. The ICPC anyway merely supervises the RUC investigating itself.
- Considering the light sentences involved in two of the three convictions for state killings, consideration must be given to enacting a statute establishing strict sentencing guidelines. This would help ensure impartial decisions and keep political considerations out of the courtroom.
- Given the fact that the overwhelming majority of killings have affected the catholic community, the overwhelmingly protestant make-up of the police and the locally-recruited regiment of the British army remains a compelling issue.

17 See Doran, p.297.

CHAPTER III

HARASSMENT

1. INTRODUCTION

Many of the issues surrounding lethal force in Northern Ireland discussed in the previous chapter affect the cases chosen for this project. Some of the families interviewed, for instance, had a family member killed by a plastic bullet in disputed circumstances. Other killings sparked concerns of a shoot-to-kill policy. The inadequacy of inquests and investigations prompted one family interviewed for this project to conduct their own public inquiry. Many of the killings involved disputed circumstances, yet only in a few cases were prosecutions brought. None resulted in convictions for murder, except for the case of Adrian Carroll¹⁸.

In addition to these issues surrounding the killings, there have been constant allegations of harassment of the victim before his/her killing. These reports prompted a desire on the part of CAJ to investigate whether there was a link between reports of harassment and the subsequent death. An additional concern is whether the killing of a family member led to increased harassment and targeting of other family members.

Harassment is, however, a complex and controversial phenomenon. It is therefore important to examine the background and attempt to define it before proceeding with the results of the project concerning the 20 families.

CAJ has been concerned for some time about security force harassment in Northern Ireland. This concern has been sparked by thousands of complaints of harassment over the years, including statements taken by CAJ. To address the problem, CAJ has undertaken an extensive one-year project seeking to investigate and document the extent of state harassment. This paper represents a further effort to document and expose state harassment in Northern Ireland, in this case only where lethal force had been used.

2. DEFINITION

The term "harassment" is commonly used in Northern Ireland to cover a broad range of activities that vary widely in their degree of seriousness. Anything from abusive language to death threats could fall under the heading of "harassment". This makes finding a definition for harassment a difficult task.

18 Four U.D.R. men were convicted of his murder. All but one were acquitted on appeal in July 1992.

For the purposes of this report, "harassment" is defined as any behaviour or action by members of the security forces that goes beyond specific and legitimate law enforcement purposes and causes mental or physical pain, fear or irritation in the victim. This is a broad definition aimed at covering a variety of actions by police and soldiers.

Of course, taking a general definition of harassment and applying it to specific incidents on the street can to some extent be a subjective exercise. What some people view as "legitimate surveillance" or "law and order" may be seen by others (especially those experiencing it) as harassment. Repeatedly spot checking a person is a case in point.

On the other hand, many reported incidents of harassment are blatant. They require no philosopher to categorise them as harassment. Beatings are a case in point. A more specific discussion of the nature of harassment as reported in Northern Ireland will illustrate the problem more clearly.

3. TYPES OF HARASSMENT¹⁹

1. **Rudeness** - This is a commonly reported form of harassment. It can involve abusive language, filthy talk, or insults to a victim or their family. Most often complaints arise from roadblocks or checkpoints, but incidents also are reported of remarks shouted from a cruising landrover or a squad car at people walking in the street.

2. **Bigotry** - Sectarian insults against religious or cultural emblems are another common complaint.

3. **Repeated street checks** - Especially when a security force foot-patrol is going through a "republican" area, people are frequently stopped and interrogated. Occasions have been cited when it has taken people two hours to walk a very short distance because of constant stopping and interrogating.

4. **Car searches** - Cases have been reported of property thrown on the road, personal papers read in detail, lengthy questioning and long and unreasonable delays.

5. **Body searches** - Complaints have been made of body searches made with punches or karate blows, especially in sensitive parts. Sexual harassment in terms of "feeling up" has been reported. People are also told to take off their jackets, shoes and socks and often have to stand about for long periods until they are allowed to put their clothes back on.

6. **Beatings** - Incidents range from minor ones to assaults requiring hospital treatment. One noted pattern is where a minor scuffle will result in the victim being arrested. They may then be beaten up on the way to and in the barracks. Beatings at checkpoints are also commonly reported.

7. **House searches** - These are officially carried out because of suspicion that arms or explosives may be present in the house. But in many incidents, homes have been

¹⁹ This typology comes from an hitherto unpublished CAJ discussion document

extensively and unnecessarily damaged. Republican areas have been targeted with whole terraces or estates sealed off by hundreds of security force personnel. Occupants of the houses are often held in virtual detention for long periods in one room of their house. Threats and physical abuse during house searches have also been reported.

8. Recruiting or attempting to recruit informers - These incidents, according to complaints, usually happen along with other means of harassment such as being beaten or otherwise intimidated. The offer of money and becoming an agent is then held out as a way of escape from an unnerving situation. A common tactic is one in which the victim is "arrested" on a minor or false charge and taken to a holding centre where pressure to become an informer is brought to bear.

9. Helicopters - These may be used to intimidate, such as by flying low for long periods of time over a particular area or isolated farmhouse. Searchlights from helicopters have been shone into peoples' homes. Incidents also have been reported of helicopters flying low over Gaelic Athletic Association matches or grounds²⁰.

10. Death threats - There are many allegations of security force members making death threats. These range from off-the-cuff remarks to very specific statements of intent. According to reports, these threats are often accompanied by reminders that the security forces are virtually immune from prosecution. Another common threat is that information will be passed to members of opposition paramilitary groups who will carry out the assassination.

11. Frequent "attention" - This type of harassment includes being stopped and checked a dozen times a day or each day for a month.

These 11 categories cover many of the commonly reported types of state harassment in Northern Ireland. The list is not exhaustive, but is designed to provide some sense of the nature of incidents reported.

4. IMPACT OF HARASSMENT

The effects of harassment are clear. Fear and isolation are felt. Harassment of one individual multiples, with the wider community feeling vulnerable. People feel isolated and under threat. Harassment also increases anxiety. People may have difficulty holding down jobs or going about their daily life as a result. People limit their social life so as not to expose themselves or their friends to harassment. Anxiety can be particularly severe in children if they witness an aggressive search of their home or their father being beaten up or threatened.

On a broader level, harassment leads to further alienation from the authorities and the system. In the context of Northern Ireland, this has mostly meant nationalist alienation, though CAJ is aware of a growing number of allegations from loyalist sources. Rather than

²⁰ The GAA was founded in the late 19th century as an organisation devoted to the nurture of Irish sporting activities. It has had a distinctively Irish nationalist ethos.

lead to "law and order," harassment builds resentment and anger at the instruments and the agents of the state.

5. REASONS FOR HARASSMENT

A variety of explanations have been given as to why authorities harass people, especially in nationalist areas. Some harassment may be ad hoc, following no particular pattern. Harassment in this sense is seen as motivated by fear and hatred. These feelings are attributed to the sectarian makeup of the security forces (overwhelmingly Protestant) and the fact that many police officers and soldiers have been killed in Northern Ireland by republican paramilitary groups. After violent incidents, security forces are often alleged to react more intensely on the streets. Some have suggested that harassment is the venting of frustration of the security forces. Others have proffered the explanation that it is the result of inadequate training. Alternatively, comments allegedly made by police and soldiers appear to indicate sectarianism and hatred.

Another explanation involves a belief in some parts of the north, especially in rural unemployment black spots, that harassment is a way of forcing people to emigrate.

Harassment, as noted earlier, is seen as a method of pressure to force people to provide information about activities and people in their area.

A further explanation is that harassment is often carried out to try to provoke a reaction which leads to the victim's arrest. When this is repeated, the individual involved can acquire a relatively lengthy criminal record in a short period of time. This suggests a pattern of deliberately trying to criminalize people.

Finally, and perhaps most serious, there is the belief that harassment might be a deliberate policy formulated at the highest level. Brigadier F. Kitson, for instance, in his book argues that one of the aims of what he calls the security policy should be to make life difficult for the population perceived as supporting paramilitary violence, so that through harassment that population will desire a return to normality and thus cease supporting paramilitary violence.²¹

21 F Kitson *Low Intensity Operations: Subversion, Insurgency and Peace-Keeping*, London: Faber & Faber, 1971.

CHAPTER IV

METHODOLOGY

1. BACKGROUND CONSIDERATIONS

This project was designed to determine the extent of harassment by choosing a sample from the 80 state killings since November 1982. 20 families were interviewed for the project.

This number, representing a quarter of the deaths in question, was felt to be sufficient:

- to determine the nature of the harassment alleged;
- to determine patterns among the cases; and
- to allow for a diverse mixture of cases.

Choosing families to interview was based on a number of factors. In most cases, those interviewed had a family member killed in the last five years, although in a few cases the killings date back up to 10 years. It was felt more appropriate to focus on relatively recent cases so that memories of various incidents would be more easily recalled by family members.

A second factor in choosing the cases was a desire for geographic diversity. The project was designed to document harassment not only in Belfast but throughout Northern Ireland.

A third and related factor was to choose a diversity of cases. Thus, the interviewees included families republican paramilitaries who have been killed and families of plastic bullet victims, two joyriders, an alleged petty criminal and other civilians. One family of a loyalist paramilitary member was also interviewed.

Based on these factors, the 20 interviews included families from Belfast, County Tyrone, County Armagh, Lurgan and Cookstown. There were 10 families interviewed in which a republican paramilitary was killed (one of these families had two members killed, one a republican paramilitary, the other a civilian); one family where a loyalist paramilitary had been killed; nine civilians, including two plastic bullet victims, two joyriders and one alleged petty criminal. In total, 19 of the 20 families were Catholics and one was Protestant. This imbalance reflects the fact that 75 out of the 80 killings since 1982 have been of Catholics.

2. THE INTERVIEWS

Interviews with families ranged in size, depending on who was available and who wished to be interviewed. In a few cases, only one family member was interviewed. Many interviews involved two family members, while a few involved more than two. One interview involved

six family members. All of the families agreed to have their names used in this report, with one exception. That family asked to remain anonymous.

All of the families were asked the same set of questions. These questions were divided into two parts. The first section involved 15 questions pertaining to the family member who was killed. The second section involved 13 questions relating to other family members. The list of questions is located in **Appendix A** at the back of this report.

3. THE FAMILIES

Interviews were conducted with the families of the following people who were killed by police or soldiers:

- one anonymous family,
- Fergal Caraher,
- Roddy and Adrian Carroll,²²
- Tony Doris,
- John Downes,
- Seamus Duffy,
- Mairead Farrell,
- Gerard and Martin Harte,
- Anthony Hughes,
- Patrick Kelly,
- Aidan McAnespie,
- Dan McCann,
- Kevin McGovern,
- Gervaise McKerr,
- John McNeill,
- Kevin Barry O'Donnell,
- Martin Peake,
- Karen Reilly,
- Brian Robinson and
- Sean Savage.

A description of the incidents in which these people were killed is located in **Appendix B** at the back of this report.

22 Adrian Carroll's murder led to the conviction of four members of the Ulster Defence Regiment, a locally recruited regiment of the British army. However the case is unique among the twenty families for two reasons. First, it has become a celebrated miscarriage of justice case, with three of the four men being released in 1992, and strong doubts remaining about the safety of the conviction of the last man, Neil Latimer. Second, in all other cases, the killings took place when the soldiers or policemen involved were under operational command. Adrian Carroll's case is therefore more properly a loyalist assassination. However, the parallels with the harassment alleged in the other cases means that we have included the information which the family provided in his case.

