

# Submission to the United Nations Special Rapporteur on Summary or Arbitrary Executions

## The Killing of Pearse Jordan

### 1 Introduction

Pearse Jordan was killed by an undercover unit of the Royal Ulster Constabulary<sup>1</sup> on 25 November, 1992. His killing is the latest in a series of incidents where the suspicion arises that the security forces in Northern Ireland have used force in a manner that has been disproportionate to the threat posed or the seriousness of the crime being committed, or has been otherwise arbitrary and uncontrolled.

Within Northern Ireland controversial killings carried out by the RUC and the British Army, and the subsequent investigations, have left many holding the view that the rigours of the criminal law do not apply to those who wear the uniform of the state. A number of the cases that have come to court have shown that it is difficult to obtain a conviction against a soldier or a police officer who has been charged with the murder of a civilian. Throughout the current phase of the Northern Ireland conflict, members of the security forces have been responsible for over 350 deaths. However, only 31 prosecutions have been brought against security force members, and only 4 convictions have been delivered. These figures have prompted many to argue that the reform of the law governing the use of force is long overdue.<sup>2</sup>

The same argument has been made persuasively by commentators at an international level. They have voiced their concern that British law on the use of force has established a "reasonableness" standard that fails to offer the individual the protection guaranteed by international law, which demands that "...law enforcement officials, in carrying out their duties, shall as far as possible, apply non-violent means and shall use force only when it is unavoidable..."<sup>3</sup> They have observed that the British Government has not acted to ensure that its law enforcement officials and military personnel respect international norms with regard to the protection of the right to life and the use of lethal force.<sup>4</sup>

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<sup>1</sup>The Royal Ulster Constabulary, [hereafter, the 'RUC'], is the police force operating in Northern Ireland.

<sup>2</sup>See generally on the shortcomings of the law on the use of force in Northern Ireland, The Committee on the Administration of Justice, Inquests and Disputed Killings in Northern Ireland, The Cullyhanna Justice Group Report, The Death of Fergal Caraher, (Dublin, 1992), Spjut, R., The 'Official' Use of Deadly Force Against Terrorist Suspects: Some Lessons From Northern Ireland, (Public Law, Spr. 1986, at pg. 46) Hadden T. in Annex E, Standing Advisory Commission on Human Rights, Report for 1992 - 1993, and Amnesty International United Kingdom: Human Rights Concerns, June 1991.

<sup>3</sup>UN Document E/CN.4/1993/46, at para. 58. The law governing the use of force in Northern Ireland is the Criminal Law (Northern Ireland) Act 1967, Section 3(1) of which states, "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 persons unlawfully at large".

<sup>4</sup>In a significant number of incidents the British Government appears to have paid a casual disregard to the protection guaranteed to the individual in articles 2 and 3 of the Universal Declaration of Human Rights, articles 6 and 26 of the International Covenant on Civil Political Rights, and more obviously, to the United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary, and Summary Executions. For a general comment on the nature of the British Government's failing see Bishop, J., The British Government and Summary Executions, (New York Law School Journal of International and Comparative Law 1990-91, at pg. 207), Asmal, K., (Chairperson), International Lawyers Inquiry into the Lethal Use of Force by the Security Forces in Northern Ireland, (Dublin, 1985).

Many of these concerns have surfaced again in the case of Pearse Jordan. This report has been compiled after discussion with Mr Jordan's family and solicitor and on the basis of information received by the Committee on the Administration of Justice<sup>5</sup> from eye-witnesses or compiled from press reports.

## **2 About Pearse Jordan**

At the time of his death, Pearse Jordan was a 21 year old single man from West Belfast, a predominantly catholic and nationalist area. He was a member of the proscribed paramilitary group, the Irish Republican Army (IRA).<sup>6</sup> His membership was admitted by that organisation, as is customary, shortly after his death. Mr Jordan's Republican connections were apparently known to the security forces, as can be judged by the attention that was devoted to him, and to his movements over a long period of time.

The parents of Mr Jordan, in an interview in June 1993, expressed their view that the security forces had indicated their intention to have their son killed. Mr Jordan had been threatened by the RUC and the Army frequently, and according to his mother, an incident occurred at a checkpoint some ten days before his death when a soldier photographed Mr Jordan before permitting him to pass through. Mrs Jordan reported that her son had informed her that the police and Army had taken photographs of him on two previous occasions.

## **3 The Incident**

Pearse Jordan was killed by officers of the RUC on the Falls Road in West Belfast. The circumstances surrounding the death have not so far attracted an official detailed comment from the RUC. Several witnesses have come forward, however, with statements which seem to indicate that the police officers involved in the incident which led to Jordan's death, were part of a pre-planned operation that was designed to ensure his apprehension, whether dead or alive.

### **3.1 The Statement of the RUC**

The only official police comment on the death of Pearse Jordan was delivered in a statement issued to the news media several hours after his death. This statement was released only after several misleading 'unofficial' briefings had been given to journalists. These will be considered in more detail below.

The official statement of the RUC described the incident baldly. It confirmed that an RUC unit had pursued a vehicle on the Falls Road, and brought it to a halt. Upon stopping the car, the officers involved fired several shots at the driver, fatally wounding him a short distance from where his car had been abandoned.

The statement went on to state that a deputy superintendent of the RUC, stationed outside the Belfast area, would be responsible for investigating the incident. In a later

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<sup>5</sup>The Committee on the Administration of Justice, [hereafter, the 'CAJ'].

<sup>6</sup> The IRA engages in the use of violence to seek a British withdrawal from Northern Ireland

statement, it was announced that the Independent Commission for Police Complaints<sup>7</sup> would supervise the RUC investigation. The Chief Constable of the RUC, Sir Hugh Annesley, stated that the involvement of the ICPC would ensure that the investigation would be conducted impartially.

### 3.2 What the Eyewitnesses Saw

Four civilian witnesses to the shooting of Pearse Jordan made statements to CAJ, and gave detailed accounts of what they saw on the evening of the 25 November, 1992. Upon the CAJ's advice, they later made statements to the RUC. The witnesses were initially hesitant about approaching the RUC because of fear of reprisals or harassment, as will be explained below.

If the statements of the eyewitnesses are correct, and there appears to be no reason to doubt their veracity, it would appear that the police officers involved in the killing of Pearse Jordan used force in a manner that was quite disproportionate to the threat posed, and that they should therefore be answerable to serious criminal charges.

Eyewitness statements were made to the CAJ within 24 hours of the incident by four men who were walking together along the Falls Road on the evening of the shooting. Each of the men described the incident in consistent terms. The four men were walking by the Andersonstown RUC station at approximately 5.00p.m. on the evening of the shooting when they saw two unmarked Ford Sierra police cars. All four witnesses had an unobstructed view of the unmarked police cars: the road was well lit by street lighting, the weather was fine, and the witnesses remarked that there was an unusually light flow of traffic on the road for that time of the evening. They further stated that the first vehicle was red and the second was dark blue/green. Each contained three uniformed officers.

One of the witnesses added in his statement that he had observed the same two cars on the road at about 4.30p.m. At that time the cars had slowed down as they came down the Falls Road, before accelerating away in the direction of Andersonstown RUC station. The cars went around the roundabout and back up the Falls Road in the direction of the station. The green car entered the station, while the red car turned into a side street beside the station before making a 'U' turn and driving back up and into the station.

As the four witnesses continued down the Falls Road they saw the two police cars parked at the road-side with headlights dimmed. The red car was parked ahead of the dark blue/green car. After walking for a further period of five minutes, and as they approached the front of St. John's church, each of the witnesses heard a crash from behind. They turned to see on the other side of the road, the red Sierra police car pulling alongside a red Orion car (Mr Jordan's car), and ramming it up on to the footpath. The red Sierra police car came to a halt in front of the red Orion, while the dark blue/green police car pulled in tight behind the red Orion hitting the rear. The effect of the police action was to sandwich the Orion car between the two police vehicles, thereby preventing its movement. Traffic travelling in both directions came to a halt.

The witnesses stopped walking when they saw the incident involving the three vehicles. From their standing position they had an unobstructed view of the stationary vehicles across the road. Moments later they saw Mr Jordan emerge from the driver's side of his Orion car and look to his right. He appeared shaken by the crashing of the cars. Mr

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<sup>7</sup>Independent Commission for Police Complaints, [hereafter, the 'ICPC'].

