

NORTHERN IRELAND

THE KILLING OF HUMAN RIGHTS DEFENDER ROSEMARY NELSON

Public anxiety about the credibility and impartiality of the RUC has reached new heights in the wake of the killing on 15 March of human rights defender and solicitor Rosemary Nelson. The RUC attempted to give credibility to its investigation of the murder by appointing senior British police officers to oversee it. But this supposed guarantee of transparency and independence has been met with widespread skepticism or outright rejection. Amnesty International continues to urge the government to establish a genuinely independent investigation into the killing of Rosemary Nelson, in which non-RUC officers would conduct the investigation and in which they would have the full cooperation of the RUC.

Rosemary Nelson was killed by a car bomb on 15 March 1999 in the town of Lurgan, near her home. The Red Hand Defenders, an armed Protestant Loyalist group, claimed responsibility.¹ The Red Hand Defenders are vehemently opposed to the Multi-Party Agreement of April 1998. The organization was declared illegal by the government only a few weeks before the killing.² No one to date has been arrested in connection with the murder. Questions are also being asked about reports of unusual RUC and army activity close to her home in Lurgan, Co Armagh, on the night before and into the morning of the bomb blast.

¹ Reports indicate that the previous bombs placed by the Red Hand Defenders were highly primitive and that the sophistication of this bomb indicated help from people previously connected to paramilitary organisations who are currently maintaining the ceasefire.

² The organization emerged last summer and has also claimed responsibility in the past for the killing of Brian Service, a Catholic, and Frankie O'Reilly, an RUC officer.

Rosemary Nelson gained prominence for her defence of individuals detained under emergency legislation and was a passionate advocate of the principle of the rule of law.³ She was recently involved in a number of high profile cases. She represented Colin Duffy on several occasions; on one, his murder conviction was quashed, and on another, charges against him were dropped. And she took steps to ensure that his safety was protected. She also represented the family of Robert Hamill. Robert Hamill was knocked unconscious after being attacked by a loyalist crowd in Portadown in 1997 during which he was kicked and punched. RUC officers positioned nearby reportedly failed to intervene during the attack. He never regained consciousness and died 11 days later of head injuries. The police failed to carry out a prompt, thorough and impartial investigation into the incident. Although six people were initially charged in connection with Robert Hamill's death, only one person was tried; he was convicted last month of affray and given a four-year sentence. No officers have so far been disciplined for failing to intervene in the attack.

For several years now, Rosemary Nelson has represented residents of the predominantly Catholic Garvaghy Road neighbourhood in Portadown during disputes about the Protestant Orange Order's insistence on being able to march from Drumcree Church down the Garvaghy Road on *12 July each year*. Two years ago, Rosemary Nelson alleged that she had been ill-treated and verbally abused by RUC officers as she tried to protect the residents' rights. Most recently, she had been extremely concerned that the nationalist population of Portadown, including some of her own clients, was being subjected to systematic intimidation and violence since the march was re-routed away from this neighbourhood last summer, and that the police was failing in its duty to protect people from intimidation. In fact, one of her last acts as a human rights defender was her attempt to publicize her concern in a lengthy interview with the *Irish News*, which appeared on the day of her killing. In the interview she stated: "The rule of law doesn't seem to apply in Portadown." In the interview she described "a story of Catholic families reluctant to enter the town centre, of almost nightly loyalist protests targeting nationalist areas and of a growing demand for the authorities to take action".⁴

In recent years Rosemary Nelson has been the subject of a campaign of intimidation, harassment and threats by members of the police (the Royal Ulster Constabulary, RUC) and the army (the Royal Irish Regiment).⁵ She also complained about comments made by officers to her clients which had sexual innuendos. She was also accused of being a bomber in anonymous leaflets and she received anonymous death threats. Amnesty International believes this was the result of her work as a lawyer and human rights defender.

³ Rosemary Nelson was married to Paul Nelson and had three children, aged 13, 11 and 8.

⁴ *Irish News*, 16 March 1999.

⁵ Rosemary Nelson first informed NGOs about the campaign of intimidation in 1996.

In September 1998 Rosemary Nelson gave the following statement to a US Congress hearing on Northern Ireland:

“.. I have begun to experience difficulties with the RUC. These have involved RUC officers questioning my professional integrity, making allegations that I am a member of a paramilitary group and, at their most serious, making threats against my personal safety, including death threats. This behaviour has worsened during the last two years and particularly since I began to represent the residents of the Garvaghy Road ...