4. THE FINDINGS

A number of common allegations emerged from the interviews with the families. Eight types of harassment were identified as commonly reported by many families. This report will document in detail the types of allegations in the following order:

- physical assaults;
- death threats;
- aiming guns at people or their home;
- intensified harassment before killings;
- failure to inform families of killings;
- harassment during the period of the wake/funeral;
- references to the killings; and
- increase in harassment after the killing.

A final section detailing miscellaneous allegations concludes the findings.

Where appropriate, specific action which may provide a safeguard against the kind of allegations discussed is recommended.

CHAPTER V

THE ALLEGATIONS

1. PHYSICAL ASSAULTS

In 10 out of 20 cases, families reported that the family member who had been killed had been physically assaulted by police and/or soldiers in incident(s) prior to his/her death. In six out of 20 cases, other family members have been assaulted as well, according to the families.

Assaults on family members later killed

The 10 cases of assaults involving family members later killed were reported as follows.

In the case of Mr Aidan McAnespie, his family reported that he had been physically assaulted on many occasions. This typically happened as he travelled from his home in County Tyrone across the border to work in County Monaghan. On one occasion, the family reported that a soldier put his knee across Aidan's throat, leaving it red and sore.

The family which asked not to be identified, alleged that the family member later killed was physically assaulted numerous times. This typically involved punching and thumping. In one incident, family members said the U.D.R. butted him in the eye with a rifle.

The family of Mr Tony Doris also reported many assaults against him. In one incident, they alleged the U.D.R. beat him up, hitting him in the stomach with their guns. During an interrogation at Gough Barracks, Armagh, the family said Mr Tony Doris was put over the back of a chair and he was unable to breath. In Dungannon Barracks, at the age of 16, a chair was put on his toes and the interrogating officers knelt on it, according to the family.

Soldiers in West Belfast started a fist fight with Mr John Downes, family members reported.

Mr Kevin Barry O'Donnell's family alleged that he was beaten up on numerous occasions. Typically he was elbowed, slapped and kicked around. One night he was allegedly beaten up by the U.D.R. and had red marks all over his back.

The family of Mr Patrick Kelly also reported several assaults. He was typically shoved around and hit with the butt of a rifle. In one incident, the family said he was dragged around with his shoes tied together. The soldiers' gun accidentally discharged. Thankfully no-one was injured. The family also alleged Mr Kelly was physically assaulted during interrogations in the 1970s. They alleged that, in Dungannon Barracks in the early 1970s, his hair and ears were pulled and that during a detention in 1977 or 1978, he was lifted by his ears and made to stand for long periods. The family also reported that Mr Kelly was bitten on the back during a house search. This incident was reported in a Dutch magazine.



According to the family of brothers Mr Martin and Mr Gerard Harte, they were assaulted on many occasions. In one incident, the U.D.R. punched Mr Martin Harte, breaking his nose, the family alleged. Mr Gerard Harte was badly assaulted by the R.U.C. at Omagh Barracks, family members said. He was kicked so badly he had to be taken to the hospital out of fear he was bleeding internally, the family reported. The brothers were also assaulted during a house search in 1981 in which the army assaulted every person in the house, the family alleged.

Numerous assaults against Mr Dan McCann were reported. In 1979 at Castlereagh interrogation centre in Belfast, interrogators allegedly pulled hair out and hit his ulcer. He vomited while they were choking him. He could hardly walk and could not go to the toilet following this beating, it was reported.

The family of Mr Seamus Duffy said he told them police beat him up in the back of an R.U.C. jeep.

The family of Mr Roddy Carroll reported that he was assaulted, typically slapped around, during numerous interrogations.

Assaults on other family members

Of the six assaults involving other family members, the Doris family reported that Dr Martin Doris, whose brother was killed, was knocked down by police on his way to a funeral, sustaining three broken fingers in the incident.

Mr Barry O'Donnell's family reported assaults against two of his sisters and his brother. Two of the sisters said they were beaten up at Cookstown R.U.C. Ms Roisin O'Donnell showed pictures in which she had severely swollen black and blue eyes. The brother, Mr Fergal O'Donnell, said he was hospitalized after he was "kicked all around" by about 10 soldiers, who also stood on his face.

The Harte family alleged that the whole family was assaulted during an Army house search in 1981. The father suffered a broken hand when hit with a baton. Mrs Harte suffered concussion when hit over the head with a baton. Family members also alleged they were assaulted by the U.D.R. after their relatives were killed.

The Duffy family also reported assaults. Mrs Duffy said on the night her son was killed she was thrown against an ambulance at the hospital by R.U.C. officers. Mr Duffy said that in 1991 he was knocked to the ground when police hit him with the butt of their gun after he intervened in an incident on his street.

Mr Fergal Caraher's family reported that his brother, Mr Cathal Caraher, was punched by soldiers.

Mr Adrian and Mr Roddy Carroll's family said another brother Mr Niall Carroll, has sued the police on a number of occasions for assaults and received compensation. Another brother, Mr Tommy Carroll, was hit in the genitals, family members said.

Conclusions

These reports of physical assault are widespread. In several cases, the allegations involve severe beatings, in and out of interrogations. If substantiated, assaults during interrogations contravene the U.N. Principles (see Appendix C). Principle 15 states:

Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened

The issue of assaults must be addressed by authorities.

- A policy prohibiting physical abuse of anyone must be spelt out and, most importantly, criminal proceedings and disciplinary action must be taken against police and soldiers who physically assault people.
- Such widespread allegations of assault during detention confirm the need for stringent safeguards including the immediate introduction of audio- and video-recording during interrogation²³.

If substantiated, these allegations constitute criminal offences ranging from assault to causing grievous bodily harm. The offence of battery involves actually inflicting violence on a person. Assault includes any act (e.g. threats of violence) that cause the victim to feel in danger of sustaining immediate violence (even if the violence has not taken place yet).

If claims of battery are substantiated against a police officer or soldier, they may incur criminal liability under the common law. Assault is a criminal offence under Section 47 of the **Offences Against the Person Act 1861**.

A police officer or soldier could incur more serious criminal liability in cases of Grievous Bodily Harm or wounding which are criminal offences under s. 18 and s. 20 of the **Offences Against the Person Act 1861**.

- In cases where a person is beaten up, a medical examination should be sought immediately afterwards for medical and documentation purposes.

2. DEATH THREATS

Nearly half, or nine out of 20, of the deceased family members had received death threats by police or soldiers before they were killed, families reported. Other family members also allegedly received death threats in nine out of 20 cases.

Death threats against family members later killed

Of the nine death threats against those later killed, they were reported as follows.

In the case of Mr Aidan McAnespie, soldiers said on several occasions they "would do him" or "would get him," the family alleged. About 18 months before Mr McAnespie was killed, a

23 For a fuller discussion of the lack of safeguards in detention centres, see CAJ's Submission to the UN Committee Against Torture.

soldier told his father he had a bullet in his gun for Aidan, the family alleged. Soldiers also reportedly threatened to pass his name onto loyalists.

The family who asked to remain anonymous said the family member later killed also received death threats, typically, "We'll get you".

The family of Mr Tony Doris said police showed Dr Martin Doris a body bag and told him it was for him or his brother, who was later killed. The U.D.R. allegedly told Mr Tony Doris and his brother that they would get Christmas boxes, but they would not contain what they imagined.

Mr Barry O'Donnell's family said he received death threats and that as a result he publicized the threats in the **Sunday Life** newspaper. The family alleged detectives told him at Gough Barracks that he would not live to see Christmas. He was told if he got acquitted of a charge, police would "do him". His photo was taken and he was told it would go to the Ulster Volunteer Force²⁴, the family alleged.

The family of Mr Patrick Kelly said that his house was searched while his wife was pregnant. Mr Kelly was allegedly told he would never see his child and he did not. He was also told by the RUC he would be lying on the slab (in the morgue) in Craigavon, the family alleged.

The family of Mr Gerard and Mr Martin Harte charged that the army often threatened to shoot them. Mr Martin Harte was told it wouldn't be long before he'd be going to the morgue to identify the body of his brother. The RUC allegedly told Gerard at Gough Barracks that his photo would be given to the UVF "If we can't take you out, the UVF will take you out," they allegedly said. The UDR took photos of Martin and allegedly said they would send them to the "right people".

Mr Dan McCann's widow, Margaret, showed a letter from "E.A.T.O." (English Anti-Terrorist Organization) which vowed to kill him. The family believes this letter came from British soldiers. Mrs McCann also alleged that at the same time as a loyalist assassination bid at the home of Mr McCann's mother in 1987, British soldiers left a cross with his name on it outside the family butcher shop. This incident was reported in the newspaper. Mrs Margaret McCann also reported that the RUC said the Protestant Action Force²⁵ would kill Mr McCann.

Mr Gervaise McKerr's wife said that, after three policemen were killed, Mr McKerr was told by members of the security forces: "Watch yourself McKerr, keep looking over your shoulder".

The family of Mr Roddy Carroll received death threats. When he was getting his license renewed, an RUC inspector asked Roddy his age, then allegedly said: "You'll not live much longer". In another incident, RUC officers at Gough Barracks allegedly said to Mr Carroll about a month before he was killed, "We can't get nothing on you Roddy, we're just going to have to shoot you". Another time, the family said he was stopped by RUC officers. One

24 A loyalist paramilitary organisation, opposed to the Irish Republican Army, which has carried out many assassinations of Catholics in the area.

25 A loyalist organisation which has carried out assassinations of Catholics.

cocked a gun, put it to his mouth and said, "We'll let you go, we'll get you another night", according to the family.

Death threats against other family members

There were nine cases reported of other family members receiving death threats from members of the security forces.

Ms Ann Bradley, widow of John McNeill, said RUC officers threatened to shoot her son Paul and "put him in the ground just like John". On another occasion, her son was stopped on his bike and allegedly told by police, "A bullet goes faster than a bike".

Ms Eilish McCabe, sister of Mr Aidan McAnespie, said the family received death threats over the phone after her brother's killing. These were typically with local accents, but one caller had an English accent, and she believed him to be a soldier. In this call, late at night, the caller said, "Pity you weren't there - we would have got the two of you with one bullet". The family also received a threatening letter from England that they believe was sent by soldiers.

Dr Martin Doris, brother of Mr Tony Doris, received a death threat in the body bag incident referred to earlier.

Mr Fergal O'Donnell, brother of Mr Barry O'Donnell, said he was told, "You'll never see Christmas".

Mr Patrick Kelly's sister, Ms Roisin Kelly, said she was told: "You'll probably end up the same way as him".

The Harte family said other family members also received death threats, such as: "We got the other two, we'll get you". Mrs Harte said she was told several times her son Mr Nashey Harte would get what her other two boys who were killed got.

The Duffy family said when Mr Seamus Duffy's father, Mr Brendan Duffy, got into an argument with the RUC, they shoved a gun in his side and said: "Do you want to be next?". On the night of his son's killing, Mr Duffy said he intervened when his wife was thrown against an ambulance by the RUC. He alleged another RUC man stuck a plastic bullet gun in his face and said: "Do you want to be fuckin' next?".

Mr Fergal Caraher's family said that, after his killing, soldiers told his brother at work, "You're next". His sister was allegedly told if she was ever seen on television again speaking about her brother's case, she'd be sorry.