Jordan made one step towards the rear of the car before he realised that his path was blocked by the dark blue/green police car. Mr Jordan staggered across the road in the direction of the four witnesses followed by four of the police officers.

As Mr Jordan reached the white line in the centre of the road, some fifteen feet from his car, one of the officers who had been in the dark blue/green police car fired a number of shots. The distance between the officer and Mr Jordan was approximately twelve feet. All four witnesses stated that neither the officer who fired the gun, nor any of his colleagues issued a warning or shouted a challenge to Jordan before opening fire.

Some of the shots struck Mr Jordan. As he staggered towards the footpath holding his left arm, he turned towards the police chasing him. He had nothing in his hand, nor did he convey the impression that he was holding anything. According to the eye-witnesses, when the officers caught up with Mr Jordan, they verbally abused him, and pushed his face into the ground. He was then searched but it appeared to the witnesses that the police did not find anything.

At the same time the other two police officers searched the boot, engine and interior of Mr Jordan's car. After completing their search one of the officers returned to his colleagues, shrugging his shoulders and placing his hands in the air as if to indicate that nothing had been found.

The two officers who searched the car were then asked to leave by one of the four officers who had pursued Mr Jordan. The two got into the dark blue/green car, made a 'U' turn and drove off in the direction of Andersonstown RUC station. One of the remaining officers directed traffic while his three colleagues administered first aid to Mr Jordan who was lying on the ground.

Further police personnel were drafted into the vicinity, and they taped off the area in which the incident had taken place. Mr Jordan was taken to hospital by ambulance. All four of the witnesses followed the ambulance to the hospital and arrived some time afterwards. At the hospital, they allege they were subjected to hostile and threatening remarks from some members of the security forces. This made them frightened to make statements to the police.

### **3.3 The Other Police Accounts**

The 'official' police statement with regard to Pearse Jordan's killing has been outlined above. That was conveyed to the news media some three hours after the incident occurred. However, before that statement was released, various descriptions of the incident appeared in press and broadcast media apparently based on security sources. These were later found to be unsubstantiated or contradicted. Such use of misinformation by unofficial sources has been a common tactic in previous cases.

One of these 'unofficial' reports, which was later withdrawn, claimed that gloves, masks, guns and bombs had been found in Mr Jordan's car. Other reports suggested that a second man had been arrested at the scene, while others still, named another man as the victim of the shooting, and went on to give details of his previous arrests. Another report named Mr Jordan as a former Republican prisoner who had been charged in 1991 with possession of explosives. This suggestion was without foundation.

Other reports concentrated on the alleged immediate background to the shooting incident. One such report suggested that it was Mr Jordan who had rammed a police car, and that he had been shot while trying to run away from the scene. Another leak suggested that the police, fearful of a bomb run, employed a unit to intercept Mr Jordan's car, believing him to be the bomb run's decoy. The plan apparently went astray when Mr Jordan rammed the undercover unit's vehicle. This statement hinted at a link between the shooting, and a joint RUC/Army raid at a house only a half mile away, at Arizona Street. The report pointed out that a team was searching for bomb-making equipment, and suggested that the police had found a mercury tilt switch at a garage to the rear of the house, although no bomb had been found.

All of these accounts found their way to the media before the more measured and sober official police statement was made.

#### **4 The Police Inquiry**

The RUC concluded its inquiry into the circumstances surrounding the killing of Mr Pearse Jordan in May 1993. However, the Jordan family has not been provided with any indication as to the nature of the RUC's findings. The RUC has made no comment to the media beyond its initial statement on the evening of the death.

The ICPC wrote to the Jordan family on 3 June, 1993, to express its view that the RUC report of the 25 May 1993, concerning the conduct of its criminal investigation into the shooting incident, was satisfactory. A statement noting the ICPC's satisfaction with the investigation was also forwarded to the office of the Director of Public Prosecutions.<sup>8</sup>

Presumably, the DPP is continuing to study the RUC's report. However, given that the report was received in June 1993, the delay in making a decision as to whether the officers involved should be prosecuted, though typical, seems hardly justifiable. The delay in this case, as with other similarly sensitive cases in the past, has not been explained.

#### **5 The Post-Mortem Report**

A *post-mortem* was carried out on the remains of Pearse Jordan on 26 November, 1992 (the day following his death). Mr Lecky, the coroner, facilitated the presence of an independent doctor nominated by the family at the autopsy. The report stated that a bullet wound to the chest was the cause of death. The *post-mortem* revealed that Mr Jordan had been struck by two bullets in the back, and a third in the back of his left arm. The injuries sustained suggested to the pathologist that the bullets had been travelling at a low velocity, although he was unable to determine from the injuries the range from which the gun had been fired.

#### **6 What Next in the Jordan Case?**

Prosecution decisions are incumbent on the office of the DPP. At this point, almost one year after Mr Jordan's death, no charges have been forthcoming. It is difficult to

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<sup>8</sup>The Director of Public Prosecutions, [hereafter, the 'DPP'].

understand why the DPP has delayed making a decision in this case. It must be remembered, as was noted above, that the DPP has been in possession of the RUC file since June of this year. Unconfirmed media reports that circulated when the RUC passed its file to the DPP, indicated that a prosecution was not likely in this case. These reports are a cause of grave concern.

If there is no prosecution, then the next step will be a Coroners Inquest. However, given the restrictive nature of the law on inquests in Northern Ireland, the jury in any future hearing will find itself limited to a finding as to when, where and how the death of Pearse Jordan occurred. While the inquest jury might well be able to consider for example, the absence of a threat posed by Jordan to the police officers, the issue of whether the police officer who fired the fatal rounds issued a warning, or the link between the killing and the search for a bomb at Arizona Street, it will not be able to give a verdict as to whether the killing was lawful or unlawful. Furthermore, the RUC officer who caused the death will not be a compellable witness. The family will not have legal aid to pay for professional representation and they will not be able to see official documents such as eye-witness statements and forensic documents before the inquest.

If criminal proceedings are not brought, the option remains of seeking compensation for the death through the civil courts. A civil action against the Chief Constable of the RUC was filed in January 1993. The government's practice in these situations is to seek an out of court settlement with no admission of liability.

## **7 A Role for the Special Rapporteur**

Because of the concerns that surround the issue of the use of lethal force by the security forces in general and the specific issues arising from the death of Pearse Jordan, CAJ respectfully asks the Special Rapporteur on Summary or Arbitrary Executions to take an interest in this case. It has been indicated that the Special Rapporteur is particularly concerned in cases of extra judicial, summary or arbitrary execution, to ensure the application of principles 9 to 19 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, which demand "...a thorough, prompt and impartial investigation..."<sup>9</sup>

It is CAJ's conclusion that the United Kingdom authorities have failed fully to satisfy the above requirements in the Pearse Jordan case. CAJ understands that the Special Rapporteur has an interest to intervene when investigations undertaken by the national authorities have been unduly prolonged, or where there is evidence to suggest that they are not being pursued in good faith.<sup>10</sup>

CAJ asks the Special Rapporteur to involve himself in this case by seeking clarification on the following points from the United Kingdom Government:

1. Why was an RUC officer appointed to carry out the investigation despite an undertaking by the government in 1988 that officers from outside Northern Ireland would be brought in to carry out investigations after such incidents?
2. Why has there been a protracted delay in deciding whether to prosecute in this case?

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<sup>9</sup> UN Document E/CN.4/1993/46, at para. 64.

<sup>10</sup> UN Document Report E/CN.4/1993/46, at para. 25.

3. When will the Director of Public Prosecutions notify the Jordan family on the issue of whether he intends to proceed with a prosecution in this case?
4. If there is not to be a prosecution in this case, will the Director of Public Prosecutions make a full, detailed, public statement, explaining the reasons for his decision?
5. If there is not to be a prosecution in this case, when will a Coroners Inquest be held?
6. What were the terms of the briefing given to the RUC officers who rammed Pearse Jordan's car? In particular, were the police expecting someone else to be in the car?
7. Is it indeed the case that no warning was given?
8. Was any attempt made to arrest Mr Jordan?
9. Why were contradictory stories given to journalists immediately after the shooting?

