

**WRITTEN EVIDENCE OF JANE WINTER, DIRECTOR, BRITISH IRISH RIGHTS WATCH TO THE HOUSE COMMITTEE ON FOREIGN AFFAIRS, SUBCOMMITTEE ON INTERNATIONAL ORGANIZATIONS, HUMAN RIGHTS AND OVERSIGHT**

**22 OCTOBER 2009**

British Irish RIGHTS WATCH (BIRW) is an independent non-governmental organisation that has been monitoring the human rights dimension of the conflict, and the peace process, in Northern Ireland since 1990. Our vision is of a Northern Ireland in which respect for human rights is integral to all its institutions and experienced by all who live there. Our mission is to secure respect for human rights in Northern Ireland and to disseminate the human rights lessons learned from the Northern Ireland conflict in order to promote peace, reconciliation and the prevention of conflict. BIRW's services are available, free of charge, to anyone whose human rights have been violated because of the conflict, regardless of religious, political or community affiliations. BIRW take no position on the eventual constitutional outcome of the conflict.

In 2007 BIRW won the Beacon Award for Northern Ireland. In 2008 we were awarded the *Irish World* Damien Gaffney Award, and in 2009 we became the first-ever recipients of the new Parliamentary Assembly of the Council of Europe's Human Rights Prize.

BIRW has been studying collusion in Northern Ireland ever since our inception in 1990, when the first case we examined was that of Patrick Finucane. Indeed, until very recently it was the NGOs such as ours, Amnesty International Human Rights First, Human Rights Watch and in Northern Ireland the Committee on the Administration of Justice, The Pat Finucane Centre, and Relatives for Justice, who have systematically researched and exposed collusion.

Collusion is a very difficult thing to measure because of its illegal and clandestine nature. No-one knows its true extent, but all the work done on collusion throws up patterns of collusive behaviour which suggest that it has become systemic. It is significant that the Consultative Group on the Past, set up by the government to look at how Northern Ireland can deal with its very troubled legacy and move forward into a better future, cited collusion as an issue that must be examined<sup>1</sup>. BIRW's research suggests that it is much more widespread than has yet been acknowledged, and that we can see only the tip of the iceberg.

At first, successive governments denied that collusion existed, but today it is widely accepted that collusion has taken place, partly thanks to the groundbreaking report issued by Baroness Nuala O'Loan following her investigation into the death of Raymond McCord Jnr and to the work done by Lord Stevens in the Finucane case.

There are currently three inquiries taking place in Northern Ireland into cases of alleged collusion.

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<sup>1</sup> *Report of the Consultative Group on the Past, 2009*

Rosemary Nelson was a lawyer who died in a loyalist car bombing in 1999. She was a busy high street lawyer who had a few contentious cases. When she took on those cases, she started to receive death threats in the form of letters, telephone calls, and messages delivered to her by police officers and soldiers, who told her clients that she would be killed. Rosemary testified about these threats before Congress just six months before she was murdered. Her death was shocking both for its brutality and for the fact that it happened after the Good Friday Agreement, of which she was a strong supporter. No-one has been convicted for her murder. It is known that some of the suspects were police informers.

Billy Wright was the leader of the dissident loyalist group, the Loyalist Volunteer Force. He was shot inside the Maze prison in December 1997 by republican prisoners who had been housed in the same prison block and had been able to smuggle weapons into the prison. A closed circuit camera that might have spotted the killers coming over the prison roof was out of action, and the prison guard in the watchtower overlooking the roof had been called away from his post at the precise moment of the attack. During the inquiry it has emerged that Billy Wright's prison records have been destroyed, and that prison staff had warned of the likelihood of just such an attack on Billy Wright, accurately predicting the method used and the names of the perpetrators. It has also emerged that Billy Wright was under surveillance while he was in prison. The perpetrators have been convicted, but the question remains as to whether the murder could have been prevented.

Robert Hamill was a young Catholic man who was attacked in 1997 by a crowd of loyalists on his way home from a dance, simply because he was a Catholic. He never regained consciousness and died some days later of head injuries. The police put out statements saying that there had been a fight between republican and loyalist factions and that police officers had been injured. None of this was true. In fact there were four armed officers in a landrover at the scene, which had lulled Robert Hamill into a false sense of security. Witnesses have told the inquiry that the officers did not come to Robert Hamill's aid until after he was attacked. It has also emerged that a police officer advised one of the suspects on how to dispose of the clothing he was wearing at the time of the attack. No-one has been convicted of his murder.

These are landmark cases. Rosemary Nelson died because she was doing her job. Billy Wright died in a predictable and probably preventable attack. Robert Hamill was not only failed by the police but was the victim of sectarian attitudes within the police which some have described as institutionalised. In Patrick Finucane's case there is compelling evidence that the police, the army and the intelligence service colluded in his death, yet the United Kingdom government continues to deny his family the independent inquiry the case demands.