Since then, my clients have reported an increasing number of incidents when I have been abused by RUC officers, including several death threats against myself and members of my family. I have also received threatening telephone calls and letters. ...

I believe that one of the reasons that RUC officers have been able to indulge in such systematic abuse against me is that the conditions under which they interview clients detained under emergency laws allow them to operate without sufficient scrutiny ... Another reason why RUC officers abuse me in this way is because they are unable to distinguish me as a professional lawyer from the alleged crimes and cause of my clients....

I believe that my role as a lawyer in defending the rights of my clients is vital. The test of a new society in Northern Ireland will be the extent to which it can recognise and respect that role and enable me to discharge it without improper interference.”⁶

The killing of Rosemary Nelson has once again brought to the fore serious issues which have been raised over the years by human rights organizations with the government and which have not been dealt with. She is the second human rights lawyer to have been killed in Northern Ireland; Patrick Finucane was shot dead by the Ulster Freedom Fighters in February 1989. It was reported then that the police had targeted Patrick Finucane, and that he was killed by loyalist paramilitaries in collusion with military and police intelligence officers. The killing of Patrick Finucane did not result in the authorities taking measures to ensure that lawyers could no longer be threatened or intimidated through their clients; that the hostility between the RUC and lawyers could be broken down; and that actions by lawyers to defend their clients would not lead to them being vilified or receiving death threats. Successive UK governments have repeatedly failed to take such measures, despite repeated requests for them to do so.

UN Investigation of Complaints

In the aftermath of the killing in 1989 of defence lawyer Patrick Finucane and persistent complaints by lawyers in Northern Ireland of harassment, intimidation and threats by members of security forces, the United Nations Special Rapporteur on the independence of

⁶ Testimony to the International Operations and Human Rights Subcommittee of the House International Relations Committee, 29 September 1998.

judges and lawyers conducted a fact-finding mission in late 1997. During the course of this mission he met with government officials, police and prison officials, representatives of non-governmental organizations, Bar Associations, Law Societies and lawyers. He also visited prisons in England and Northern Ireland and the centres in Northern Ireland where people arrested under emergency laws are detained. In a report which was published in April 1998, the Special Rapporteur concluded that “the RUC has engaged in activities which constitute intimidation, hindrance, harassment or improper interference” with lawyers. Among other things, the Special Rapporteur recommended that the authorities conduct an independent and impartial investigation of all threats to legal counsel in Northern Ireland. In addition, his report called on the government to initiate an independent judicial inquiry into the case of Patrick Finucane. It also recommended ensuring respect for the right of an arrested or detained person to immediate access to counsel and the right to have a lawyer present during police questioning, the restoration of the right to silence, and other additional measures. (See *United Kingdom: UN Report criticizes emergency law practices in Northern Ireland*, AI Index: EUR 45/06/98).

In April 1999, the Special Rapporteur submitted a further report to the UN Commission on Human Rights. In it he followed up on his concerns of the previous year. He stated that the “RUC showed complete indifference to the allegations” made about harassment of lawyers and stated that the Chief Constable’s failure to engage in dialogue with the lawyers affected “allowed the situation to deteriorate”. He also reiterated his call for an independent inquiry into the killing of Patrick Finucane.

Regrettably, to date, most of the Special Rapporteur’s recommendations have not been implemented. Moreover, as a result of his investigation, the Special Rapporteur had been particularly concerned about the threats against Rosemary Nelson. Indeed, in August 1997, the Special Rapporteur had issued an urgent action to the government specifically to ensure her security. Amnesty International believes that if the government and police authorities had responded wholeheartedly and positively to the recommendations, and taken prompt action, the killing of Rosemary Nelson might have been averted.

RUC Investigation of Complaints

In September 1997 the Independent Commission for Police Complaints (ICPC) began the supervision of an RUC investigation into Rosemary Nelson’s complaints of police intimidation and harassment. Formal complaints had been made on 10 April 1997, 18 July 1997 and September 1997, either by her or on her behalf. Once the investigation began, Rosemary Nelson, the Lawyers Alliance for Justice and the Committee on the Administration of Justice forwarded other witness statements. In July 1998, Niall Mulverhill, a Commander from the Metropolitan Police in London, took over the investigation from the RUC after the ICPC raised serious concerns about the initial investigation conducted by the RUC. He completed it in February 1999 and the report is now with the Director of Public Prosecutions.