## **8 Conclusion**

The killing of Pearse Jordan raises serious questions about the commitment of the United Kingdom Government to carrying out its international human rights obligations in relation to the use of lethal force by the security forces in Northern Ireland. The CAJ respectfully ask the Special Rapporteur to use his influence to secure the fair administration of justice in this case, even at this late stage.



# **Submission to the United Nations**

## **Special Rapporteur on Summary or Arbitrary Executions**

### **The killing of Gerard Maginn**

#### **1. Introduction**

Since 1969 the British Army and Royal Ulster Constabulary (hereafter, the RUC, the police force in Northern Ireland) have killed over 350 people in Northern Ireland. Over half of these deaths were non-involved civilians.<sup>11</sup> Since 1982 there have been 6 young persons shot dead and many others injured as a result of so called "joyriding".<sup>12</sup> The only successful prosecution arising out of such an incident took place in July 1993 and resulted in one soldier being convicted of murder and another convicted of attempted murder.<sup>13</sup>

This report has been compiled after discussions with Mr Maginn's family and solicitor and from information compiled from news reports and by CAJ's observer at the inquest into Mr Maginn's death.

#### **2 About Gerard Maginn**

At the time of his death, Gerard Maginn was 17 years old. Mr Maginn lived with his parents in the predominantly catholic and nationalist area of West Belfast. He was single and unemployed. It is clear that Maginn was not a known "joyrider" and appears to have acted out of character in joining two other youths in the stolen car.

#### **3 The Incident**

On the evening of 2nd September 1991 Mr Maginn got into a stolen car being driven by another youth John Brady. Along with Maginn a third youth Richard Scott also got into the car. During the course of the evening they drove to Lisburn, a town about 8 miles from Belfast, were pursued by police and subsequently the car was hit by nine police bullets two of which hit Maginn killing him.

The circumstances of Mr Gerard Maginn's death are still in dispute even after a coroners inquest. The fact that the RUC carried out the investigation into the actions of other RUC officers, the lack of any prosecution and information which emerged at the inquest have led the family to conclude that not only should their son not have been killed but that the state has failed in its duty to prevent similar tragedies from happening by prosecuting those involved.

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<sup>11</sup> Figures from Irish Information Partnership.

<sup>12</sup> In many underprivileged areas of Belfast youths turn to stealing cars and driving them at high speeds for thrills. Those who are persistently involved face paramilitary punishments especially knee-capping while there is also the risk that they will fall foul of army or police patrolling and operating checkpoints.

<sup>13</sup> For fuller discussion of issues surrounding the use of lethal force by members of the security forces in Northern Ireland, see page 1 of submission on The killing of Pearse Jordan.

### 3.1 Police Version of Events

The RUC accept that joyriding is a serious problem and that it is a major inconvenience and danger to other road users. They also point out that paramilitaries often take cars to use in acts of violence. The RUC states that sometimes it is difficult to differentiate.

On the night in question the RUC state that a number of their officers, after pursuing a car from Lisburn, opened fire on it. The officers alleged that they were under attack from its occupants who, the officers believed, had lured them into an ambush. As they approached the stationary car the officers heard loud bangs and returned fire.

### 3.2 The evidence of the survivors

Mr Brady admitted stealing a Vauxhall Cavalier in West Belfast on the afternoon of 2nd September 1991 and meeting Mr Scott and Mr Maginn some time later. He claims to have been surprised when Mr Maginn asked could he get in as he did not joyride. Mr Brady travelled along the motorway for some distance before realising he had gone too far and therefore left the motorway to go into Lisburn and back to Belfast. While driving through Lisburn he was pursued by an RUC car. After a high speed chase, the car stalled and came to a halt. The RUC officers got out of the car. Despite the fact that they shouted to the police that they were joy-riders, the RUC officers opened fire, killing Maginn. No warning was given.

## 4 The police investigation

The Chief Constable of the RUC, Sir Hugh Annesley announced the launch of an internal investigation with Detective Chief Superintendent Ruddle appointed as the senior investigator supervised by the Independent Commission for Police Complaints (ICPC). Sir Hugh Annesley claimed the presence of the ICPC would ensure an impartial and thorough RUC investigation. The ICPC member would have regular consultations with Detective Chief Superintendent Ruddle and would attend at all crucial civilian and police interviews.

Despite the Chief Constable's reassurances nationalist politicians voiced concern over the possibility of a police cover up: there was a distinct lack of trust in the RUC investigating its own officers.

While the Irish Government called for a full report from the British Government others called for an independent inquiry. The RUC decision not to suspend its own officers until the results of the internal inquiry were known angered those who believed that it was *prima facie* a case of excessive use of force.

In August 1992 the RUC's findings were submitted to the Director of Public Prosecutions (DPP). The ICPC issued a statement of satisfaction on the conduct of the police investigation on 20th August. The RUC reported that they had found insufficient evidence to prosecute the officers involved in the shooting, the DPP then directed that there should be no prosecutions.

## 5 The inquest

On 22nd June 1993 the inquest into the killing was opened by the Coroner for Belfast, Mr John Leckey. The role of the inquest in Northern Ireland has been radically curtailed by Government legislation in 1980 and extensive legal hearings since. The jury can no longer deliver a verdict nor add riders to its findings. Currently the sole function is to ascertain who died where and when, and how the death was caused. Thus the jury has been effectively precluded from making any comment on the actions of the security forces and in particular coming to a decision as to whether the death was lawful or unlawful.<sup>14</sup>

The inquest system suffers from a further fundamental flaw: the coroner cannot compel any person to attend who may have been responsible for the death. Hence in this case, the RUC officer who fired the bullets which killed Mr Maginn did not attend and merely had his written statement read to the jury without it being open to cross examination. The coroner pointed out to the jury that, because the officer did not attend, less weight should be attached to his statement. This state of affairs, however, means that the officer concerned has not had to give a public account of his actions and face questioning.<sup>15</sup>

Within its own restricted terms of reference the inquest was thorough lasting 5 days and hearing the evidence of 40 persons including the police, Maginn's co-passengers, experts and eye witnesses.

### 5.1 The evidence of police witnesses at the Inquest

The four officers maintained that they had observed a silver Vauxhall Cavalier and a white Ford Fiesta acting suspiciously in Lisburn town centre. They pursued the cars in two police vehicles and eventually found the Cavalier stationary at the Belsteel Road junction, on the outskirts of West Belfast, with its engine still running. One police car pulled in approximately 5 feet in front of the halted Vauxhall, and the other approximately 20 feet behind it. As the officers approached the car on foot, one of them shouted "police". The same officer grabbed the handle of the driver's door, but discovered the door was locked. He then smashed the driver's window with the butt of his revolver in an attempt to get the car keys. The driver of the Vauxhall revved the engine and reversed smashing into the police car parked behind it. Before the Vauxhall sped off, the officers believed they heard shots fired from it. The police believed they were under hostile fire because the area was known for IRA activity. They responded by firing at the Vauxhall without issuing a challenge to its occupants.

On cross-examination the police who interviewed Brady and Scott admitted that the possibility that the car had backfired had not formed an element in their investigation at that stage. Brady and Scott consistently denied that the car had backfired when this was put to them.

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<sup>14</sup> A recent example of how this affects the role of inquests occurred during the inquest into the death of Seamus McElwaine, an Irish Republican Army member killed by an elite undercover unit of the British army in April 1986. After the inquest which was held in April 1993, the jury was prevented from adding to their finding that the undercover army unit which shot McElwaine could have arrested him. This was struck out of their findings on the ground that it was opinion.

<sup>15</sup> Other problems with the inquest system relate to the lack of legal aid for families who wish to be represented at inquests, the long delays before an inquest takes place and the fact that families have no right of discovery of documents before the inquest in order to prepare for a hearing. For a full discussion of the inquest system in Northern Ireland see CAJ, Inquests and Disputed killings in Northern Ireland, which concludes that the system fails to meet the requirements of UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Execution.

## **5.2 Forensic evidence**

Forensic testimony revealed a total of thirteen shots were fired, all from a range within approximately twelve to twenty feet from the Vauxhall. Nine of the shots struck the Vauxhall and their trajectory indicated the officers had stood in a semi-circle while they were shooting. Forensic results, however, could not conclusively state whether the Vauxhall was stationary while the shooting occurred. The forensic expert did not submit any evidence concerning shots fired from within the Vauxhall. On cross-examination, the forensic expert stated no tests were conducted on the inside of the Vauxhall suggesting that, at the time tests were carried out, there had been no mention of shots fired from inside the car. Carbon tests, however, were performed on Maginn's clothing and the test results revealed the clothing did not contain any gunpowder residue. It is clear that none of the joy-riders were armed, nor were any shots fired from the car.