What concerns BIRW is that, as Nuala O'Loan's and Lord Stevens' work has shown, these were not exceptional cases, they have simply become emblematic of collusion which has permeated policing, and in particular the intelligence services, in Northern Ireland.

BIRW has studied cases involving collusion from the early 1970s to the present day. Collusion has been honed as a weapon in the counter-terrorism armoury. It has become mainstreamed.

The ordinary meaning of the word "collusion" is a conspiracy for improper purposes. In the context of Northern Ireland, the term has come to embrace a number of illegal activities on the part of members of the security forces (the police, the army and the intelligence services) and policies or practices on the part of the state. These include:

- conspiring with paramilitaries to carry out assassinations;
- taking part in such assassinations;
- collecting information on those targeted by paramilitaries and passing it over to paramilitaries;
- passing legitimately collected official information to paramilitaries for illegitimate purposes;
- failing to prevent paramilitary assassinations;
- providing weapons to paramilitaries;
- assisting in the commission of such killings, for example, by lifting road blocks;
- failing to investigate such killings rigorously;
- failing to prosecute those responsible for such killings;
- failing to prosecute or otherwise discipline those members of the security forces involved in collusion;
- using Public Interest Immunity Certificates and claims at trials and inquests to withhold information concerning alleged collusion;
- refusing to make public the findings of the limited number of official investigations into collusion;
- allowing members of the security forces to carry out illegal acts, whether in conspiracy with paramilitaries or not, with impunity and hindering official investigation of those acts.

Many of these activities, policies and practices have been described and criticised by international human rights groups<sup>2</sup> and domestic NGOs over a period of many years.

A key feature of collusion has been the suppression of reports into contentious deaths in Northern Ireland, most notably the reports of the Stalker/Sampson Inquiry and the three reports produced by Lord Stevens.

The extraordinary saga of the Stalker Inquiry displayed many features of

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<sup>2</sup> See, for example, successive editions of *United Kingdom Human Rights Concerns*, Amnesty International; *Human Rights and Legal Defense in Northern Ireland: The Intimidation of Defense Lawyers, the Murder of Patrick Finucane*, Lawyers Committee for Human Rights, New York, February 1993; *Political Killings in Northern Ireland*, 1994, Amnesty International; *At the Crossroads: Human Rights and the Northern Ireland Peace Process, Ending the Emergency, Judges and Lawyers*, Lawyers Committee for Human Rights, New York, December 1996; *To Serve Without Favour: Policing, Human Rights, and Accountability in Northern Ireland*, 1997, Human Rights Watch/Helsinki, New York; *Criminal Justice And Human Rights In Northern Ireland and the Republic of Ireland*, 1999, Association of the Bar of New York, New York; and *Beyond Collusion: The UK Security Forces and the Murder of Patrick Finucane*, Lawyers Committee for Human Rights, New York, February 2002

apparent collusion. In 1982, six men were killed by a special RUC unit within a period of 7 weeks. These killings led to allegations of a shoot-to-kill policy, especially after it emerged at the trial<sup>3</sup> of three RUC officers charged with the murder of one of the victims that they had been instructed by their superiors to withhold information concerning the planning of the operation from detectives investigating the killings. John Stalker, a senior English police officer, was called in to investigate all six deaths. He was removed from the inquiry after his professional integrity as a police officer was called into question, only to be reinstated subsequently with no stain on his character<sup>4</sup>. Stalker was replaced by another senior policeman, Colin Sampson. The Stalker/Sampson report was never published. In 1988, Sir Patrick Mayhew, then the Attorney-General<sup>5</sup>, announced that, although their report disclosed evidence of a conspiracy on the part of certain police officers to pervert the course of justice, he had decided that it would not be proper to institute any criminal proceedings "in the public interest". In September 1994, the Coroner abandoned all attempts to hold an inquest on the six deceased because the government refused to disclose the contents of the report. The Coroner wanted to call members of the Stalker team as witnesses, and issued a subpoena for a copy of the inquiry report so that they could refresh their memories. The Secretary of State, Sir Patrick Mayhew, signed a Public Interest Immunity Certificate protecting the report from disclosure and the High Court upheld the certificate and granted an application by the Chief Constable to have the subpoena set aside. Very recently, the Coroner has taken steps to re-open the inquests on the six men, following a ruling by the European Court of Human Rights<sup>6</sup> that there had been no effective investigation into their deaths. He has again ordered disclosure of the Stalker/Sampson report, and this time the police have agreed that he may have access to it at a secure location in London. However, it will not be published.