The family of Mr Adrian and Mr Roddy Carroll reported death threats were made to their brothers.

Conclusions

The **Criminal Law (Amendment) (Northern Ireland) Order 1977** makes death threats illegal. However, it is not known whether this piece of legislation has been used in the circumstances arising from the allegations in this section.

These allegations of death threats are of course a serious concern. The reports are too widespread and occurred in such a diversity of cases (ie. republican paramilitary, civilian, urban/rural) that they cannot be ignored. The fact that family members were killed after death threats were allegedly made is especially disturbing.

The U.N. Principles (Appendix D) state:

*Effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats*²⁶.

- To comply with this U.N. Principle, the authorities in Northern Ireland should develop a mechanism whereby a person who reports a death threat or other credible evidence that his or her life is in danger from police or soldiers would be able to seek some type of protection. This could, for instance, include a court order prohibiting a certain police officer or soldier from entering the person's property.
- A policy prohibiting death threats in any circumstances must be developed and highlighted. Severe disciplinary measures must be taken against any police officer or soldier who makes death threats.
- This allegation is so serious that it should be the subject of an independent inquiry to determine the extent of the problem. This inquiry also should look at the question of state/loyalist collusion, in light of allegations that police and soldiers made references to using loyalist groups in issuing death threats.
- Families who receive death threats should consider immediately contacting the United Nations Special Rapporteur on Summary and Arbitrary Executions, whose mandate specifically includes this issue.

3. AIMING GUNS AT PEOPLE AND/OR THEIR HOMES

In seven of the 20 cases, families reported that police or soldiers aimed their guns directly at family members or the family's home.

Description of incidents

The family which did not wish to be named said that in one incident which occurred at 4 am, the army put a gun to the head of the family member later killed.

The Doris family alleged soldiers and the UDR would come to their house, aim their gun at the front door and kneel in the firing position.

Mr Gerard Harte's family said his vehicle would regularly be pulled over to the side of the road at checkpoints and objects in the car thrown out in a ditch. The soldiers or police would try to make him retrieve it, with one taking the firing position to shoot if he crossed the ditch.

26 Emphasis added

The Duffy family reported that British soldiers were carrying out a search of the house next door when a soldier spotted Mrs Duffy in the window. He got down on his knees and took aim with his gun at her, Mrs Duffy said.

Mr Fergal Caraher's father said that on the night of his son's shooting, he was not allowed to get to the scene. When he persisted in his attempts, he said one soldier said to another: "Train your gun on that fucker's head and if he even moves blow him to fuck".

The Carroll family alleged that police put a cocked gun to Mr Niall Carroll's mouth.

Mr Aidan McAnespie's family said that, on the day before he was shot, a soldier had him pinned against a wall in a search centre with his gun pointed at him.

Again, these allegations are serious. Such incidents are extremely threatening, especially after a family member has been killed.

Conclusions

- The police and army should adopt as part of a statutory code of conduct instructions which state specifically the limited circumstances when it is appropriate to take up a firing position or aim a gun directly at a person or their home. Pointing guns or taking up the firing position should not be used as a tool for harassment or to intimidate. The new code should provide for disciplinary measures.
- Consideration also should be given to establishing a new criminal offence for threatening someone with a gun, either by pointing it at them or taking up the firing position in unwarranted circumstances.

4. INTENSIFIED HARASSMENT BEFORE KILLINGS

In nearly half the cases, or nine out of 20, families reported that harassment increased before the family member was killed by police or soldiers.

Description of incidents

The family who asked not to be named said harassment became so bad that people would ring the family's home to tell them police or soldiers had their relative on the road.

Mr Martin Harte was allegedly told shortly before he was killed: "This is your last Christmas, make the best of it". One week before the two Hartes were killed, the Army or UDR fired shots over their car at a vehicle checkpoint, family members alleged. The night before they were shot, the Army allegedly threatened to shoot them, family members said.

The Doris family said the SAS²⁷ allegedly came to the family's house on three occasions in the run up to Mr Tony Doris' death. Police allegedly told him: "We'll clean up Coalisland".

27 An elite undercover unit of the British army.

Mr Fergal Caraher's family said there was a noticeable increase in harassment in the area the week before he was shot. His father said he was severely harassed one day, with British soldiers making him take off most of his clothes on a cold day. When he refused to take off more clothes, they allegedly threatened to shoot him. Mr Caraher said in another incident the same army regiment said they would shoot someone in Cullyhana before Christmas.

Mr Adrian Carroll's family said harassment against him intensified shortly before he was killed. The UDR took him out of his work hut daily. The UDR allegedly asked Adrian within weeks of being shot how much longer he'd be working there. They questioned him on the day he was shot, the family reported. Two of the death threats received by Mr Roddy Carroll came within a month before he was killed, family members said.

Mr Barry O'Donnell's family said harassment against him intensified after his acquittal in England in February, 1991²⁸. He was stopped constantly, with complete searches, even in the rain, family members said.

Mr Patrick Kelly's family said harassment against him intensified before he was shot. They said he was badly beaten up the night before he was killed.

Mr Dan McCann's family said harassment increased before he was shot in Gibraltar. He couldn't walk down the street without being stopped by police or soldiers and called names in front of his children, Mrs. McCann said.

The McAnespie family reported a similar intensification before Mr McAnespie was killed. It got to the point where his mother had to come meet him at the border checkpoint. He began to walk instead of drive across the border to avoid trouble, but still he was detained. Mr McAnespie's reports of extensive harassment were the subject of news articles before he was killed. His solicitor compiled a dossier documenting the extent of the harassment.

Conclusions

Nearly all of these cases (seven out of nine) involved a republican paramilitary being killed. The widespread nature of these reports raises serious concerns, especially in light of ongoing shoot-to-kill allegations.

- As noted in the section on death threats, a mechanism should be established to provide legal protection for these families.
- If someone notices a perceptible increase in harassment, urgent notifications should be made to human rights organisations and to the United Nations Special Rapporteur. It would also be worthwhile notifying the United Nations Human Rights Centre by way of the 1503 Procedure.

28 Mr Kevin Barry O'Donnell was tried for IRA offences.

5. FAILURE TO INFORM FAMILIES OF KILLINGS

In three-quarters of the cases, or 15 out of 20 cases, families said authorities never informed them that a family member had been killed. In a few cases, authorities searched family homes immediately after a killing, but never informed any family members that a family member had been killed. Instead, families learned of the death from friends, neighbours or even from the news media.

In the loyalist case, Mrs Alberta Robinson, widow of Mr Brian Robinson, said she was told her husband had been in an accident. She went to the hospital, but he was not there. She only learned of his death when she went to the RUC Barracks at Tennant Street. Police then searched her home, she said, describing them as "very cold".

The failure to inform families of these killings could be interpreted as the state not even acknowledging the killing. It shows a callous disregard for bereaved families. Amnesty International also has raised concerns that the families of those killed are not informed properly of the death. The failure of authorities to notify the next of kin contravenes U.N. Principles (see Appendix D).

- Authorities must adopt a consistent policy of notifying the next of kin in any killing, especially before the news media is informed.

6. WAKE, FUNERAL HARASSMENT

In more than half of the cases, or 12 out of 20, families reported harassment by police and/or soldiers during the wake and funeral period.

Description of incidents

Mr Niall Farrell, brother of Ms Mairead Farrell, said during the journey of the funeral cortege from the border to Belfast, police landrovers surrounded the cortege on all sides. They drove very aggressively, with a landrover at one point cutting into the cortege, according to Mr Farrell. When passing through loyalist areas, Niall said police deliberately slowed down so that the cortege would be an easy target. Mobs threw stones and Mr Farrell's own car was damaged. On the motorway, part of the cortege was delayed for around two hours. They were surrounded by hundreds of landrovers and subject to verbal abuse by police, Mr Farrell reported.

The McAnespie family said mourners were harassed on their way to the wake and funeral.

The family who asked not to be identified said the police presence was so heavy there was not even room to take the coffin out of the house. Mourners were allegedly harassed.

The Doris family said their home was "inundated" by members of the security forces. Authorities looked in windows, cheered and jeered for three nights non-stop, the family said. Mourners were kicked and asked, "Are you going to the barbecue?", a reference to the fact that the vehicle in which Mr Doris was travelling when attacked by soldiers, was engulfed in flames and completely burnt out as a result of the sustained firing.

The O'Donnell family said the police presence at the wake and funeral was "disgusting". The family said they rang the local police station twice in order to ask that members of the RUC stop interfering with mourners. A landrover drove into a mourner's car. Mourners were stopped and questioned; police allegedly hit one in the hand with a baton. There was verbal abuse. On the morning of the funeral, police swamped the house and the family could not get the coffin out, family members said. Police shouted and whistled. The funeral procession was stopped six times.

Mr Patrick Kelly's family said that, on the night he and seven other members of the IRA were killed in Loughgall, Co. Armagh²⁹, the UDR displayed a banner on their landrover which said: "8-nil." Police kept their distance from the family's house, but at the funeral procession, police tried to hijack the remains, the family alleged.

The Savage family said just before the funeral, soldiers shouted "Gibraltar" as they passed shops near the family's home. (Mr Sean Savage was one of the three IRA members killed in Gibraltar.)

The Harte family said that, on their way to the morgue to identify the bodies of two family members, authorities shouted abuse, such as: "How will you identify him?". At the house, mourners were verbally threatened and some were assaulted, the family said. Police and soldiers allegedly yelled: "3-nil" and "3 down, more to go".

Mrs Margaret McCann, widow of Mr Dan McCann, said police and soldiers inundated the parents' home during the wake and funeral period, camping outside. They allegedly harassed four of Mr Dan McCann's friends who lifted the coffin into the house. Police and soldiers allegedly spat on the coffin. Other mourners were harassed, searched and verbally abused, she said.

The Duffy family said police shouted offensive remarks at friends and relations of the family, including "one-nil". When Mrs Duffy's sister left the house, police reportedly asked her to "Smile, it wasn't us, it was our friends in North Queen Street (barracks)".

Mr Caraher said he and his brother, an invalid, were stopped on their way to the undertakers to arrange for the funeral of his son Mr Fergal Caraher. Mr Caraher said members of the security forces made his brother get out of the car. When he objected, they allegedly said they could do "whatever the fuck we like".

The Carroll family reported harassment at Mr Roddy Carroll's funeral. Mourners were stopped and questioned and made fun of. Landrovers camped out at the family's home and talked and laughed among themselves. Authorities stayed away from Adrian's funeral, the family said.

Conclusions

This is a particularly troublesome series of allegations. Abusing families and mourners during this period shows a total disregard for their feelings. It would be difficult for authorities to justify much of the conduct reported by families during wakes and funerals.

29 One civilian, Mr Anthony Hughes was also killed.

- In light of the widespread nature of these allegations, the police and army should adopt and enforce a specific code of conduct for patrolling at wakes and funerals that address the allegations made in this report.

In cases of paramilitary funerals, authorities should make it a consistent policy of first checking with families to see if there will be a paramilitary funeral. If not, then authorities should keep their distance from the wake and funeral. In cases of paramilitary funerals, authorities have a legitimate law enforcement purpose in preventing the firing of volleys.