## **5.3 Independent eye-witness**

The RUC version of events was in sharp contrast to the evidence of a local resident, Patricia Hartley who observed the shooting from her bedroom window which overlooks the Belsteel junction. This witness' view was unobstructed: there was no other traffic and the junction was well lit by street lighting.

Despite some contradictions in her initial statement to the RUC while under cross-examination by lawyers acting for the RUC Mrs Hartley maintained she had observed the entire incident and never heard the officers shout a warning before they opened fire. Crucially she said she did not hear the car backfiring. She stated that there were three RUC officers holding handguns in a firing position, that she heard a succession of 10 or 11 shots spaced over approximately thirty seconds, that there had been no gunfire from the Cavalier and that the Cavalier was stationary until the shooting ended.

## **5.4 Brady/Scott evidence at the Inquest**

Both youths admitted they had been involved in joyriding. Neither had any connection with paramilitary organisations. Brady admitted stealing the car and later the other two youths got in.

During the Inquest it was evident that the RUC were not suggesting that any of those in the car were armed. Brady stated that he noticed an unmarked RUC car in Lisburn, recognising it as a police vehicle because of its tinted and bullet proof windows. Brady stated that he had lost control of the Cavalier at the Belsteel junction. The car stalled (i.e. its engine cut out), thus enabling the RUC cars to catch up with them. The RUC officers approached the car and one opened fire hitting Maginn in the back seat. This was followed by further shots, one of which hit Brady who then managed to start the car and drive off and abandon the car on the Glen Road, driving through a military checkpoint in the process. Both men stated there had been no warning, that they were unaware of the car back-firing and that the shots were fired while the car engine was not running. They denied any knowledge of a white Ford Fiesta which the police claim to have seen in Lisburn with the Cavalier.

## 5.5 Jury's finding

After hearing all the evidence, the jury deliberated for nearly three hours and delivered an unanimous finding. The jury found that the shooting incident began at 4am when the police observed the silver Vauxhall Cavalier and a white Ford Fiesta racing around Lisburn town centre. Police pursued the cars and a high speed chase ensued. At the outskirts of Belfast, the two police cars caught up with the Vauxhall which had stopped. The four police officers got out of their vehicles and surrounded the Vauxhall. One of the officers walked up to the driver's window and shouted a warning. Trying to open the driver's door, the same officer found the door locked. He then smashed the driver's window with the butt of his revolver in an attempt to grab the keys from the ignition. While smashing the window, the Vauxhall reversed. Believing themselves to be under threat, the officers opened fire on the moving car. They fired a total of 13 shots at the Vauxhall. Nine hit the car. One of the nine struck Mr Maginn in the head which later caused his death. After the gunfire, the Vauxhall raced off bursting through an army checkpoint further down the road. Thereafter the car was found abandoned on Glen Road by an army foot patrol and Maginn was discovered, dying, in the back seat.

The jury failed to make a finding on the police assertion that the Vauxhall backfired during the incident prompting them to fire at the car. The jury, however, did accept RUC evidence that the officers involved had been concerned for their personal safety and feared they had been drawn into a "terrorist" ambush when they had come upon the halted Vauxhall.

## 6 Conclusion

CAJ concludes that the **RUC should not investigate** killings by its own members. The supervisory function carried out by the ICPC does little to assure the family and wider public that the investigation will be properly independent. The ICPC has been extensively criticised for its lack of investigative powers and has asked for further powers. No further disciplinary action has been taken against any of the RUC officers involved. None were even suspended from duty.

A further concern is the **lack of prosecutions** against members of the security forces in cases where there is *prima facie* evidence that they have acted in bad faith, excessively or in shoot to kill or ambush situations. Only 33 prosecutions have taken place arising from over 350 deaths. 11 of these have happened in the last two years. It is CAJ's belief that a secret investigation and decision making process in these cases mitigates against public accountability and the requirements for a prompt, thorough and impartial investigation.

Clearly, not every killing by a policeman or soldier will be murder. However, section 3 of the Criminal Law Act 1967 allows police officers and soldiers to use **such force as is "reasonable in the circumstances"**, a formulation of words clearly out of step with international standards in this area. Furthermore, judicial interpretation makes a sustainable prosecution even more unlikely.<sup>16</sup>

It is unacceptable that, in the absence of a prosecution, the only public inquiry is the **inquest system which lacks any power** other than to state who died, where and how.

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<sup>16</sup> *R v Jones*, (1975) 2 NIJB. This case sets the leading interpretation in this area of law. It was referred by the Attorney General (A.G Reference No 1 of 1975) and was eventually heard by the House of Lords, the UK's Supreme Court. Commentators have found that the House of Lords in this judgement undermined the principle of proportionate force and the principle that force must relate to an immediate threat of violence.

These concerns give rise to a suspicion that the state's primary aim is to avoid prosecutions, to investigate in circumstances which lack public accountability and create circumstances for **members of the security forces to act with impunity.**

CAJ asks the Special Rapporteur to communicate the above concerns to the UK Government. In terms of the death of Mr Maginn, specific questions which arise are:

1. Why was an RUC officer appointed to carry out the investigation despite an undertaking by the government in 1988 that officers from an outside police force would be brought in to carry out investigations after such incidents?
2. Why did it take so long for the RUC to complete their investigation?
3. Why did it take so long for the DPP to come to a decision not to prosecute the officers involved?
4. Why did the police raise the question of the Cavalier back-firing at the inquest when it doesn't appear to have been a factor in the initial police investigation?
5. If the police feared that they were being lured into an ambush, why did one of the police officers feel safe enough to go up to the car and break the windscreen with his gun?
6. If the police officers claimed that they were under hostile fire, why were no forensic tests carried out to establish whether a weapon had been fired from the car?

CAJ respectfully asks the UN Special Rapporteur to take an interest in this case and approach the United Kingdom government on the points that this report has raised.

# **Submission to the Special Rapporteur on Summary or Arbitrary Executions:**

## **The Killing of Patrick Finucane**

### **1 Introduction**

On 12th February 1989, Belfast lawyer Patrick Finucane was killed by an illegal loyalist paramilitary group, the Ulster Freedom Fighters. No-one has been prosecuted in relation to his death. There is evidence of collusion in his killing by members of the British security forces. There is also evidence that death threats were made against him by police officers prior to his death. He was killed shortly after a government minister made remarks in Parliament disparaging some solicitors in Northern Ireland. The police investigation into his death and the inquest were both deficient.

This submission makes the case that Patrick Finucane's killing comes under the second category of summary or arbitrary executions defined by the Special Rapporteur: "The deprivation of life as a result of killings carried out by order of a Government or with its complicity, tolerance or acquiescence, without any judicial or legal process." In particular, his death falls within the mandate of the Special Rapporteur because it took place: "As a result of assault by individuals or paramilitary groups not under official control, but acting with official collusion or connivance."<sup>17</sup>

The death threats made against the victim also come under the Special Rapporteur's remit because they were allegedly made by: "Members of police, military or any other governmental or quasi-governmental forces."<sup>18</sup>

The murder of Patrick Finucane is significant beyond its immediate circumstances and consequences. He died as a result of intimidation of defence lawyers in Northern Ireland. Lawyers here continue to report that intimidation is still taking place, and that his murder is used to threaten other lawyers.

The Special Rapporteur is requested to communicate this submission to the United Kingdom government and to request further information about the death of Patrick Finucane, as set out below.

### **2 International Concern**

Many domestic and international non-governmental organisations have expressed concern about the murder of Patrick Finucane and the situation of defence lawyers in Northern Ireland. These concerns have been endorsed by the United Nations' Special Rapporteur on Judges and Lawyers, M. Louis Joinet, and by the UK-nominated member of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Dr. Claire Palley.

M. Louis Joinet<sup>19</sup> said of the situation in Northern Ireland: "Many sources agree that pressure is put on the lawyers of persons arrested in connection with the anti-terrorist

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<sup>17</sup> [Economic and Social Council resolution 1989/65]

<sup>18</sup> [UN Fact Sheet No. 11]

<sup>19</sup> At para. 110 of his report of 5.8.1992 to the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities,

campaign." He went on to recall the United Nations Basic Principles on the Role of Lawyers, in particular principle 16, which says: "Governments shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference" and principle 17, ".....where the security of lawyers is threatened.....they shall be adequately safeguarded by the authorities."