Lord Stevens has conducted three investigations in to collusion in Northern Ireland over the period 1989 to 2003. During Stevens One the Stevens team took written statements from 1,900 witnesses, followed 2,000 lines of investigation and spent 2,000 hours interviewing people in custody. They recovered 2,600 documents, most of which originated from the security forces<sup>7</sup>. In May 1990 a summary of his report was published, which confirmed that collusion had occurred. At paragraph 27 of the summary report, he said: "It is clear that official information, originally produced by the Royal Ulster Constabulary, the Army and the Prison Service, has passed, illicitly, into the hands of the loyalist paramilitary groups. Documents and information from documents, have been traced to the possession of these paramilitaries. They have been used by them to enhance their own intelligence systems and as

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<sup>3</sup> R v Montgomery & Ors

<sup>4</sup> The business man, Kevin Taylor, who was used in the attempt to taint John Stalker spent many years trying to clear his own name. He eventually sued the police for malicious prosecution and was awarded damages of around £1 million.

<sup>5</sup> He later became Secretary of State for Northern Ireland

<sup>6</sup> Jordan et al v UK 2001

<sup>7</sup> *The RUC 1922 – 1997 A Force Under Fire*, by Chris Ryder, Mandarin, revised 1997, p. 387

an aid to the targeting of persons suspected of being Republican terrorists.” However, at paragraph 41 he concluded:

“... the detailed analysis of the Security Force documents recovered during the Enquiry and the evidence secured, makes it clear that the passing of information to paramilitaries by Security Force members has been restricted to a small number of individuals. It is neither widespread nor institutionalised.”

By the time he had completed Stevens Three, Lord Stevens had radically revised his opinion on this matter.

Not even a summary of Stevens’ second report has ever been published, despite the recommendation of the United Nations Special Rapporteur on Freedom of Expression and Opinion, Abid Hussain, that all Stevens’ reports should be made public<sup>8</sup>.

Stevens Three was instigated because of a confidential report, *Deadly Intelligence*, by BIRW, which had been intended to persuade the UK government to hold an independent, public inquiry into the murder of Patrick Finucane. Instead of doing so, the government called Stevens in for a third time. In April 2003, Lord Stevens published a summary report, just twenty pages in length. This was a much shorter version of the original document, which was over twice as long. For several years it was thought that a very much longer report existed, and that what was published summarised that full report, but now it is understood that, while a fuller version of the summary may have been delivered to the Chief Constable of the RUC (now the PSNI), there is no full report, merely a series of reports to the DPP and an enormous archive of corroborative evidence. Nevertheless, the Stevens Three summary report was the first unequivocal public admission by an establishment figure that collusion was a reality. Stevens said:

“My Enquiries have highlighted collusion, the wilful failure to keep records, the absence of accountability, the withholding of intelligence and evidence, and the extreme of agents being involved in murder. These serious acts and omissions have meant that people have been killed or seriously injured.”<sup>9</sup>

The first official reports on collusion to fully see the light of day were those by Judge Cory, who named his investigation the “Collusion Investigation”. Even so, the government redacted many names and passages and even whole pages of Judge Cory’s reports.

The least redacted of reports into collusion has been that published by Baroness O’Loan<sup>10</sup> in 2007 into the circumstances surrounding the death of Raymond McCord Jnr, which laid bare the mechanics of collusion between certain Special Branch police officers and loyalist paramilitaries. Her investigation led to a massive police investigation which has resulted in several arrests and charges of murder and is still in place.

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<sup>8</sup> *Visit to the United Kingdom of Great Britain and Northern Ireland*, E/CN.4/2000/63/Add.3, 11 February 2000

<sup>9</sup> *Stevens 3 Enquiry: Overview and Recommendations*, April 2003, paragraph 1.3

<sup>10</sup> *Statement by the Police Ombudsman for Northern Ireland on her investigation into the circumstances surrounding the death of Raymond McCord Junior and related matters*, January 2007

The intelligence services in Northern Ireland – army intelligence, the Special Branch of the police, and MI5 – have been heavily dependent upon recruiting informers among the paramilitary organisations, both republican and loyalist. Loyalists regarded themselves in many ways as being on the same side as the security forces<sup>11</sup> and the intelligence services, and collusion was widespread. Many leading loyalists were also prime intelligence sources for the security forces. In this sense, they were double agents. However, the duality of their role made them difficult to control from the point of view of the intelligence services, who also sought to infiltrate their own locally-recruited agents, like Brian Nelson<sup>12</sup>, into the paramilitary organisations. Republicans have not seen themselves as being on the same side as the intelligence services, so different methods have been used to recruit republican agents. Some have been blackmailed into working for the “other side”; some have been offered a deal, such as the dropping of charges or a lighter sentence for a terrorist offence; others have been bribed with large sums of money; and some have come from the ranks of the small number of Catholics who joined the army, who were asked to go and spy on their own community.