However, much of the activities reported go well beyond law enforcement purposes and must be prohibited as a matter of policy. The presence of so many landrovers at wakes and funerals raises the question of sectarian domination by the state. It is difficult to justify such a practice on law enforcement grounds. Likewise, there is no justification for camping outside homes during the wake period. No law enforcement purpose is served by blocking the family's ability to get the coffin out of their home.

- A new policy should respect families' rights to privacy by providing that police and soldiers keep their distance from the home.
- A wake/funeral policy also should prohibit any abusive comments or actions to the families and other mourners. Searching people on their way to a wake or funeral is excessive and points toward harassment.
- A new policy that prohibits these actions should include provisions for disciplinary punishment for offenders.
- If any behaviour or action by the police or army is perceived to be specifically anti-Catholic, interfering in any way with or acting in an insulting fashion towards the religious belief and/or practice of families, consideration should be given to notifying the United Nations Special Rapporteur for the Elimination of Religious Intolerance.

7. REFERENCES TO KILLINGS

In three-quarters of the cases, or 15 out of 20, families reported that police and/or soldiers made remarks to other family members about the family member who was killed.

Description of incidents

Ms Mairead Farrell's brother said that just after she was killed police set up a roadblock to stop him and Ms Farrell's boyfriend. He alleged police hurled verbal abuse at both of them, saying to Ms Farrell's boyfriend: "Well you won't be fucking Mairead anymore". When police learned the car owner was Mr Niall Farrell's wife, who has the title doctor, they replied: "It's a pity your wife wasn't in Gibraltar that day".

After Mr Kevin McGovern was killed, his brother Dr Sean McGovern said British soldiers would ask Kevin's friends at checkpoints in Cookstown: "Where's Kevin now?".

The family who asked not to be identified said there were references to the killing, with authorities asking where the deceased family member was.

The Doris family reported that soldiers made numerous references about Mr Tony Doris' death to family members. They asked: "How'd you feel when your brother was shot dead?". Other reported remarks included: "Just imagine his head when he died"; "You have eyes like your brother"; and "there weren't many wreaths on his grave". Soldiers also stopped a sister, Ms Joan Doris, after his killing and allegedly asked: "Why are you so happy?".

Ms Brenda Downes, reported references to the killing of her husband Mr John Downes during a search of her house in 1988. She said security force personnel asked who her husband was, when they were well aware that he had been killed by police.

Mr Barry O'Donnell's family reported references were made to his killing. British soldiers allegedly said to his sister: "Where's your brother now?". References were allegedly made to friends as well, such as "our local heroes".

The Kelly family reported several incidents. Ms Roisin Kelly, a sister of Mr Patrick Kelly, said security force personnel told her: "We blew his head off". (They apparently confused his killing with the killing of another Kelly). The family received phone calls, with local accents, asking for Mr Patrick Kelly. They also received letters that they suspect, based on their contents, came from the RUC. Other remarks to family members reported include: "There's the terrorist's sister", and "Oh, he's long gone dead".

As noted earlier, the Savage family reported that soldiers shouted "Gibraltar" as they passed shops near the family's home after Mr Sean Savage was killed in Gibraltar.

The Harte family reported repeated references to the deaths of their relatives. RUC officers said to Mr Nashey Harte: "Tell your brothers I was asking about them". Other remarks allegedly included: "How's your brother getting on?"; and "Is there worms eating them?". The family also has received phone calls asking for Mr Gerard or Mr Martin Harte. Callers had English accents and there was jeering in the background. The family suspects British soldiers made these phone calls. The family also has received hate mail, including letters from England and newspaper clips. The family showed one article about the two Harte brothers in which the words, "Ha, Ha, Ha" had been written around their pictures. The family also suspect soldiers sent this letter.

Mrs Margaret McCann also reported remarks made about her husband's killing. British soldiers have repeatedly tried to come into his parents' butchers shop in Belfast, yelling things such as: "It's a nice day in Gibraltar" and "Didn't your son look well". British soldiers on several occasions have had their photo taken with the butcher shop's in the background. Mr Dan McCann's brother is often stopped and comments are made about his brother, Mrs McCann said.

The Duffy family reported numerous incidents of references made about the killing of Mr Seamus Duffy. This allegedly began on the night of the killing, with police shouting "one-nil" at friends and relations of the Duffys. Mr Duffy said police hurled verbal abuse at his son's friends after his killing, such as: "Where's Seamus?", "Seamus got it" and "Do you want the message too?". In another incident, the Duffy's 11-year-old daughter was playing with friends at her house one day when a joint army/police patrol came by and allegedly asked her: "Is Seamus not coming out to play?". Comments were also made to Mr Seamus Duffy's brother by police, such as: "Do you want to be next?"

The Caraher family reported similar references. Soldiers allegedly told Mr Fergal Caraher's mother that they knew where a white rover was selling for cheap. (Mr Caraher was in a white Rover when he was shot dead). One day, soldiers outside the family's home spotted photos of Mr Fergal Caraher in the window. They allegedly jeered at them, pointing and laughing. Remarks were allegedly made to Fergal's brother, such as: "You're next".

Mrs Eleanor McKerr reported that security force personnel made references to and fun of her husband's death to his friends.

The family of Mr Adrian and Mr Roddy Carroll reported remarks made about their deaths. These allegedly included: "How's Adrian now?" and "How's Roddy?". When soldiers or policemen saw pictures of the two on the wall in the family's home, family members said they would make remarks such as: "Who's that? I think I know that fellow". In relation to the acquittal of three of the four UDR members convicted of Mr Adrian Carroll's murder, security force personnel allegedly asked Adrian's brother Tommy how Adrian was doing, then said: "Well Adrian will not be coming home like the UDR men". UDR and police also allegedly told family members, referring to the UDR men: "They're going to get off." Mrs Carroll said when she was detained for seven days RUC officers made constant references about Adrian and Roddy.

The Reilly family did not report direct references to the killing of their daughter, Ms Karen Reilly, a joyrider, but they did point out an incident which surfaced in the news media. The article reported that British paratroopers at their barracks in Holywood had put up a cardboard cut-out mocking the killing.

Conclusions

Making references about a killing to family members is an allegation raising disturbing questions. The nature of such remarks, often made repeatedly, must be extremely painful to the families involved. These statements could be considered a form of verbal violence.

- A strict policy should be adopted, publicized and enforced to prohibit such remarks, which clearly have nothing to do with law enforcement. Disciplinary measures must be taken against police or soldiers who make these remarks as a matter of consistent policy.

8. INCREASE IN HARASSMENT AFTER KILLINGS

In 14 out of 20 cases, families reported an increase in harassment after a family member was killed by police or soldiers. Some of this included reports of funeral harassment and references to the death discussed in the previous chapters. Some of the other six families said harassment was ongoing, rather than worse after a family member was killed. Some of the cases of an increase in harassment included:

Description of incidents

Ms Ann Bradley, widow of Mr John McNeill, said there was no harassment of her family before Mr McNeill was killed. After his killing, there were a number of incidents of harassment/abuse, she said. Both her daughters were stopped more often, including one who was pregnant, and physically searched inside a Belfast hospital. As referred to earlier,

Ms Bradley's son allegedly received death threats. Ms Bradley herself said two days before she was to do an interview for a BBC programme on her husband's killing, masked men broke into her house by knocking down the door with a hatchet and physically attacked her. The men said they were looking for her son. Because she was not killed, she believes the RUC were behind this incident, to try to intimidate her from doing the TV program. In another incident at her home in Belfast, she said RUC called her a "fuckin' big mouth" and said of her son, "We'll get the wee bastard". In another incident, on New Year's morning, she said UDR and RUC stopped her and her daughter in the car and gave her a ticket for not having enough air in the tyres. Ms Bradley believes she and her family are harassed because she campaigns publicly against alleged shoot-to-kill incidents.

Mr Kevin McGovern's family reported an increase in harassment after his killing. During the funeral period a brother, Mr Raymond McGovern, was detained and questioned by the Special Branch in London at the airport, even though they knew his name in advance so they already knew why he was going home. Dr Sean McGovern, another brother, believes police tapped his phone while a TV program was being made on Kevin's killing. On two occasions, police searched for another brother, Mr Patrick McGovern, just before he was to meet his brother regarding the TV program, according to Dr McGovern.

The McAnespies reported an increase in harassment after Mr Aidan McAnespie was killed. They were pulled over and kept sitting for long periods and their car was searched. There were many threatening phone calls in the early hours of the morning, especially during periods when the killing was publicized. Soldiers would come by the house, look in the windows and laugh at the family, family members said.

The family who asked not to be identified said there was a lot of harassment in the first year after the family member was killed.

The Doris family said harassment increased, "very much so", after Mr Tony Doris' death. Soldiers allegedly left a broken heart with two bullets in it and the words: "Tony loves the SAS (by whom he was killed)". Soldiers also allegedly wrote: "Tony's day will never come". The family reported that paratroopers threatened to rape a sister Ms Joan Doris at the bottom of the road. Family members said they also are subject to far more stops and searches since Mr Tony Doris' killing. They said there have been "plenty" of house searches since the death. His mother remarked of police and soldiers: "I think they're going to live here one day."

The Downes also reported an increase in harassment. Shortly after the killing a sister, Ms Jo-Anne Downes, said her parents were regularly held at the border for two to three hours at a time. Police or soldiers would make fun of something among themselves as they asked the family: "What's your name?" The widow, Ms Brenda Downes, said a sexual remark was made to her in one incident. A few years after his killing, Ms Downes said soldiers threw mass cards all over a field in front of her house. The cards had been kept from the time of her husband's funeral in a store at the rear of her house. She says that the soldiers must have taken the cards out of the store before throwing them around the field.

Mr Patrick Kelly's family reported an increase in harassment for a period after he was killed. Police and army vehicles would toot their horn and flash their lights as they passed the family's home, family members said. Ms Paula Kelly, a sister, is repeatedly stopped and searched and harassment is ongoing, the family said.

The Savage family reported that Ms Mary Savage, a sister of Mr Sean Savage, was stopped three times in one day in Belfast and her packed clothes were searched. This was shortly after her brother's death and they knew who she was, the family said.

The Harte family reported more harassment after the killings of two brothers. They said physical assaults got worse, especially from the UDR. The family is constantly stopped and harassed, family members said.

The McCann family experienced more harassment after Mr Dan McCann was killed, according to his widow, Margaret. Mrs McCann said soldiers were seen at her husband's grave stealing two stands for flower pots as souvenirs, as well as throwing flowers all over the place. His brother is repeatedly stopped while taking his children to school and comments are made about his brother, Mrs McCann said.

Mr Seamus Duffy's family reported minimal harassment before his death. After his killing, there were numerous incidents, they said. This included constant flashing of police headlights and searchlights into the family's home and constant harassment of his brother.

Mr Martin Peake's family said they noticed that after his death soldiers would stop pedestrians and motorists in front of their home. Mrs Peake said a soldier shouted at her when she came out of the court hearing in relation to her son's killing. She also reported another incident in which a soldier made a sexual remark to her.

The Caraher family reported a similar increase in harassment. While the family prepared an inquiry into Mr Fergal Caraher's death, his father said he and a Dublin barrister were stopped several times. His home was searched for eight hours, while at the same time the barrister's home in Dublin was searched by the Special Branch.

Conclusions

The widespread nature of this allegation is disturbing and raises questions about whether this is a policy. Amnesty International also has reported cases where family members have alleged that they were subjected to harassment after the death of a family member.