M. Joinet concluded: "In our view, these provisions are all the more necessary when lawyers as a result of discharging their functions are identified with their clients or their clients' causes. This practice, which is forbidden by the 'Lawyer Principles' (principle 18), makes lawyers vulnerable and seriously weakens the guarantees of protection, and hence the exercise of the rights of the defence."

At the same Sub-Commission meeting, the International Commission of Jurists said: "Most threats against defense lawyers are made by police officials and transmitted to the lawyers through their clients undergoing interrogation. In the reported cases, police officers make comments during interrogation sessions, suggesting that the particular lawyer's life is in danger."<sup>20</sup>

The Federation Internationale des Droits de l'Homme also highlighted the problem: "Detainees regularly report that police officers make threats against the lives of their lawyers, question their lawyers' professionalism and suggest that their lawyers are in the pay of or are members of terrorist groupings. Many of these alleged threats contain references to the murder in February 1989 of a Belfast solicitor, Mr Patrick Finucane, who represented many detainees accused of terrorist offences.....[we] believe that these practices comply with neither the letter nor the spirit of paragraphs 16, 17 and 18 of the United Nations Basic Principles on the Role of Lawyers...." <sup>21</sup>

At the Sub-Commission, Dr Claire Palley, the independent expert nominated by the United Kingdom said, according to the summary record of the proceedings : ".....The issuing of threats and abuse to their clients about lawyers appeared to be a police practice, and needed to be made a disciplinary offence.....Last, there was a need for an independent investigation into the death of Mr. Finucane, a defence lawyer who had been murdered following a statement made in Parliament by a junior minister to the effect that certain lawyers in Northern Ireland were not conducting themselves properly, particularly since a United Kingdom double agent for military intelligence had declared that his superiors had known that Mr. Finucane had been targeted."<sup>22</sup>

The American Lawyers Committee for Human Rights' commented: "Numerous detainees, solicitors, and journalists told the Lawyers Committee mission that the security forces in Northern Ireland violate basic international standards safeguarding the role of lawyers on a regular and ongoing basis. Credible evidence suggests that Patrick Finucane's murder was simply the most heinous instance of systematic harassment of defense lawyers simply for doing their job. Nor does any end appear in sight without significant reforms."<sup>23</sup>

They concluded: "The killing of Patrick Finucane in 1989 and the government's unwillingness or inability to prosecute those who are responsible continue to undermine the vitality and effectiveness of the legal profession."

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<sup>20</sup> ICJ, **Attacks On Justice: The Harrassment and Persecution of Judges and Lawyers** June 1991 - May 1992.

<sup>21</sup> E/CN.4/Sub.2/1992/NGO/11, paragraphs 8 and 15.

<sup>22</sup> E/CN.4/Sub.2/1992/SR.23 page 13.

<sup>23</sup> Human Rights And Legal Defense In Northern Ireland: The Intimidation of Defense Lawyers; The Murder of Patrick Finucane (February 1993), p 25.

"The Lawyers Committee found credible evidence that Finucane's effective legal advocacy in politically sensitive cases resulted in his harassment and ultimately led to his killing. We also found credible evidence suggesting collusion between elements within the security forces and loyalist paramilitaries in Finucane's murder."<sup>24</sup>

They went on to make the following recommendations:

- There should be an independent, judicial public inquiry into the murder of Patrick Finucane.
- The RUC should be required to make a public statement concerning the status of its investigation into the Finucane killing.
- The Government should reprimand Douglas Hogg for his reckless statements concerning solicitors 'unduly sympathetic' to paramilitary groups.
- The Law Society of Northern Ireland should issue a public statement calling for a public inquiry into the Finucane murder. The Bar Council of Northern Ireland should do the same.<sup>25</sup>

The Lawyers Committee presented their findings in an oral submission to the 49th session of the United Nations Commission on Human Rights in February 1993 as follows: "The Lawyers Committee mission also found that, in a number of respects, the UK government was failing to comply with the United Nations Basic Principles on the Role of Lawyers. In particular, through legislation, it has significantly limited the rights of detainees to obtain confidential legal advice. Furthermore, government officials and members of the police have failed to distinguish lawyers from the interests of their clients, and appear to have taken no action to ensure the protection of lawyers. Indeed, the reverse appears to be the case with emergency legislation all but ordaining police hostility."

In a report published in May 1993 entitled **Northern Ireland: Human Rights Abuses By All Sides**, US Helsinki Watch supported the recommendations of the Lawyers Committee on Human Rights.

In a report published in June 1993 of a three-day conference on human rights in Northern Ireland held in London in April 1992, Lois Whitman, the independent Commissioner assessing complaints concerning the right to a fair trial, observed: "Evidence was presented of the systematic intimidation of defence lawyers in Northern Ireland and it is my view that this intimidation has become institutionalised. Such intimidation is inimical to the right to a fair trial because it creates the risk that lawyers will allow fears for their personal safety to interfere with their duty fully to represent their clients' interests. It is of particular concern that there has been no prosecution in relation to the murder of Belfast solicitor, Patrick Finucane."

Lois Whitman went on to recommend: "11. The UK should make a clear and unequivocal statement condemning direct and indirect intimidation of defence lawyers. 12. There should be an immediate independent inquiry into threats made by RUC officers against defence lawyers in Northern Ireland and those responsible should be dismissed from the police and, where appropriate, criminal prosecutions should be brought. 13. There should be an immediate independent inquiry into the circumstances of Patrick Finucane's murder and particularly of any alleged collusion between the RUC and loyalist paramilitaries."<sup>26</sup>

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<sup>24</sup> Ibid p 2.

<sup>25</sup> Ibid p 9.

<sup>26</sup> *Broken Covenants*, Liberty, 1993.

### 3 Response Of The United Kingdom Government, Its Advisors, And The Police

The UK government has been slow to respond publicly to these expressions of concern, but in June 1993 the Secretary of State for Northern Ireland, Sir Patrick Mayhew, speaking in a debate on the renewal of the Northern Ireland (Emergency Provisions) Act 1991, said: "I shall not leave the subject of the holding centres without mentioning Lord Colville's comments on alleged intimidation of defence lawyers. I warmly endorse his conclusions. If such intimidation takes place - and without particulars I cannot know whether a single case is proved - it must cease immediately."<sup>27</sup>

He made no mention of the killing of Patrick Finucane.

Lord Colville is appointed by the government to monitor its emergency legislation. In his **Report On The Operation In 1992 Of The Northern Ireland (Emergency Provisions) Act 1991**, published in May 1993, he devoted considerable space to the issue of intimidation of defence lawyers. Commenting on the allegation that some police officers frequently make abusive remarks about detainees' solicitors, he said: "If one means of provoking replies or lowering morale is to assail the detainees with disagreeable suggestions or sarcasm about his solicitor, it is a device which should be discontinued. Not only may it run contrary to international law; it is repugnant to the opinions of any reasonable person. I am sure that the lawyers themselves share that view and that anxiety of this nature can only detract from their professional efficiency as well as their well-being."

He declined to make any comment on the murder of Patrick Finucane on the ground that it is *sub judice*.

Lord Colville went on to call upon those making such allegations to give their evidence to the RUC, the Northern Ireland police force who are the subject of the allegations. The Secretary of State repeated that call in the parliamentary debate. One of the NGOs who have such evidence has responded by suggesting that the RUC is not the appropriate body to investigate the matter, and has offered instead to co-operate fully with an independent judicial inquiry.

The Northern Ireland Office (NIO), part of the executive, wrote a detailed response to the draft report of the Lawyers Committee on Human Rights, which was reproduced at the end of their final report. On intimidation, they said: "The attitude of both the Government and the RUC to the sort of behaviour you allege.....is unequivocal. If such behaviour takes place, it is totally unacceptable."

The NIO went on to urge those with evidence to come forward. Of the murder of Patrick Finucane, they said: ".....The RUC's investigations into the murder are continuing: it would therefore be inappropriate for us to comment in detail on the case itself." However, they strongly attacked the basis of the Lawyers Committee's allegation that there may have been state collusion in the murder.