Most nations have some form of intelligence service, and there can be no doubt that intelligence is necessary to combat the many scourges that beset modern society, including terrorism, organised crime, people-trafficking, and the drugs trade. However, intelligence has only two legitimate aims: the prevention and the detection of crime. Most unfortunately, in Northern Ireland it has become apparent that the gathering of intelligence for its own sake has been prevalent throughout the conflict. The Northern Ireland population has been subjected to a very high level of sophisticated surveillance – even in these relatively peaceful times, the population of Northern Ireland is six times as likely to have their telephones tapped as people elsewhere in the UK<sup>13</sup>. Paramilitary groups have been deeply infiltrated. However, instead of using the information thus collected to prevent terrorist attacks or arrest perpetrators, the intelligence services have withheld information from detectives and others in order to protect sources. Many killings have gone ahead and/or remained unpunished as a result. Furthermore, the different intelligence services have treated each other with hostility and competed among themselves. This is not an intelligent approach to intelligence.

The theory behind this strategy was that by infiltrating paramilitary groups lives would be saved, and if they did kill anyone at least it would be other active paramilitaries. However, in reality it meant that government-paid agents had inevitably to engage in illegal activities and that paramilitary murders, bombings and other operations had to be allowed to go ahead in order to protect those agents’ cover. These interventions did not save lives, they cost the lives of many people.

Now that the existence of collusion is officially recognised, one would, perhaps, expect that it would be put under anxious scrutiny. However, partly but not wholly in response to the Finucane case, the government has

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<sup>11</sup> The army and the police

<sup>12</sup> Who played a significant role in the Finucane case

<sup>13</sup> *Hanging on the telephone*, by Richard Norton-Taylor, *Guardian*, 29 July 2008

deliberately changed the law so that those responsible for collusion will be more difficult to call to account. In 2005 they passed the Inquiries Act, which effectively abolished public inquiries by taking control of inquiries away from the independent judiciary and placing it in the hands of government Ministers. Under the Act, the Minister:

- decides whether there should be an inquiry
- sets its terms of reference
- can amend its terms of reference
- appoints its members
- can restrict public access to inquiries
- can prevent the publication of evidence placed before an inquiry
- can prevent the publication of the inquiry's report
- can suspend or terminate an inquiry, and
- can withhold the costs of any part of an inquiry which strays beyond the terms of reference set by the Minister.

Even the Consultative Group on the Past, whose report contains many positive proposals, recommends that an thematic inquiry on collusion should not take place in public. This passage from the report speaks for itself:

“But the Group does not see the outcome of the information recovery process or thematic examination as blaming or naming individuals. In the process of information recovery, the aim is to resolve unanswered questions. In thematic examination, the purpose is to look at overall accountability, not individual accountability; to identify areas where things went wrong and why they went wrong; to gain greater understanding; to encourage apology where appropriate; and to build a shared and reconciled future.”<sup>14</sup>

What the Group is proposing, when they speak of not naming or blaming, is an amnesty by any other name and impunity on a massive scale.

Collusion confers impunity on those in authority for acts of gross illegality, who think that there are no rules, and that gathering intelligence is an end in itself, rather than a means of preventing or detecting crimes such as terrorism. Ultimately, collusion erases the distinction between the forces of law and order and those who wish to impose their views by inflicting violence and terror on innocent people. Far from saving lives, collusion costs lives; encourages and in some cases coerces people to inform on one another; and deepens divisions in already-divided societies, retarding and even extinguishing any hope of progress towards peace. It is impossible to gauge the harm that collusion has done in Northern Ireland, other than to say that it is probably on a par with that inflicted by the physical violence that its people have endured over more than three decades.

Finally, BIRW is not the only NGO to have studied collusion. Groups such as Amnesty International, Human Rights First, Human Rights Watch, the Committee on the Administration of Justice, the Pat Finucane Centre, Relatives for Justice, Justice for the Forgotten and others all have done invaluable work. I am conscious that in this brief overview of collusion in Northern Ireland, I have barely scratched the surface of what is a widespread and complex issue.

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<sup>14</sup> Ibid, Chapter 7, paragraph 63

I thank the Subcommittee for your interest and respectfully request that you take the following steps:

1. Promote a resolution renewing Congress' call for an independent, judicial inquiry into the death of Patrick Finucane.
2. Promote a resolution calling for an independent, judicial inquiry into the death of Raymond McCord Jnr.
3. Write to the Chief Constable of Northern Ireland asking him what concrete measures have been taken to eradicate collusion by police officers.
4. Write to the British Prime Minister asking him what concrete steps he will take to bring the intelligence services under transparent scrutiny and to eradicate collusion.
5. Call on the British government to repeal the Inquiries Act 2005 and replace it with a human rights-compliant, effective means of investigating deaths.
6. Resolve to hold further hearings on collusion in Northern Ireland.