Under U.N. Principles (see Appendix D), families who believe they are targeted for harassment or intimidation from authorities are entitled to an "independent commission of inquiry or similar procedure".

- To comply with this U.N. Principle, government officials in Northern Ireland should establish a mechanism to facilitate this right to independent investigations in cases where families believe they are targets of harassment.
- In light of so many reports within this sample, an independent public inquiry should be conducted to determine if other families are targeted for more harassment after a family member has been killed.

9. MISCELLANEOUS ALLEGATIONS

Other allegations arose during interviews with families regarding harassment and abuses by police and soldiers.

Damage to property

Although not specifically asked, seven out of 20 families, reported that police or soldiers damaged their property. Among these allegations:

The family who asked not to be identified said a soldier, believed to be in the UDR, put a gun to the head of the family member later killed while he sat in his car, broke his windscreen and cracked his side windows.

The Doris family said police would kick in the lamps on Mr Tony Doris' car and say they were not working. Police and soldiers also allegedly pulled the wipers off his car. Outside the family's home, the UDR would damage Mr Doris' car in the hope that he would come outside, family members said.

The Harte family reported that soldiers, who reeked of drink, ransacked their home during the search in 1981 in which everyone in the house was allegedly assaulted. A brother of the two Hartes killed, said he has a case against the authorities for allegedly damaging his car.

A police officer or soldier who recklessly damages a person's property (ie. for no law enforcement purpose) may incur criminal liability under Section 1 of the **Criminal Damage Act 1971**.

Intelligence gathering

In another issue, five of the 20 families noted that during house searches, security force personnel carefully drew maps of the interior of the house, sketching and measuring rooms and noting who slept in each room. In some cases, photos were taken around the house. These types of house searches raised concerns that the sketches of the houses and rooms would end up in the hands of loyalist paramilitaries.

If a claim is substantiated that information was passed to a paramilitary group by police officers or soldiers, they could be held liable under sections 31 of the **Emergency Provisions Act 1991**. These make it an offence to collect, record, publish, communicate or attempt to elicit any information which is of such a nature as is likely to be useful to paramilitary groups.

Considering the number of security force files that have been found in loyalist paramilitary hands, this is a legitimate concern. Public disquiet over the nature of information obtained during house searches (ie. interior sketches) must be alleviated.

This practice must be justified publicly as to what law enforcement purpose is served. If there is a legitimate reason, authorities also must explain the safeguards taken so that such information does not find its way into the hands of paramilitary groups.

CHAPTER VI

COMPLAINTS ABOUT HARASSMENT

1. HISTORY AND BACKGROUND OF POLICE COMPLAINTS SYSTEM

After reading the accounts we have been given of the allegations of harassment by the security forces, the question has to be asked whether any of the people affected has made any attempt to complain or seek redress through the established machinery and, if so, how successful were they. It is important to state that, whereas we do not have the means to establish the truth or otherwise of the allegations, a properly functioning complaints mechanism should.

The system for lodging complaints against authorities in Northern Ireland has been the subject of much criticism dating back more than two decades. The complaints mechanism has been faulted for having a number of serious flaws, yet the system has changed little in more than 20 years.³⁰

One of the most fundamental criticisms has been, and remains, the lack of a genuinely independent system for investigating complaints lodged by citizens against the authorities. Going back to 1969, the **Cameron Commission** recommended the establishment of an independent tribunal to investigate complaints and recommend disciplinary charges against RUC members. Later, the Bennett and Scarman Inquiries recommended more frequent use of outside and independent investigations. These recommendations were based on extensive public testimony. The government, however, ignored their advice, relying instead on advice from those bodies which consulted mainly police and government representatives.

2. THE PROCEDURE FOR LODGING COMPLAINTS AGAINST THE RUC

The **Complaints and Discipline Branch** of the RUC is responsible for investigating complaints against the RUC. The C&D consists of 120 RUC officers of the rank of inspector and above. The **Independent Commission for Police Complaints** for Northern Ireland

³⁰ CAJ Pamphlet 16, "Cause For Complaint The System For Dealing with Complaints Against the Police in Northern Ireland," May 1990.

(ICPC) serves as a supervisory body. The ICPC must consist of at least seven members, who are appointed by the Secretary of State for up to three years.

The complaints system applies to the RUC, but does not apply to members of the British Army or UDR.

In terms of registering a complaint, it is common for complainants to ask a solicitor, their MP, a clergyman or a friend or relative to complain for them. People may lodge a complaint, either in person or by letter, with either the RUC - by visiting a police station or writing to the chief constable - or the ICPC office in Great Victoria Street in Belfast. Most complaints are lodged at RUC stations.

All complaints are forwarded to the Deputy Chief Constable (DCC), who first determines whether the complaint is suitable for informal resolution. The procedure calls for all complaints that are not informally resolved to be formally investigated. The DCC first forwards the complaint to the ICPC, which decides whether or not to supervise the investigation. If the complaint alleges death or serious injury, the commission must supervise the investigation.

In practice, the commission's funding and staffing levels limit its capacity to supervise investigations.

The DCC appoints an investigating officer (I.O.) who is almost always a member of the Complaints and Discipline Branch. The officer is superior in rank to the accused. The final paragraph of the investigative report will contain a recommendation, reviewed by the Assistant Chief Constable, as to whether or not the officer should be prosecuted. According to the Commission, reports rarely recommend prosecution. In practice, the Commission does not express dissatisfaction with an I.O.'s conduct in an investigation, but it has issued certificates which criticize the lack of cooperation by a complainant. Most investigative reports go to the Director of Public Prosecutions, who almost always directs no prosecution. It is understood that the DPP considers and generally follows the recommendation contained in the investigative report.

Disciplinary proceedings are ordinarily headed by a senior police officer. The ICPC may direct its members to sit on a disciplinary tribunal as well in "exceptional circumstances". The tribunal enters a finding of guilty or not guilty by majority vote. The RUC will inform the complainant of the finding but not of the punishment imposed.

3. NATURE OF COMPLAINTS, STATISTICS

The bulk of completed investigations involve allegations of assault, harassment and incivility. Allegations of assault most commonly involve reports of excessive use of force during arrest, during interrogation or in the back of a landrover. Complaints of harassment may allege an unnecessary stop or search, verbal abuse or intimidation, threats or persistent pressure to become an informer, and often involve a series of incidents over a long period of time.

Most complaints fail allegedly for lack of evidence. If there is no independent witness or evidence, then there will not be reasonable prospects of proving the case beyond a reasonable doubt. Another problem is the difficulty of identifying the officer involved.

Statistics compiled for a 1990 CAJ report on the police complaints system show the ineffectiveness of the process. The first major problem is the frequency with which complaints are withdrawn. Roughly two-thirds of cases are withdrawn by the complainant or dispensed with as being incapable of investigation. In 1988, for instance, 682 cases were withdrawn, including 11 cases supervised by the Commission. It has been well documented that complainants sometimes withdraw due to pressure from the police or fear of further harassment or of being charged with a criminal offence in retaliation.

There is the disturbing possibility that police may stifle a valid complaint by bringing a charge in retaliation, something which most solicitors interviewed for this report said occurs quite frequently.³¹

Even when complaints make it through the whole process, prosecutions are rare. In 1988, out of 549 completed reports, 452 were sent to the DPP, who directed prosecution only three times. Disciplinary charges are slightly more frequent but still rare. Formal disciplinary charges were heard only five times in 1988, all but one at the recommendation of the Commission. Informal disciplinary action is most common. In all, CAJ found in 1990 that 9-10 percent of fully investigated cases are substantiated, that is, they result in some form of action against the officer.

Statistics reported in the ICPC's latest two annual reports show the same problems. In 1990, out of 2,321 cases completed, 61% of the complaints were either withdrawn or dispensed with as being incapable of investigation. The DPP directed only 16 criminal charges. There were only 13 cases where officers received formal disciplinary charges.

In 1991, out of 2,440 cases completed, 59% were either withdrawn or dispensed with as being incapable of investigation. The DPP directed only 9 criminal charges. There were only five cases where an officer received disciplinary charges.

These last two annual reports show that:

- A majority of complaints are still withdrawn or dispensed with;
- Prosecutions and formal disciplinary charges are still rare;
- The Commission continues to criticize complainants, but not the police. These reports cite "complainants refusal or failure to cooperate" or "complainants failed to cooperate with the investigating officer". The police version is presented as factual, but there is no mention of whether investigating officers failed to co-operate with complainants or to conduct an impartial investigation.

31 CAJ Pamphlet 16, p. 22.

4. FINDINGS OF THIS PROJECT: IMPACT OF REGISTERING COMPLAINTS

Of the 20 families interviewed, no fewer than seven reported that registering complaints about harassment had no impact in reducing the harassment. Two families reported that registering complaints did help reduce the harassment. But another three families alleged harassment got worse after they registered complaints. Two of these families that reported matters typically got worse after registering complaints also cited incidents when complaining to police did help. Eight families said no complaints were ever registered that they knew of(even though some of these families did report harassment in interviews). Families typically registered complaints either with the police, through their solicitor (who then took up the matter with the police) or through a parish priest.

Of the seven families reporting no impact, five involved cases where the family member killed was a republican paramilitary while the other two were civilians. In one of the civilian cases, Mr Brendan Duffy alleged that an RUC man told him on one occasion that he would take down his complaint, then throw it out. In another incident, Mr Duffy alleged four RUC men refused to take his complaint and physically threw him out of the barracks in Belfast.

Among the six families not registering complaints, four were families in which a civilian was killed and two in which a republican paramilitary was killed.

Of the three families reporting worse harassment after complaints were registered, all three involved cases where a republican paramilitary was killed.

Of the two cases where registering complaints helped, both were non-paramilitary.

Analysis

Overall, the reports show the ineffectiveness of registering complaints in terms of reducing or stopping harassment. In half the cases, 10 out of 20, registering complaints either made no impact or made matters worse. The effectiveness or ineffectiveness of registering complaints was spread over a diversity of cases. Those reporting no impact, for instance, included paramilitary and civilian cases. On the other hand, there is evidence that the complaints procedure worked better in civilian cases than republican paramilitary cases. All of those reporting worse harassment after complaints were registered were families in which a republican paramilitary had been killed. The two cases where harassment declined after a complaint had been made were civilians.

In fact, the Doris family reported that when complaints were registered, they were told by police that Dr Martin Doris could be helped, but not his brother Mr Tony Doris, a republican paramilitary later killed.

The results of the interviews carried out for this project provide further evidence that the complaints system is not adequate in addressing reports of harassment.