The police also replied to the report, and their letter is also reproduced by the Lawyers Committee. Deputy Chief Constable Michael McAtamney's response can be summed up in the following sentence: "The shortcomings of the draft report are such as to lead me to the conclusion that it does not merit detailed comment and in its present form is not capable of being constructively amended."

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<sup>27</sup> Hansard, 8.6.1993, col. 155.

The Standing Advisory Commission on Human Rights (SACHR), which is appointed by the government to advise the Secretary of State on human rights in Northern Ireland, has also considered the issue in its most recent annual report.<sup>28</sup> It has noted M. Joinet's report with concern, and also taken cognisance of Dr Claire Palley's remarks at the United Nations. While recognising the difficulties posed by confidentiality, the Commission calls upon those with evidence to present it to the Independent Commission for Police Complaints. SACHR concludes: "The Commission understands that this is a difficult and delicate issue and urges Government to take all reasonable steps to eliminate the circumstances which give rise to such allegations."

The report makes no mention of the murder of Patrick Finucane.

#### 4 The Killing

Patrick Finucane was murdered at around 7:25 pm on Sunday 12th February 1989 by two masked assassins who broke into his home and shot him in front of his wife, who was herself injured and their three children, aged 9, 13 and 17. At the inquest into his death, pathologist Dr Jack Crane said that Patrick Finucane was struck by 14 bullets to the head, neck and trunk. At least one of the bullets fired into Patrick Finucane's head was fired from a range of 15 inches.

The inquest took place on 6.9.1990. Forensic evidence showed that the victim had been hit at least 11 times by a 9mm Browning automatic pistol and twice by a .38 Special Revolver. Detective Superintendent Simpson of the Royal Ulster Constabulary (RUC), who was in charge of the investigation, gave evidence that the Browning pistol was one of 13 weapons stolen from Palace army barracks in August 1987 by a member of the Ulster Defence Regiment (a locally recruited regiment of the British army) who was subsequently jailed for the theft. These weapons found their way after the robbery into the hands of three members of the illegal Ulster Freedom Fighters (UFF) who were convicted of possession of the weapons and UFF membership, but the police were satisfied that they were not in possession of the pistol at the time of Patrick Finucane's murder.

The inquest heard evidence that the murderers used a red Ford Sierra car, registration number VIA 2985, which was hijacked from taxi driver William Reid by three men shortly before the murder. They told Reid that his car was needed "for the cause". They seemed nervous and prone to panic. One man drove the car away while the other two held Reid hostage. The car was found abandoned later that evening. DS Simpson told the inquest: "I believe that the persons who hijacked the taxi were not the same as the persons who shot Mr Finucane. Those persons displayed coolness and did not panic."

He further told the Coroner: "His murder was unusual both for its ferocity and the fact that he was struck by all 14 shots fired.....The murder was carried out with precision by persons who I believe must have murdered before."

Patrick Finucane's brother Martin alleged in a submission made to M. Louis Joinet that police roadblocks in place up to an hour before the murder in close proximity to Patrick Finucane's home were removed, thus affording the murderers unfettered access to and escape from the house. This allegation was repeated in the Dispatches television programme transmitted on 2.9.1991 [transcript, p. 13].

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<sup>28</sup> Published in July 1993.

There is no dispute that the UFF murdered Patrick Finucane: this illegal loyalist paramilitary group claimed responsibility for the assassination. The day after the murder, 13th February 1989, a man telephoned the press with the following statement: "The UFF claim responsibility for the execution of Pat Finucane, the PIRA [Provisional Irish Republican Army] Officer, not the solicitor. While Provos continue to execute Loyalists, and members of the security forces who share their lunch with them, then there will be the inevitable retaliation."

The question that remains is whether there was official collusion in his murder, and if so what form it took.

## **5 About Patrick Finucane**

Patrick (Pat) Finucane was 39 years old when he died. He was a Catholic who grew up in the nationalist Falls Road area of Belfast. Some of his brothers had republican connections, but he had none. His wife, Geraldine, is a Protestant. In 1979 he and Peter Madden formed Madden & Finucane, a public interest law firm which is now one of the leading practices acting in defence of those detained and/or charged under emergency laws in Northern Ireland. Patrick Finucane always acted for both Catholic and Protestant clients.

As a lawyer defending those accused under emergency legislation, Patrick Finucane was no stranger to confrontation with the police. During the 1980s, he became increasingly prominent as an inventive and effective solicitor who used all legal means available to defend his clients and to hold government agencies accountable for their actions.

In the immediate aftermath of his murder, loyalist sources alleged that Patrick Finucane had very close links with the IRA, and even that he was an IRA member.

John Stalker, an English policeman writing of his experiences of trying to investigate allegations of a shoot-to-kill policy in Northern Ireland in his book *Stalker* [1988], reported that in 1984 or 1985 an RUC sergeant said to him of a lawyer who must have been Patrick Finucane (identified by his client's name and case),  
"The solicitor is an IRA man - any man who represents IRA men is worse than an IRA man. His brother is an IRA man also and I have to say that I believe a senior policeman of your rank should not be seen speaking to the likes of either of them. My colleagues have asked me to tell you that you have embarrassed all of us in doing that. I will be reporting this conversation and what you have done to my superiors."

John Stalker professed himself surprised at the sergeant's "studied vehemence".

However, at the inquest, DS Simpson, the police officer investigating the killing, completely rejected the UFF's allegations, stating: "The police refute the claim that Mr Finucane was a member of the PIRA. He was just another law-abiding citizen going about his professional duties in a professional manner."

Geraldine Finucane was widely reported by the media as having said immediately after he was murdered that he would have defended those who killed him, such was his dedication and professionalism.

## 6 Prior Death Threats

Geraldine Finucane maintains that the RUC had been making death threats against her husband for some time before his death. She attempted to make a statement to that effect at his inquest, but was prevented from doing so by the Coroner. Her allegations were denied by the RUC Detective Superintendent giving evidence at the inquest.

In May 1987 a group of solicitors in Northern Ireland issued a public statement from the offices of the firm of Patrick Fahy & Co in Omagh alleging that their clients had reported regular abuse of the solicitors by members of the RUC, who had not acted upon complaints made to them by the solicitors concerned. Patrick Finucane's name appeared in the list of solicitors subscribing to this statement.

Amnesty International,<sup>29</sup> said that a client of Patrick Finucane's had "said that his lawyer, Patrick Finucane, would be killed" (p. 56) a year before the murder took place. That client was Brian Gillen, who suffered severe ill-treatment in RUC custody for which he later received compensation. Brian Gillen told the American Lawyers Committee for Human Rights that after Patrick Finucane filed a petition for habeas corpus on his behalf, police officers told him that, "It would be better if he [Patrick Finucane] were dead than defending the likes of you," and that they threatened to give details concerning the solicitor and his client to loyalist paramilitaries.<sup>30</sup>

According to the same report, Peter Madden told the Lawyers Committee that occasional threats had been made against his partner since the late 1970s. Geraldine Finucane said that after the Gillen case the incidence of threats escalated. Clients reported abuse of her husband by police officers during interrogations at holding centres such as Castlereagh. Several former clients of Patrick Finucane's told the Lawyers Committee about death threats made against him by police officers. He also received threatening telephone calls at his home.

On 5th January 1989, five weeks before his death, one of Patrick Finucane's clients alleged that an RUC officer: ".....informed me that my solicitor was working for the IRA, and would meet his end also.....He asked me to give Mr Finucane a message from him.....He told me to tell him he is a thug in a suit, a person trying to let on he is doing his job, and that he, like every other fenian [republican] bastard, would meet his end."

On 7th January, another client was told, "Fucking Finucane's getting took out [murdered]."<sup>31</sup>

## 7 Ministerial Intervention

Patrick Finucane's death came less than four weeks after Douglas Hogg MP, then Parliamentary Under-Secretary of State for the Home Department, said in a Committee stage debate on the Prevention of Terrorism (Temporary Provisions) Bill on 17.1.1989: "I have to state as a fact, but with great regret, that there are in Northern Ireland a number of solicitors who are unduly sympathetic to the cause of the IRA."

Although challenged, he failed to substantiate this allegation, although he repeated it several times in similar language, saying only: "...I state it on the basis of advice that I have received, guidance that I have been given by people who are dealing with these matters, and I shall not expand on it further."