The report of the ICPC concerning the RUC investigation was made public on

22 March. It stated that the ICPC officer supervising the investigation, GERALYN McNALLY, had found the "behaviour and attitudes displayed by police officers in the course of interviews was such as to be seriously damaging to the credibility of the investigation itself". The barrister supervising the investigation also listed a catalogue of concerning incidents that occurred during the investigation, including:

- * observable general hostility, evasiveness and disinterest on the part of the police officers involved in this investigation;
- * in the report of the investigation drafted by the Chief Inspector he makes a number of assertions which constitute judgements on the moral character of Mrs Nelson and others;
- * another senior officer ... coupled the quality of the evidence given by Mrs Nelson, a solicitor and officers of the court in good professional standing, with that of her clients, whose reliability was deemed by him to be questionable. The evidence given by Mrs Nelson was seen as being "no better" than that given by her clients;
- * the Chief Inspector cited the volume and timing of correspondence received from various international groups on behalf of Mrs Nelson as giving rise to what he claimed was the reasonable suspicion that the complaints were more to do with generating propaganda against the RUC than establishing the truth.

Some of these concerns echo those of the Special Rapporteur, in particular concerning senior RUC officers being unable to distinguish between lawyers and the views and causes of their clients. The comments by the Chief Constable about GERALYN McNALLY's "subjective feelings ... sincerely felt" had the effect of undermining her professional integrity⁷.

Yet this same supervisor has been involved in the investigation of over 100 cases, with no complaints ever being made about the professionalism of her work. Niall Mulverhill, the Metropolitan police investigator into the complaints by Rosemary Nelson against the RUC, in an unprecedented manner, published an interim report not of findings into the complaints by Rosemary Nelson, but of his review of the original RUC investigation. Although he was not present at the original meetings, he was still able to find: "It is my view that a breakdown of communication, coupled with a series of unrelated administrative and organisational problems, combined to create an 'air of concern' which was wholly at odds with and disproportionate to the actual situation. Whilst acknowledging that the various complaint investigations might not have been conducted in a truly outstanding fashion they were adequate." Amnesty International is concerned that this report by Commander Mulverhill would appear to have been given greater credence by the RUC and some members of the Police Authority than the report of the ICPC investigating officer.

Commander Mulverhill's report also indicates that not all potential witnesses cooperated with either inquiry; indeed he stated that people making some of the most serious allegations had still refused to come forward to his inquiry. Amnesty International is concerned that neither inquiry had sufficient public confidence as to their credibility and

⁷ *Irish Times* of 16 April reported the Chief Constable stating: "Well I am certain that is what the independent supervisor felt, and these are subjective feelings as expressed, and I have no doubt that they were very sincerely felt".

impartiality for these inquiries to have gathered all the relevant facts. There is additional concern that the current investigation into Rosemary Nelson's killing also does not have the necessary credibility for potential witnesses to come forward.

Investigation into Rosemary Nelson's Killing

On 16 March the RUC Chief Constable invited Kent Chief Constable Sir David Phillips to oversee the police investigation into the killing of Rosemary Nelson. In addition, the Chief Constable asked the FBI to provide expertise assistance to the investigation, in particular in the field of forensics. The Chief Constable stated that this was to ensure that the investigation was transparent, independent and had an international dimension. The RUC has also stated that no officer involved in any complaint by or on behalf of Rosemary Nelson is involved in the investigation.

Amnesty International and other NGOs⁸ expressed concerns in two meetings with the Secretary of State for Northern Ireland, on 16 and 23 March, that these measures were insufficient, since the actual investigation was being carried out by RUC officers. These concerns were echoed by the recently established Northern Ireland Human Rights Commission which said that it would be in the best interests of the RUC itself, given the circumstances of this case, that non-RUC officers should be involved in the actual investigation work.

Two weeks later, the Chief Constable announced that Deputy Chief Constable of Norfolk Constabulary, Colin Port,⁹ was to oversee the day-to-day investigation. Under terms of reference -- of 6 April -- for the investigation, Colin Port was given a very wide remit, including: to direct, control and supervise all aspects of the investigation into the murder; to be able to address any issue arising out of his investigation and related to the murder; to have unlimited access to all intelligence and RUC files; and to choose the composition of the investigative team. As of 15 April, Colin Port was overseeing the work of 40 RUC officers and 12 non-RUC officers, including several from the FBI.

Amnesty International remains concerned that the investigation into the killing of Rosemary Nelson is not genuinely independent in that it continues to involve RUC officers centrally in the conduct of the investigation.

Failure to provide protection

⁸ Amnesty International had joint meetings, and wrote joint statements, with British Irish Rights Watch, the Committee on the Administration of Justice, Human Rights Watch, and the Lawyers Committee.