5. THE REASONS WHY THE COMPLAINTS SYSTEM FAILS

The fact that the police complaints machinery does not hold out much hope of relief for people suffering from harassment and may indeed make matters worse, will not surprise anyone at all familiar with its defects. This is not the place to describe in any detail how the system operates or what needs to be done to make it more effective³². Suffice it to say that the following are the main reasons why as things stand the complaints system is unlikely to be a significant source of help in cases of harassment:

1. There is a general perception that registering a complaint about harassment, or any other departure from proper behaviour, will achieve nothing (except possibly harassment or further harassment). This perception leads people to do nothing or to sue the police in the civil courts.
2. Should they register a complaint, they may choose not to co-operate with the investigation because they have so little faith in its impartiality. Most people are very cynical about a system that uses police officers to investigate complaints against their colleagues. the use of civilians as investigators is arguably the most urgently needed reform.
3. The ICPC, whose function it is to receive all complaints and supervise the investigation of the more serious ones, has both inadequate powers and an inadequate budget and so is able to supervise the investigation of only a very small proportion of the total. It is unlikely that many people who have been harassed know of the ICPC's existence or of their powers to supervise harassment complaints.
4. All cases where a police officer may have been guilty of a criminal offence have to be referred to the Director of Public Prosecutions so that he can decide whether to lay a charge, His decision is largely influenced by his estimate of the likelihood of securing a conviction and, because of his knowledge of the workings of the criminal courts, he frequently decides against laying a charge. Moreover, in the few cases where a charge is laid, the outcome is seldom a conviction against a police officer. The public is broadly aware of the rarity of charges and greater rarity of convictions and so is discouraged from pursuing the matter further.
5. In most cases where there are no witnesses of what took place, the investigator is faced with one story by the complainant and another by the officer who is the object of the complaint. In such cases it is often the case that the complaint fails to be substantiated for lack of evidence. The standard of proof required before a complaint can be regarded as valid is, in the case of the police, the one used in the criminal courts - proof beyond all reasonable doubt. This is largely responsible for the rarity of successful complaints. In most other professions, complaints against an individual can be substantiated by the test used in the civil courts - the balance of probabilities. There is a school of thought that complaints against the police should be treated in the same way as those against other professional employers. For more detailed discussion of this, see CAJ's forthcoming pamphlet.

32 CAJ has over the years published three pamphlets on this subject and is about to publish another.

6. Those who lodge a complaint at a police station have sometimes to contend with an absence of full co-operation from the officer receiving them. Mr Brendan Duffy's allegations, quoted above fall into this category.

7. Likewise, after a complaint has been registered, there have been allegations that improper pressure has been used to secure its withdrawal. Whether this occurs or not is irrelevant. If the general public believes it to be the case, it must act as a deterrent to anyone contemplating making a complaint.

8. The police have also been known to lay criminal charges against complainants and some have regarded that development as a bargaining counter intended to deter the making or the pursuing of a complaint. The opposite may also be true that some people whom the police charge with an offence may register a complaint as a bargaining counter. Be that as it may, the mere fact that the making of a complaint may be followed by a criminal charge must surely act as a deterrent to using the complaints machinery after being harassed.

9. Even if a complaint is substantiated, the complainant will not receive any compensation on the basis of that finding. He or she must still take a case in the civil courts if something other than disciplining of the police officer concerned is required.

6. THE ARMY COMPLAINTS SYSTEM

The procedure for lodging complaints against the British army, including the Royal Irish Regiment, formerly the Ulster Defence Regiment, is similarly unsatisfactory. There have been some recent developments in the army complaints system; their effectiveness, however, remains doubtful.

As with the RUC, there are two types of complaints which may be brought against a soldier. The first is where s/he has acted illegally and the complaint is thus of a criminal nature. The second involves unacceptable behaviour which falls short of criminal activity.

The complaint can be made personally, or through a third party, to the RUC, the Central Complaints Office at Thiepval Barracks, Lisburn or to the Commanding Officer of any Army base; The Central Complaints Office acts as a 'clearing house' for all complaints, passing those of a criminal nature to the RUC and the rest to Military Command. On receipt of a complaint from the Central Complaints Office the RUC should investigate and if a crime is believed to have been committed the papers will be passed to the Director of Public Prosecutions who decides whether or not a prosecution should take place. If there is to be no prosecution the case reverts to the Army for consideration of whether disciplinary proceedings are appropriate.

In cases of complaints of a non-criminal nature investigation is carried out by the Army themselves. The Commanding Officer of the relevant Unit will be asked to arrange that an investigation is carried out into the relevant complaint. The Civil Representative, an NIO employee may attempt to work as an intermediary between the complainant and the army. Complaints should be acknowledged and complainants informed of the outcome of their complaint.

In December 1992 the Office of the **Independent Assessor of Military Complaints Procedures** was established with the task of scrutinizing and keeping under continuous review the system for investigating 'non-criminal' complaints against members of the armed forces³³ The Assessor will not address the facts of the case but rather examine procedures for investigation to ensure effectiveness. Nonetheless, complainants should consider sending copies of their complaints to the Independent Assessor so that he is aware of the substance of the complaints as well.

Finally, a new scheme was introduced in late 1992 by which army patrols are required to carry cards which members of the public can ask for if they wish to register complaints against the patrol involved. The cards will indicate the regiment involved and the time of a particular incident. However, this idea appears to be based on a misunderstanding of the psychological dynamics of harassment. The notion that someone who has been harassed will easily ask the soldier who has just been harassing him/her is hard to credit.

These two recent developments in the Complaints procedure against the Army are unlikely significantly to improve the system or engender faith in its effectiveness amongst members of the public who are likely to have been subjected to behaviour, necessitating the lodging of a complaint.

Many of the fundamental flaws outlined in 5 above in respect of the Complaints Procedures against the RUC apply equally to the system for lodging complaints against the Army. There is a public perception that it is a waste of time, it is not independent it is fundamentally biased against complainants, there will be no prosecution/conviction etc.

The results of interviews carried out for this project provide further evidence that the complaints system is not adequate in addressing reports of harassment.

7. THE NEED FOR GREATER SAFEGUARDS

CAJ has identified a number of measures required to make the complaints system more effective.

First and foremost, the system must be made genuinely independent. Under the present system, the police dominate the complaints procedure. The RUC investigates, prosecutes, sits in judgement, metes out punishment and hears appeals.

If complainants fundamentally distrust the RUC, they will fundamentally distrust the complaints system, and no amount of supervision or oversight will alter this feeling.³⁴

A system must be created in which an independent body receives, processes, investigates and evaluates complaints against the RUC and the army. One possibility is a system where a police investigator from another force conducts the investigation. This system is used frequently in Britain. Another possibility is that an independent system could be used only in statutorily defined serious complaints.

33 Report of the Operation in 1992 of the northern Ireland (Emergency Provisions) Act 1991, by Viscount Colville of Culross.

34 CAJ Pamphlet 16, p. 28.

Other steps should be taken to make the police complaints system independent. One might be to have an independent body, rather than the Secretary of State, make appointments to the Independent Commission for Police Complaints. A second is that the investigative report from the RUC's investigating officer should not make any recommendation as to prosecution. The present practice makes the RUC the judge of its own cause. Likewise, the decision regarding disciplinary charges should be that of the Commission alone. One way to achieve this might be to establish an independent tribunal for disciplinary hearings, though the government recently refused to establish this limited safeguard which was requested by the ICPC after its first triennial review in 1991.

Other measures that should be taken to safeguard citizens from harassment include the following:

- The Commission could be given a role in investigating complaints against the UDR/RIR and British Army.
- A procedure could be devised to make it easier to register complaints at places other than police stations.
- The process could be made more open. This would mean providing specific reasons for a decision not to bring disciplinary charges as well as disclosing the punishment given in disciplinary cases.
- Withdrawals could be permitted only if the Commission were satisfied that the complaint was not being withdrawn due to improper pressure.
- The problem of lack of evidence could be addressed by requiring audio- and video-taping of all interrogations in detention centres and by ensuring that statements made by complainants are not passed to lawyers acting for the RUC in any subsequent civil or criminal case involving the complainant.

Together, these reforms would help create a more independent and effective police complaints system. They would improve public confidence that the police and army are accountable for their actions.

8. SUMMARY OF RECOMMENDATIONS:

As well as the recommendations listed above concerning the complaints system, CAJ make the following general recommendations dealing specifically with allegations raised in this report

- Independent investigations by outside police forces should be held into disputed state killings to determine if prosecutions are appropriate.
- A new police and army policy must specifically prohibit assaults, with provisions for disciplinary action. Video- and audio-taping of interrogations is needed.
- A new policy should be adopted prohibiting death threats, with severe disciplinary measures taken in cases of transgressions. A new statute should be adopted to make death threats a criminal offence. An independent public inquiry should be launched to determine the extent of the problem, including a focus on authorities allegedly threatening people with references to loyalist paramilitary groups. A new mechanism should be developed to provide judicial protection for people who receive death threats or other indications that their lives are in danger from authorities.

- A new code should be developed to prevent police officers or soldiers from pointing guns at people or taking up the firing position in unwarranted circumstances. Consideration also should be given to establishing a new criminal offence for threatening someone with a gun.
- The police and army should adopt a specific code of conduct for patrolling at wakes and funerals, with provisions for disciplinary action. Consideration should be given to establishing an independent body to monitor the conduct of authorities at wakes and funerals.
- A new policy should be adopted and followed consistently whereby authorities inform the next of kin, in a sensitive manner, that a family member has been killed by police or soldiers.
- A strict policy should be adopted, publicized and enforced by the police and army to prohibit any references made to families about a deceased family member.
- An independent public inquiry should be conducted to determine the extent to which families are targeted for harassment by authorities after a family member is killed by police or soldiers. In ongoing cases, families should be entitled to an independent investigation, in accordance with U.N. Principles.
- The authorities must publicly explain and justify the nature of information obtained during house searches. They also should detail safeguards taken to ensure such information does not wind up in the hands of paramilitary groups.

CHAPTER VII

ANALYSIS OF FINDINGS

This section will analyze the results of the interviews to determine patterns in the allegations. At issue is whether certain types of allegations occur primarily in certain types of cases. After this analysis, the intensity of the allegations in each case will be examined to determine if certain types of cases (ie. republican paramilitary) involved more serious allegations than others (ie. civilians). The allegations placed under the miscellaneous heading will not be analyzed because numbers are too small for comparative purposes.

1. PHYSICAL ASSAULTS

This allegation was divided into two parts: physical assaults against the family member who was later killed, and physical assaults against other family members. As noted earlier, 10 out of 20 families (50%) reported the family member who was killed had been assaulted by police and/or soldiers before his/her death. Of these 10, seven were republican paramilitaries, and the other three were civilians, including two plastic bullet victims.

Six out of 20 families (30%) reported that other family members have been physically assaulted by police and/or soldiers. These six cases included four in which the family member killed was a republican paramilitary, and two families of a civilian killed, including one plastic bullet victim.

This breakdown in the findings shows that reports of physical assaults were spread quite evenly among the different cases. A high number of republicans and their families were allegedly assaulted, but assaults were reported in civilian cases as well. The allegations were made in rural and urban areas.

2. DEATH THREATS

Nine out of the 20 families (45%), reported that the deceased family member had received at least one death threat from police and/or soldiers. Of these nine cases, eight were reportedly directed at alleged republican paramilitaries, while one was against a civilian.

Nine of the 20 families (45%) reported that other family members had received death threat(s) from police/soldiers. Five of these cases were from families in which the family member killed was a republican paramilitary. The other four cases involved families in which an alleged petty criminal was killed, and three cases of civilians killed.

These findings indicate that death threats reportedly made against the family member later killed were mostly against alleged republican paramilitaries, with one exception.

By contrast, nearly half the reports of death threats against other family members, or four out of nine, involved families in which the person killed did not have a paramilitary connection.

3. AIMING GUNS AT PEOPLE AND/OR THEIR HOMES

This allegation was reported in seven out of 20 cases (35%). Four of the cases involved families in which a republican paramilitary was killed. Three cases were of families in which a civilian was killed.