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<sup>29</sup> In its report United Kingdom: Human Rights Concerns, June 1991.

<sup>30</sup> Human Rights And Legal Defense In Northern Ireland, p. 49.

<sup>31</sup> Source: instructions taken by Madden & Finucane, solicitors.

Speaking in reply, Seamus Mallon MP said: "I have no doubt that there are lawyers walking the streets or driving on the roads of the North of Ireland who have become targets for assassins' bullets as a result of the statement that has been made tonight.....Following [this] statement, people's lives are in grave danger."

Commenting on this episode, the American Lawyers Committee for Human Rights said: "Hogg's remarks caused a public outcry, especially from within Northern Ireland's legal community. Mrs Finucane told us that her husband was especially shocked. Not only could he not understand why a government minister would make so irresponsible a statement, he also began to take the threats against him as more than interrogation devices. After Finucane's murder, another outcry against Hogg arose that included calls for his resignation, but these went unheeded. Hogg has since moved on to another post. To date, neither he nor the government has issued an apology for his remarks save for feeble expressions of regret at Finucane's killing. Hogg also refused to meet with our delegation to discuss his remarks."<sup>32</sup>

## 8 Collusion

It is a matter of public record that substantial amounts of confidential intelligence information have regularly been leaked from security force sources to loyalist paramilitaries. On 14.9.1989, the Chief Constable of the RUC appointed John Stevens, Deputy Chief Constable of the Cambridgeshire police force, to investigate allegations of such leaks by the RUC and by the Ulster Defence Regiment. As a result of his inquiry, 59 people were charged or reported to the Director of Public Prosecutions, including Brian Nelson (see below). Remarkably, not one of the 59 was a police officer, even though much of the leaked information came from police files. The inquiry failed to identify anyone within the police or army who was providing the information, rather it focused on the recipients. A television programme in the World in Action series transmitted on 17.6.1991 alleged that confidential intelligence was still being leaked by the security forces on a large scale. Some instructions taken from clients of Madden & Finucane allege that RUC members referred to the "Inner Circle", an illegal committee said to operate within the RUC which is actively involved in collusion. For instance, on 3.4.1990 a client told his solicitor: "Today they have been talking about the Inner Circle. They mentioned the late Mr Finucane. They said they might as well get the road sweeps moving to get the scum off and the dirt off out of the road."<sup>33</sup>

Brian Nelson was a double agent working for British military intelligence who became the chief intelligence officer of the Ulster Defence Association, a loyalist paramilitary group involved in illegal activities, including murder, which has since been banned. Nelson was arrested in January 1990 as a result of the investigations of the Stevens Inquiry. At his trial, the British authorities claimed that he had got out of hand and had become personally involved in loyalist murder plots. Originally he faced 35 charges, but 13 of these, including two charges of murder, were dropped by the prosecution. He was eventually convicted on 5 charges of conspiracy to murder, for which he received the remarkably lenient sentence of 10 years' imprisonment.

So far as the murder of Patrick Finucane is concerned, allegations of Brian Nelson's involvement had surfaced at Patrick Finucane's inquest, when reference was made to an earlier report in the Independent newspaper of 28.5.1990. Although the Finucane murder was not one of the ones for which Brian Nelson was ultimately tried, further revelations

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<sup>32</sup> Op cit p.52.

<sup>33</sup> Source: Madden & Finucane dossier submitted to the United Nations Committee Against Torture on 13.11.1991, case 52.

were made about his life as a double agent on a Panorama TV programme transmitted on 8.6.1992. According to a diary written while in prison and quoted on the programme, Brian Nelson admitted to having targetted Patrick Finucane and another lawyer, Paddy McGrory. He alleged that two weeks before Patrick Finucane's murder a "UDA terrorist" asked him "what he could discover about Finucane's movements". Brian Nelson says that he told his British army handlers about this approach "at the time". If this is true, they took no action to prevent the murder. Nelson passed a photograph of Patrick Finucane to the UDA man on the Thursday before he was killed. The programme went on to allege, "According to loyalist sources Nelson himself pointed out Finucane's house to his killers." The transcript of the Panorama programme has been under consideration by the Director of Public Prosecutions since June 1992.

A controversial television programme transmitted on 2.9.1991 in Channel 4's Dispatches series, called The Committee, also claimed to shed light on Brian Nelson's role and on collusion in Patrick Finucane's murder. The programme alleged the existence of a Central Co-ordinating Committee, the function of which was to co-ordinate between loyalist paramilitaries and loyalist RUC members and to sanction and organise the assassination of alleged republicans. It went on to allege that the murder of Patrick Finucane had been suggested by "an army double agent" (Brian Nelson) and taken to the Committee by loyalist police officers. The RUC roundly deny the truth of any of these allegations. Channel 4 and Box Productions, who made the programme, were prosecuted under the Prevention of Terrorism Act for refusing to reveal the identity of their source, known as Source A, and then fined £75,000 for contempt of court when they failed to comply with a court order to identify him. Ben Hamilton, Box Productions' researcher, was arrested for perjury concerning the contents of his affidavit in the contempt case, but the prosecution was dropped when the Crown Prosecution Service decided there was insufficient evidence against him. The RUC has now succeeded in finding Source A by their own efforts and further criminal proceedings against the programme makers may be in contemplation. The RUC has displayed quite remarkable tenacity in their attempts to disprove these allegations, pursuing this matter with considerably more vigour than they appear to have applied to the investigation of Patrick Finucane's murder.

In their submission to M. Louis Joinet of March 1993, British Irish Rights Watch analysed instructions given by 333 of Madden & Finucane's clients detained under the emergency laws between March 1989 and September 1992. They reveal that some RUC officers are allegedly prepared to claim that they are willing and able to act in collusion with loyalist paramilitaries. The allegations include threats to give the detainee's name and address to loyalist paramilitaries, threats that the police themselves will arrange to have the detainee killed, threats that the police will tell the paramilitaries that s/he has turned informer, the taking of multiple photographs (many police photographs have ended up in the hands of paramilitaries), and so on. Such allegations occurred in 85 cases; in other words one in every four clients. These are some typical examples:

**Case 2:**

"In the morning interview they mentioned Pat Finucane being shot and said that he was high profile and the next thing I would be shot. I would be at my own funeral before the year was out.....I have received threats from the RUC when I was arrested and taken to Castlereagh.....I have been told by the police in Castlereagh they would get me stifed [killed] or pass my details on to the UVF to get me stifed. This has happened on a number of occasions.....they threatened to pass on information to the loyalists because I was an easy target. Photographs were taken on this occasion and I believe that the only reason I was arrested on this occasion was to get up-to-date photographs of me and to threaten to pass on information to the UVF."

**Case 13:**

"Six photographs have been taken of me, two with a polaroid, and four from an ordinary camera.....They did not ask my consent for these photographs or explain why they wanted them."

**Case 64:**

"He stated that I deserved to be dead and referred to Pat [Finucane] the Rat.....The main thrust of this conversation, both morning and afternoon, was that I should be dead but a bullet in the head was too good for me. He preferred if I'd get it in the stomach, died slowly and painfully. He said I'd be set up for sectarian assassination."

Some other firms of solicitors have reason to take these kinds of allegations seriously. There has been a marked upsurge in loyalist paramilitary violence in Northern Ireland over the past year. One solicitor, Barra McGrory, whose father Paddy McGrory was allegedly targeted by Brian Nelson, had two republican clients, Conor McGuire and Martin O'Prey, who were murdered in 1992. Both these clients had reported to their solicitor that death threats were made against them and him by police officers shortly before they were murdered by Loyalist paramilitaries.

## 9 The Police Investigation

According to evidence given at the inquest by DS Simpson, the police officer in charge of the murder investigation, fourteen people were interviewed by the police in connection with the murder. He testified: "We are reasonably certain that the main perpetrators of the murder were among these suspects but no evidence is presently available to sustain a charge of murder, but enquiries are ongoing.....None of these 14 persons I interviewed in connection with Mr Finucane's death had any connection with the security forces."

There are several aspects of the police investigation into this murder which are far from satisfactory. First, there is the role admitted by Brian Nelson. It would appear from the revelations in the Panorama programme that Brian Nelson was centrally involved in Patrick Finucane's murder, and that he claims that his army handlers knew all about his part in it. Yet the solicitor's killing was not one of the murders included in Nelson's trial. Why not? Moreover, why, now that the murder has been referred, among others, to the DPP, has no decision been taken concerning a prosecution more than a year after the programme was transmitted?