⁹ Colin Port was previously the Investigations Coordinator with both the International Criminal Tribunal for the former Yugoslavia and the Rwanda tribunal.

It is to be hoped that Colin Port will interpret the remit of the investigation to include the issue of clarifying why action was not taken to protect the security of Rosemary Nelson. Thus the investigation would have to examine the complaints made against the RUC; the knowledge that the police had of death threats against Rosemary; the knowledge that the government had of death threats against Rosemary; the reported requests for her protection; and the action taken by the government and RUC.

On the one hand, the Special Rapporteur and NGOs had made special appeals on behalf of Rosemary Nelson, on the other hand the Chief Constable has said: "I'm not certain if Mrs Nelson ever made representations directly. Certainly, I think, towards the end of last year, I'm not exactly sure when, others would have raised concerns about Mrs Nelson's safety... What would have happened in those circumstances is that an intelligence assessment would have been conducted at that time to determine whether protection was appropriate."¹⁰ The Secretary of State for Northern Ireland stated that Rosemary Nelson would have been entitled to low-grade protection but had not asked for it.¹¹ "The bottom line is that there was no specific indication in the case of Rosemary Nelson to demand it [protection]. It was low-grade at best."¹²

Secretary of State Mo Mowlam also expressed the difficulty of providing protection for people who do not have confidence in the RUC to protect them. However, the Special Rapporteur's recommendation in 1998 was that any lawyer who faced a threat to his/her physical integrity should be provided with the necessary protection. Amnesty International urges the government to establish an independent mechanism which would monitor all threats received by lawyers and human rights defenders, and which would provide truly effective measures to protect people under threat. Such measures would send a clear signal that defence lawyers play a critical role in the administration of justice and the rule of law in Northern Ireland.

Additional recommendations:

After the killing of Rosemary Nelson, the Special Rapporteur stated: "My concern is that this particular murder is going to be a further blow to the independence of defence lawyers in

¹⁰ Interview with Chief Constable, Good Morning Ulster (Radio), 16 March 1999.

¹¹ Residents of Garvaghy Road state that they asked Jonathan Powell, the Prime Minister's chief of staff, and officials from the Northern Ireland office to place Rosemary Nelson, as their lawyer, on the Key Persons' Protection Scheme. It was reported that the Secretary of State wrote to a representative of the residents group stating that anyone wishing to apply for entry to the scheme had to do so in person. Rosemary Nelson did not apply personally. But the residents dismiss this argument stating that while they asked for these measures, Rosemary Nelson had been sitting with them. As part of the protection, she might have been offered security devices in her home, and an under-car booby-trap warning kit.

¹² *Irish Times*, 17 March 1999.

Northern Ireland. It will put more fear in some of these lawyers who have taken, very courageously, unpopular cases.”¹³

The Special Rapporteur’s 1998 report made a number of important recommendations concerning the intimidation of lawyers, which the UK government has failed to implement to date. By so failing, the government wasted an important opportunity to address what Amnesty International has repeatedly highlighted as grave concerns regarding the ability of defence lawyers in Northern Ireland to carry out their professional duties without fear or intimidation.

Amnesty International urges the authorities to reconsider its response to the UN Special Rapporteur’s recommendations and to immediately implement them, including:

- a) an independent and impartial investigation of all threats to lawyers;
- b) where there is a threat to the physical integrity of a lawyer, authorities should provide necessary protection;

The Special Rapporteur also expressed particular concern that the RUC has identified solicitors with their clients’ causes and recommended:

- c) that the RUC should organize training seminars for police officers on the role of defence lawyers;
- d) lawyers should be present during police interrogations of suspects.

In addition to these recommendations, Amnesty International believes that the special interrogation centres, notably Castlereagh and Gough Barracks, should be closed down immediately. The conditions at these centres are conducive to creating an atmosphere of hostility by detectives toward defence lawyers. Moreover, it is during interrogation sessions at these centres that detectives have reportedly issued threats against lawyers through their clients.

The UN Special Rapporteur urged in particular that there should be an independent judicial inquiry into the allegations of official collusion in the killing of Patrick Finucane. Amnesty International urges the government to act immediately on this recommendation. The organization also urges the Law Society of Northern Ireland to publicly support the call for such an inquiry, and to act more effectively in defence of lawyers under threat.

Taking these steps will go some way forward in addressing the concerns raised over the years which culminated in the tragic loss of Rosemary Nelson to Northern Ireland and to the international human rights community. At the same time such steps must be taken within a broader context of transforming the systems of policing within Northern Ireland.

¹³ *Guardian*, 17 March 1999.