These findings show that allegations of authorities pointing guns at family members or at their home happen in paramilitary and civilian cases.

4. INTENSIFIED HARASSMENT BEFORE KILLINGS

In nearly half of the cases, or nine out of 20 (45%), families reported an increase in harassment before a family member was killed by police or soldiers. Of the nine, seven involved families in which the family member killed was a republican paramilitary. The other two cases were civilians.

This breakdown indicates that reports of increased harassment before a killing were more likely in republican paramilitary cases. However, the two reports involving civilians show this allegation is not confined to republican paramilitary cases.

5. FAILURE TO INFORM FAMILIES OF KILLINGS

This was reported in 15 out of the 20 cases (75%). Nine of the 15 involved cases where a republican paramilitary was killed, and one in which a loyalist paramilitary was killed. The other five were non-paramilitary. Of the five families that were informed, in three cases a civilian had been killed and in one a republican paramilitary had been killed.

These findings show that in a large majority of the cases, the authorities did not inform families that a family member had been killed. These cases represented a cross-section in the nature of cases; republican and loyalist paramilitaries, plastic bullet cases, other civilians and an alleged petty criminal.

6. WAKE, FUNERAL HARASSMENT

This allegation was reported in 12 out of 20 cases (60%). Of the 12, nine were wakes/funerals of republican paramilitaries, and three were for civilians.

These findings show harassment was more likely in republican paramilitary cases (nine out of 10 families of republicans killed reported this allegation). But the fact that wake/funeral harassment was reported in three non-paramilitary cases shows this alleged harassment occurs in other cases as well.

7. REFERENCES TO KILLINGS

This allegation was reported in 15 out of 20 cases (75%). In all of the republican cases and a majority of the non-paramilitary cases (five out of nine) this allegation was made. This shows the widespread nature of reports that authorities made references of the killings to family members. This allegation was reported among a diversity of cases.

8. INCREASE IN HARASSMENT AFTER KILLINGS

This allegation was reported in a large majority of cases: 14 out of 20 (70%). The 14 cases included seven families in which a republican paramilitary had been killed, and seven families in which the family member killed had no paramilitary connections.

Again, this allegation is widespread, having been reported in a large majority of cases after republican and civilian killings. The reports are also geographically diverse.

9. CONCLUSION

In sum, the analysis of the findings shows that:

- reports of physical assaults were spread evenly among the different cases;
- allegations of death threats made against republicans who were later killed, and their family members were common; threats were also alleged against family members of non-republicans and non-paramilitaries who were killed.
- allegations of police/soldiers pointing their guns at family members and homes occurred in paramilitary and civilian cases;
- reports of harassment intensifying before a family member was killed were more likely in republican paramilitary cases, but occurred in civilian cases, too.

Three types of harassment were reported in a large majority and diversity of cases:

- authorities making references of killings to family members;
- an increase in harassment after a family member was killed; and
- that families were never told of the killing.

Wake/funeral harassment was more likely in republican cases, but happened in civilian cases as well.

Based on this analysis, certain conclusions of a general nature are evident. One is that harassment occurs in a diversity of cases. Second, some allegations are widespread. Two of these common allegations are of a serious nature: authorities making derogatory references of the killing to other family members, and an increase in harassment after a family member was killed. The widespread nature of these reports raises concerns that families are targeted for harassment and other abuses after a family member is killed, regardless of circumstances.

Another method of analysis is to look at the intensity of the allegations of harassment in the different cases to see if patterns are evident. The 20 cases may be divided into three categories: families who received minimal or no harassment; families who reported a "moderate" level of harassment; and families who alleged extensive harassment/abuses. These are relative categories and are not meant to down-play the significance of allegations made by some families. Instead, the cases have been categorized to show that families reported different levels of harassment and abuse. Categorizing the cases helps to analyze which families received the most serious harassment and which ones reported moderate or minimal/no harassment.

Of the 20 cases, seven families (35%) may be classified as having reported either minimal or no harassment from authorities. These cases include four families in which a family member who was a civilian (non-paramilitary) was killed; two families in which a republican paramilitary was killed, and one in which a loyalist paramilitary was killed.

Three families (15%) may be grouped under the category of "moderate" harassment. These include the family of an alleged petty criminal; the family of a civilian killed and the family of a republican paramilitary killed.

Ten of the 20 families (50%) may be categorized as having reported extensive harassment from authorities. These 10 include three families in which a civilian was killed, and seven families in which the family member killed was a republican paramilitary.

This type of analysis shows that the three different levels of harassment each involve a mixture of cases. The minimal/no harassment grouping, for instance, involves three paramilitary cases and four non-paramilitary cases. Similarly, the extensive harassment grouping involves three civilian and seven paramilitary cases.

This analysis shows mixed results. Some families in which a republican paramilitary family member was killed did report extensive harassment, but in other cases of a republican paramilitary being killed, families reported moderate or no/minimal harassment. Likewise, in cases where a civilian family member was killed, some families reported minimal or no harassment from authorities, while others alleged serious abuses, including assaults, death threats and repeated derogatory references about the family member killed.

This exercise supports the previous analysis conducted issue-by-issue, which found reports of various types of harassment/abuse were made in a diversity of cases (ie. paramilitary, non-paramilitary).

On a geographic basis, all of the Tyrone cases except one fall under the extensive harassment category. By contrast, cases in Belfast fell more evenly under all three categories. This suggests, at least within the cases in this project, a disproportionately high level of allegations in Tyrone compared to other areas. There were seven interviews conducted in Tyrone (five republican, two civilian). The families live in rural areas or small towns. One possibility is that harassment may be worse in certain rural areas, but more cases would be needed to make a firm conclusion.

CHAPTER VIII

CONCLUSION

Clearly, the interviews carried out for this project have turned up an abundance of allegations. In fact, several families noted that they suspect there were more incidents of harassment that the family member later killed (as well as other family members) never disclosed out of concern that the family, especially the parents, would become alarmed and fearful. The reports that were made are of a serious nature and raise disturbing concerns. They affected paramilitary suspects as well as civilians and other family members. They were made in urban and rural areas. Many of the reports point towards the holding of sectarian attitudes among police and soldiers in Northern Ireland.

These allegations raise broader concerns.

- Three of the allegations - death threats, aiming guns at family members and their homes, and that harassment intensified before a family member was killed - raise concerns about whether there is a shoot-to-kill practice or policy in some cases.
- Three other allegations - wake/funeral harassment, references to killings and that harassment increased after killings - provide substantial evidence of a practice or policy in which families are targeted for harassment after a family member is killed, regardless of circumstances.
- All of the allegations reported by families in connection with this project raise disturbing concerns. This is particularly so because of their widespread nature - in paramilitary and civilian cases, rural and urban.
- These reports overall point toward the need for independent investigations and monitoring of authorities wherever possible, especially for families where a family member has been killed by police or soldiers. Strict policies with disciplinary provisions and new statutes to address common allegations raised in this report are needed urgently.

Appendix A

Questionnaire on harassment related to the use of lethal force by members of the security forces in Northern Ireland

VICTIM

1. Was the victim harassed in any way by members of the security forces before his death?
2. If so, when did the harassment begin and what was the nature of the abuse? Did it intensify prior to the shooting?
3. Was the victim harassed during travel, either on foot or in car?
4. Was the victim ever stopped and searched? How often and how was he treated?
5. Was the victim ever arrested and detained? How often and what took place during these incidents?
6. Was your home searched by security force members? How often and what was the conduct of the authorities involved?
7. Was the victim ever physically assaulted by police or soldiers?
8. Did they ever make death threats on his life? Please describe.
9. Was there any verbal abuse?
10. Did authorities ever take his photo? If so, why?
11. Did the victim ever register any complaints about harassment with anyone? (RUC, solicitor, minister or parish priest, CAJ, etc.)
12. Did the level of harassment change after the complaint was made?
13. Did he ever require medical treatment as a result of abuse?
14. Was there any incidents of harassment/abuse that shed light on the subsequent killing?

FAMILY

1. Were other family members harassed in any way by members of the security forces before the death? Please describe.
2. Did harassment change/increase after the killing? Please describe.
3. Was your home searched immediately after the killing? How did the authorities behave? Did they inform the family that a family member had been killed?
4. What was police/army conduct like during the wake/funeral period? Were family members or other mourners harassed? Was the police/army presence intrusive at your home or at the funeral?
5. Did any family members register complaints over harassment?
6. Did the level of harassment change after complaints were registered?
7. Is there verbal abuse, such as references to the killing?
8. Did police or soldiers ever disclose any circumstances about the killing to any family member?
9. Are family members targeted for repeated stops and searches?
10. Have there been house searches since the killing?
11. Has any family member been arrested and detained? Any charges?
12. Has there been any physical abuse or death threats made against family members?
13. Are there any witnesses to incidents of harassment/abuse?

Appendix B

Incidents causing deaths referred to in this project

- On November 11, 1982, **Gervaise McKerr** (31), **Eugene Toman** (21), and **Sean Burns** (21) were shot dead at a road check outside Lurgan; no guns were found in the car. This incident was one of three investigated by John Stalker, deputy Chief Constable of Manchester. The inquest into the deaths has still not been completed.
- On December 12, 1982, two men, **Seamus Grew** (31) and **Roderick Carroll** (22) were shot dead after a high speed car chase in Armagh. No weapons were found either in the car or at the scene. This incident was also investigated by John Stalker amid allegations of a shoot-to-kill policy by the RUC.
- On 8th November 1983, **Adrian Carroll** was shot dead by a lone loyalist gunman. 4 UDR members were convicted of his murder. However, claims of a miscarriage of justice grew and a second appeal in 1992 resulted in the release of 3 of the 4 James Hegan, Winston Allen and Noel Bell. Neil Latimer remains in jail still claiming his innocence.
- On August 12, 1984 at an internment rally in Andersonstown, West Belfast, **Sean Downes** was killed by a plastic bullet fired at point blank range. The RUC man who fired the bullet was subsequently cleared of manslaughter. Downes widow received £25,000 compensation in October 1989. Because there had been a prosecution the coroner decided that there should be no inquest.
- Allegations of ambush and summary execution followed the killing of 8 IRA operatives, on May 8, 1987, as they attacked the RUC barracks at Loughgall, Co. Tyrone. The eight IRA operatives were **James Lynagh, Patrick Kelly, Patrick McKearney, Declan Arthur, Sean Donnelly, Anthony Gormley, Eugene Kelly, Gerald O'Callaghan**. A civilian, **Anthony Hughes** was also killed in the ambush. Hughes' widow received an out of court settlement in 1991.
- On February 21, 1988, **Aidan McAnespie** was killed by a British Army bullet while crossing the border into N Ireland at Aughnacloy, Co. Tyrone. McAnespie had been repeatedly threatened. Private Holden was charged with manslaughter. These charges were dropped and he was subsequently fined for negligence. An out of court settlement was reached in December 1991. In this particular instance the MoD accepted liability all along. The inquest was held in 1993.
- On 6th March 1988, 3 members on an IRA Active Service Unit were killed by SAS soldiers in Gibraltar. **Máiréad Farrell, Séan Savage** and **Daniel McCann**, all from Belfast, were shot dead in broad daylight. Initial official statements claimed that a bombing had been averted. However, while the IRA acknowledged that there was a bombing mission in train; the three were unarmed, and no bomb had been placed when they were killed. Claims of summary execution followed. The inquest finding of lawful killing is contested and has failed to shake off a general belief that the three were

murdered in cold blood. The families action before the European Commission of Human Rights has recently been declared admissible.