Secondly, neither Geraldine Finucane nor Peter Madden, nor any client of Madden & Finucane's, has ever been interviewed by the RUC concerning the death threats allegedly made against Patrick Finucane by police officers prior to his death. Nor were they interviewed by the Stevens Inquiry. Why not?

Thirdly, under questioning during the inquest by Counsel to the Finucane family, Seamus Treacy, DS Simpson said that he had referred the matter of death threats made against Patrick Finucane to the Stevens Inquiry. However, any conclusions the Stevens Inquiry may have come to concerning Patrick Finucane's murder have never been published. Why not? At Brian Nelson's trial, one of his army handlers, referred to as "Colonel J", said in his defence that Nelson had passed on to the intelligence services 217 names of people at risk from the UDA. Was Patrick Finucane's name among them? Furthermore, since the Stevens Inquiry apparently shed no light on the matter, why does the RUC not investigate allegations of collusion in the murder now?

In the absence of a police prosecution, the Coroner's Inquest is the only available public forum for investigating a murder. However, Geraldine Finucane's attempts to read out a statement at the inquest on her husband's death about the threats uttered against him by police officers were ruled irrelevant by the Coroner, John Leckey, who was constrained by the rigid rules on inquests in Northern Ireland, which do not allow the inquisition to extend beyond the identity of the deceased and how, when and where he died.

## **10 Continuing Reports Of Threats Against Defence Solicitors**

According to the clients of defence solicitors in Northern Ireland, RUC officers frequently refer to Patrick Finucane's death, even today, four years later. In a dossier of extracts from instructions taken from 268 clients during the period 1.3.1989 to 28.10.1991, presented to the United Nations Committee Against Torture on 13.11.1991 by Madden & Finucane, 238 disclosed evidence of threats and ill-treatment of people detained under the emergency laws. In 143 cases (60%), RUC officers had uttered threats and abuse against the detainees' solicitors. In 10% of these cases a direct death threat was allegedly made against the solicitor concerned, and in no fewer than 29% of cases mention was made of Patrick Finucane. Such instances are not concentrated in the months immediately following the murder, but recur fairly evenly throughout the sample.

Such references continue to occur. For example, on 21.5.1992, RUC officers reportedly told one client, "that [Philip] Breen will end up like Pat the Rat [Patrick Finucane] with four [bullets] in the face." On 3.6.1992, police officers said to another client, "Finucane, where is he now? Fuck, [Peter] Madden must be next." The rate of such abuse remains in excess of 60%. It should be noted that other forms of abuse that fall short of death threats, such as suggesting that a solicitor is an IRA member, are potentially life-threatening.

Although other firms of solicitors do not systematically record such instances, many other defence solicitors have confirmed that the level of abuse suffered by solicitors at Madden & Finucane is by no means unusual and that frequent reference is made to Patrick Finucane.

Occasionally, RUC members are reported by clients as being prepared to claim responsibility for Patrick Finucane's murder. In instructions dated 8.4.1991, Madden & Finucane recorded a client as saying: "They told me that Pat Finucane was in the IRA and that he was getting good results, that he was standing on the steps of the courts and telling everybody that he was getting good results, that he was a big man and that they decided to take him out. They said that it was a special hit squad who did this."

The instructions record that they went on to issue a death threat against Peter Madden's new partner, Kevin Winters.<sup>34</sup>

## **11 Conclusion**

It is over four years now since Patrick Finucane was killed. Despite the admission by Brian Nelson, a double agent employed by the UK government, that he played an active part in the assassination, and despite the questions his admission raises about official collusion in the murder, the authorities have made no appreciable progress in investigating his death. Key witnesses, such as his widow and his professional partner, have not been interviewed by either the police or the Stevens Inquiry concerning their allegations that Patrick

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<sup>34</sup> Source, Madden & Finucane dossier, case 156.

Finucane was repeatedly threatened by police officers prior to his death. Although the UK government is at last beginning to respond to constant reports from defence lawyers in Northern Ireland that they have been abused and threatened by some police officers, there has been a remarkable lack of comment on Patrick Finucane's murder. We agree with Dr Claire Palley that: "Suspicions of official collusion in Mr Finucane's murder must be put at rest."

CAJ requests the Special Rapporteur to ask the United Kingdom Government the following questions concerning the murder of Patrick Finucane:

1. What role did Brian Nelson play in the murder of Patrick Finucane?
2. What reports did Brian Nelson make to his army handlers concerning Patrick Finucane?
3. What steps did the British intelligence services take to prevent the murder of Patrick Finucane?
4. Apart from the involvement of Brian Nelson, what role, if any, did the British security services play in the murder?
5. What police roadblocks were in place within one mile of the Finucane residence on the day of his murder? When were they removed, and why?
6. What steps did the police take to investigate Mrs Finucane's allegations that her husband's clients had reported death threats issued against him by police officers prior to his death? Why have Mrs Finucane, Peter Madden, and Patrick Finucane's clients not been interviewed by police about these allegations?
7. What aspects of Patrick Finucane's murder were referred to the Stevens Inquiry?
8. What investigations did the Stevens Inquiry make with regard to Patrick Finucane?
9. What conclusions did the Stevens Inquiry reach concerning the murder of Patrick Finucane? Why were these never published?
10. What progress has been made in investigating the allegations made by Panorama in June 1992? Who is carrying out the investigation?
11. What was the basis for the remarks made in Parliament by Douglas Hogg? To which solicitors specifically was he referring? Does the Government still believe that his remarks were accurate; and if so on what evidence?
12. Will the UK government set up an independent judicial inquiry into the murder of Patrick Finucane and into allegations of ongoing intimidation of defence lawyers?

The Special Rapporteur is requested to communicate this submission to the UK government, to seek their comments on its contents and to seek answers to the specific questions listed above. He is further requested to ask what steps are being taken to safeguard defence lawyers and to investigate allegations of collusion between members of the security forces and loyalist paramilitaries.

Mr Bacre Waly Ndiaye  
Special Rapporteur on Summary or Arbitrary Executions  
United Nations Human Rights Centre  
8-14 Avenue de la Paix  
1211 Geneva  
Switzerland

28th October 1993

Dear Mr Ndiaye

The Committee on the Administration of Justice (CAJ) is an independent non-governmental organisation based in Belfast, Northern Ireland. Formed in 1981, CAJ is a civil liberties organisation working to secure the highest standards in the administration of justice in Northern Ireland. Made up of members from both sections of the community in Northern Ireland, the organisation is opposed to the use of political violence and takes no position on issues relating to the constitutional future of Northern Ireland.

CAJ, through its affiliation with the Fédération Internationale des Droits de l'Homme, has made submissions in the past two years to the UN Committee Against Torture, the Committee for the Elimination of Racial Discrimination, and both the Commission and the Sub-Commission on Human Rights. We recently sent some of our general publications to you in Senegal. I hope that you received them and found them of interest.

For some years CAJ has been concerned about issues arising from the use of lethal force by members of the security forces in Northern Ireland. Increasingly we have been approached by families of those killed by soldiers or members of the police force expressing their dissatisfaction with the way in which the authorities have dealt with the incidents during which their relatives were killed. It is CAJ's contention that the mechanisms in place in Northern Ireland to investigate such deaths fail to meet the requirements of UN Principles 9 to 19 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, which demand "...a thorough, prompt and impartial investigation...". (UN Document E/CN.4/1993/46, at para. 64.)

Accordingly, we enclose submissions looking at 3 cases and request that you seek clarification from the United Kingdom government on the questions listed at the end of each submission. The submissions relate to the deaths of **Mr Pearse Jordan**, **Mr Gerard Maginn** and **Mr Patrick Finucane**.

Mr Jordan and Mr Maginn were killed by police officers. Mr Finucane was killed by a paramilitary organisation, the Ulster Freedom Fighters, which seeks to maintain the constitutional link between Northern Ireland and Britain. Mr Finucane's case is included because of persistent suspicion, based on strong evidence, that the authorities were complicit in his killing.

With thanks for your attention in these matters. Please do not hesitate to contact me if you require any further information.

Yours sincerely,

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Michael Ritchie