- On August 30, 1988 **Gerard Harte, Brian Mullin** and **Martin Harte** were shot in an SAS-style ambush at Drumnakilly near Omagh, Co Tyrone. The three men were claimed by the IRA. At the inquest in 1993, the jury were unable to confirm the official claim that the IRA operatives had fired first.
- On August 9, 1989, **Seamus Duffy** was killed by a plastic bullet in North Belfast. The RUC claimed he was involved in rioting. This was contradicted by the Duffy family. After an internal investigation supervised by the Independent Commission for Police Complaints, the DPP decided no prosecutions would be brought against any RUC members. The inquest was held in June 1990.
- On September 9, 1989 an UVF unit were escaping after committing a sectarian murder in N Belfast. A British army undercover unit rammed their motorcycle and shot the two men killing **Brian Robinson** and injuring David McCullough. Circumstances indicated that Robinson was finished off on the ground and that the undercover unit was in a position to catch the UVF unit prior to the sectarian murder. A **Panorama** programme in July 1990 produced new evidence which caused the DPP to re-open the case. In November 1991, the DPP informed Mrs Robinson that the decision not to prosecute any soldier in relation to the incident had been confirmed. The inquest took place in April 1992 when the jury concluded that Brian Robinson had been hit by several bullets, including two fired from fairly close range as he lay on the ground, unarmed and injured.
- On January 13, 1990 **John McNeill, Eddie Hale** and **Peter Thompson**, who were robbing a betting shop, were shot dead by British army undercover operatives in West Belfast. McNeill was shot while waiting in the getaway car. Replica weapons were found connected to the other 2. Eye-witnesses heard no warnings and saw Hale and Thompson being finished off on the ground after they ran out of the betting shop. The DPP directed in December 1990 that there should be no prosecutions. In July 1991 however, a **BBC Panorama** programme produced new evidence. Because of this, the DPP requested the RUC to carry out further investigations into the incident. However, the decision to bring no prosecution was confirmed. The inquest was opened in 1993, but adjourned pending a legal challenge by the government to the coroner's decision that the soldiers involved should not be screened while giving evidence.
- On September 30, 1990, two teenage joy-riders, **Karen Reilly** and **Martin Peake**, were killed by a British Army patrol in west Belfast. A third teenager, Markiewicz Gorman was injured. NIO allegations that their car had crashed a road-block were contradicted by eye-witnesses, including Markiewicz Gorman, who claimed a hail of shots was fired at the car as it was slowing down, and that there was no road-block. 6 paratroopers were charged in August 1991 in connection with the incident, one for murder, three for manslaughter, and all 6 for conspiring to pervert the course of justice. Private Lee Clegg was convicted of murder and Private Barry Aindow of manslaughter in the summer of 1993.
- On December 30, 1990 British marines opened fire on a car in disputed circumstances in Cullyhanna, Co Armagh. The army claimed that the car broke through a checkpoint. Eye-witnesses claimed the soldiers opened fire without provocation. **Fergal Caraher** was killed and his brother Michael was seriously injured. An independent inquiry was

organised by the local community in June 1991. Two marines were charged with murder in January 1992, and the trial took place in November/December 1993. Judgement was reserved at the time of printing.

- On June 3, 1991, **Lawrence McNally, Michael Ryan** and **Tony Doris** were killed by uniformed undercover soldiers who fired a large number of shots at their car as it drove through Coagh, Co. Tyrone. The three men were acknowledged by the IRA to have been on active service. Two rifles were found in the car. The car burst into flames and the bodies of the men were burned beyond recognition. The families of the men claimed that the incident was evidence of a shoot-to-kill policy.
- On September 29, 1991, **Kevin McGovern**, a 19 year old student, was shot dead by the RUC in Cookstown Co. Tyrone. First official reports claimed that the shooting had taken place after McGovern had "appeared to throw something at the police". The RUC themselves retracted that statement later the next day saying that the shooting had been a mistake and acknowledging that McGovern had been an uninvolved and innocent victim. CAJ asked the Chief Constable to appoint an officer from an outside police force to investigate the killing, a call later echoed by others. This request was refused. However after an investigation, supervised by the Independent Commission for Police Complaints, Counstable Timothy Hanley was charged with murder. The trial is pending. The family carried out an independent autopsy which showed that Kevin McGovern had been shot in the back. The trial took place in December 1993.

Appendix C

United Nations Basic Principles On The Use Of Force By Law Enforcement Officials

(These Principles were adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba, on September 7, 1990. The United Nations General Assembly subsequently welcomed the Principles in its Resolution 45/121 of December 14, 1990 and invited all governments to be guided by them in the formulation of appropriate legislation and practice and to make efforts to ensure their implementation.)

General provisions

1. Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.
2. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.
3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.
4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.
5. Whenever the use of force and firearms is unavoidable, law enforcement officials shall:
 - (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
 - (b) Minimize damage and injury, and respect and preserve human life;
 - (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
 - (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

6. Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.

7. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.

8. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

Special Provisions

9. Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable to protect life..

10. In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.

11. Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

- (a) Specify the circumstances under which law enforcement officials are authorised to carry firearms and prescribe the types of firearms and ammunition permitted;
- (b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;
- (c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;
- (d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;
- (e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;
- (f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

Policing unlawful assemblies

12. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.

13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

14. In the dispersal of violent assemblies, law enforcement officials may use firearms but only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases except under the conditions stipulated in principle 9.

Policing persons in custody or detention

15. Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.

16. Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.

17. The preceding principles are without prejudice to the rights, duties and responsibilities of prison officials, as set out in the Standard Minimum Rules for the Treatment of prisoners, particularly rules 33, 34 and 54.

Qualifications, training and counselling

18. Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.

19. Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.

20. In the training of law enforcement officials, Government and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents.

21. Governments and law enforcement agencies shall make stress counselling available to law enforcement officials who are involved in situations where force and firearms are used.

Reporting and review procedures

22. Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11(f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a

detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.

23. Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependents accordingly.

24. Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting or have resorted, to the unlawful use of force and firearms, and they did not take all measures to prevent, suppress or report such use.

25. Governments and law enforcement agencies shall ensure that no criminal or disciplinary sanction is imposed on law enforcement officials who, in compliance with the Code of Conduct for law Enforcement Officials and these basic principles, refuse to carry out an order to use force and firearms, or who report such use by other officials.

26. Obedience to superior orders shall be no defence if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.

Appendix D

United Nations Principles On The Effective Prevention And Investigation Of Extra-legal, Arbitrary And Summary Execution

Annex to the United Nations Economic and Social Council resolution 1989/65 of 24 May 1989.

Prevention

Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions. Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority.

In order to prevent extra-legal, arbitrary and summary executions, Governments shall ensure strict control, including a clear chain of command over all officials responsible for the apprehension, arrest, detention, custody and imprisonment as well as those officials authorized by law to use force and firearms.

Governments shall prohibit orders from superior officers or public authorities authorizing or inciting other persons to carry out any such extra-legal, arbitrary or summary executions. All persons shall have the right and the duty to defy such orders. Training of law enforcement officials shall emphasize the above provisions.

Effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats.

No one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extra-legal, arbitrary or summary execution in that country.

Governments shall ensure that persons deprived of their liberty are held in officially recognized places of custody, and that accurate information on their custody and whereabouts, including transfers, is made promptly available to their relatives and lawyer or other persons of confidence.

Qualified inspectors, including medical personnel, or an equivalent independent authority, shall conduct inspections in places of custody on a regular basis, and be empowered to undertake unannounced inspections on their own initiative, with full guarantees of

independence in the exercise of this function. The inspectors shall have unrestricted access to all persons in such places of custody, as well as to all their records.

Governments shall make every effort to prevent extra-legal, arbitrary and summary executions through measures such as diplomatic intercession, improved access of complainants to intergovernmental and judicial bodies, and public denunciation. Intergovernmental mechanisms shall be used to investigate reports of any such executions and to take effective action against such practices. Governments, including those of countries where extra-legal, arbitrary and summary executions are reasonably suspected to occur, shall co-operate fully in international investigations on the subject.

Investigation

There shall be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any adequate autopsy, collection and analysis of all physical and documentary evidence, and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.

The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify. The same shall apply to any witness. To this end, they shall be entitled to issue summons to witnesses, including the officials allegedly involved, and to demand the production of evidence.

In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.

The body of the deceased person shall not be disposed of until an adequate autopsy is conducted by a physician, who shall, if possible, be an expert in forensic pathology. Those conducting the autopsy shall have the right of access to all investigative data, to the place where the body was discovered, and to the place where the death is thought to have occurred. If the body has been buried and it later appears that an investigation is required, the body shall be promptly and competently exhumed for an autopsy. If skeletal remains are discovered, they should be carefully exhumed and studied according to the systematic anthropological techniques.

The body of the deceased shall be available to those conducting the autopsy for a sufficient amount of time to enable a thorough investigation to be carried out. The autopsy shall, at a

minimum, attempt to establish the identity of the deceased and the cause and manner of death. The time and place of death shall also be determined to the extent possible. Detailed colour photographs of the deceased shall be included in the autopsy report in order to document and support the findings of the investigation. The autopsy report must describe any and all injuries to the deceased including any evidence of torture.

In order to ensure objective results, those conducting the autopsy must be able to function impartially and independently of any potentially implicated persons or organizations or entities.

Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in extra-legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations.

Families of the deceased and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence. The family of the deceased shall have the right to insist that a medical or other qualified representative be present at the autopsy. When the identity of a deceased person has been determined, a notification of death shall be posted, and the family or relatives of the deceased immediately informed. The body of the deceased shall be returned to them upon completion of the investigation.

A written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. The report shall also describe in detail specific events that were found to have occurred, and the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The Government shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it.

Legal proceedings

Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary and summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or co-operate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed.

Without prejudice to Principle 3 above, an order from a superior officer or a public authority may not be invoked as a justification for extra-legal, arbitrary or summary executions. Superiors, officers or other public officials may be held responsible for acts committed by officials under their hierarchical authority if they had a reasonable opportunity to prevent such acts. In no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, arbitrary or summary executions.

The families and dependents of victims of extra-legal, arbitrary and summary executions shall be entitled to fair and adequate compensation within a reasonable period of time.

List Of CAJ Publications

- No. 1 **The Administration of Justice in Northern Ireland:** the proceedings of a conference held in Belfast on June 13th, 1981 (no longer in print).
- No. 2 **Emergency Laws in Northern Ireland:** a conference report, 1982 (no longer in print)
- No. 3 **Complaints Against the Police in Northern Ireland,** 1982. (price £0.50).
- No. 4 **Procedures for handling complaints against the Police,**1983 (updated by pamphlet no. 16)
- No. 5 **Emergency Laws: suggestions for reform in Northern Ireland,** 1983 (photocopy available).
- No. 6 **Consultation between the police and the public,** 1985.
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- Monitors Civil Liberties issues
- Publishes a monthly bulletin JUST NEWS
- Provides information to the public
- Has published pamphlets on policing, prisons, emergency legislation, Bill of Rights etc.
- Campaigns for adequate safeguards to protect civil liberties
- Has published a comprehensive handbook on civil liberties in Northern Ireland

Civil Liberties are under attack. By joining CAJ you can help defend them.

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