

## NORTHERN IRELAND

### Continued Abuses by all Sides

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Human Rights Watch/Helsinki is deeply troubled by continuing human rights abuses in Northern Ireland, abuses that are carried out by all sides in the conflict: security forces, republican paramilitaries, and loyalist paramilitaries.<sup>1</sup>

The abuses by paramilitary groups include killings and punishment shootings and beatings. Government abuses include the failure to ensure that police officers and soldiers are held accountable for the use of lethal force, unfair trials, ill-treatment in detention, street harassment, abandonment of normal policing,

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<sup>1</sup> Republican paramilitaries draw their support from the Catholic (nationalist) community and support the use of violence to gain independence from the United Kingdom. They include the Irish National Liberation Army (INLA). The group now known as the IRA, the most important of the republican paramilitaries, is actually the Provisional IRA, or "Provos", which broke away from the "Official IRA" in 1970. All of these groups are illegal; they were outlawed by the Northern Ireland (Emergency Provisions) Act of 1973.

Loyalist Paramilitaries draw their support from the Protestant (Unionist) community and support the use of political violence to maintain union with the United Kingdom. These groups are also illegal. They include the Ulster Defense Association (UDA), the Ulster Freedom Fighters (UFF) and the Ulster Volunteer Force (UVF).

violations of freedom of movement and expression and failure to transfer to Northern Ireland prisoners serving sentences in England and Wales.

## **EMERGENCY LAWS**

Emergency laws have been in effect in Northern Ireland for over seventy years—since 1922. The most recent of these laws, the Northern Ireland (Emergency Provisions) Act (EPA), and the Prevention of Terrorism (Temporary Provisions) Act (PTA), have been in effect since 1973 and 1974. They give security forces—the police (Royal Ulster Constabulary) and the British Army—broad powers to stop people on the street, to question and search them, to search their homes, to detain them for as long as seven days without charges, to seize and examine documents without a warrant, and to exclude people from Northern Ireland and from Great Britain. The right to a trial by jury has been suspended for a large number of offenses, the right to silence restricted, and the rules of evidence altered to permit confessions that, in some cases, appear to have been secured improperly.

Human Rights Watch/Helsinki again calls on the United Kingdom to repeal these emergency laws.

## **DEATHS CONNECTED WITH "THE TROUBLES"**

The death toll from "The Troubles" continues to rise; by the end of 1993, 3,114 people—more than half of them civilians—had lost their lives in connection with the twenty-four-year conflict. Of these, more than 350 were shot and killed by government security forces—the police or the army;<sup>2</sup> it is generally agreed that more than half of them had not been involved in paramilitary activity.<sup>3</sup>

In an encouraging development, no one was killed by police or soldiers in Northern Ireland in 1993, the first year that has happened since The Troubles began in 1969.

However, eighty-four people were killed by paramilitary groups in 1993. For the third year in a row, loyalists killed more people than republicans: loyalists claimed responsibility for 47 deaths and republicans for 37.

Members of the security forces continued to be among those killed. Fourteen of the 37 people killed by republican paramilitaries in 1993 were security force members—six police officers and eight soldiers.<sup>4</sup>

Human Rights Watch/Helsinki again calls on paramilitary organizations, both republican and loyalist, to order an end to the use of violence for political ends.

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<sup>2</sup> Committee on the Administration of Justice, *Adding Insult to Injury*, Belfast, February 1994, p. 3.

<sup>3</sup> Stephen Livingstone, *Fortnight*, February 1994, p. 10.

<sup>4</sup> Telephone conversation with Brian Kirk, director, British Information Service, New York City, February 14, 1994.

## INVESTIGATION OF THE USE OF LETHAL FORCE BY SECURITY FORCES AND PROSECUTION OF THOSE RESPONSIBLE FOR KILLINGS

The failure to prosecute soldiers or police responsible for past killings continued in 1993. On November 18, for example, the director of public prosecutions ordered that no prosecution take place in the November 1992 killing of Pearse Jordan. Eye-witness evidence suggested that police could have arrested rather than killed Pearse Jordan, an unarmed member of the IRA.

Prosecutions have not been brought in other cases of killings by security force members in disputed circumstances, including the killings of Brian Robinson in 1989, and of John McNeil, Edward Hale and Peter Thompson in 1990.

Although more than 350 people have been killed by security forces since 1969, there have been only thirty-three prosecutions; of those, one-third—eleven—took place in the past three years. Only four soldiers have been convicted:

\* A British soldier was convicted of manslaughter in the 1981 shooting death of Theresa Donaghy; he received a suspended sentence;

\* Private Ian Thain was convicted of the 1984 murder of Thomas Reilly in August 1989 and sentenced to life imprisonment. After serving two years and three months, Private Thain was released and allowed back into his regiment.

The last two soldiers' convictions took place in 1993:

\* Private Lee Clegg and Private Barry Aindow of the Paratroop Regiment were convicted of murder and attempted murder, respectively, for the shooting deaths of Joy-riders Karen Reilly and Martin Peake in September 1990.<sup>5</sup> The soldiers have appealed the decision and are awaiting a judgment.

In 1993 and early 1994 security force members were acquitted in two cases in which they had been charged with murder. On December 23, 1993, two British marines, Elkington and Callaghan, were cleared of murdering Fergal Caraher in December 1990 and of attempting to murder his brother Miceal during the same incident. Lord Justice Hutton ruled that there was a reasonable doubt that required the soldiers to be acquitted.

In the second case, R.U.C. Constable Timothy Hanley was acquitted in January 1994 of the 1991 murder of Kevin McGovern, an unarmed man. Mr. Justice Nicholson ruled that the constable had honestly believed that Mr. McGovern had been armed:

With hindsight, he [Hanley] may honestly have brought himself to believe that he saw Mr. McGovern's hands though I am sure that he was mistaken in any such belief. He assumed when he saw the face of Mr. McGovern that the body was in a position in which he was in

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<sup>5</sup> Committee on the Administration of Justice, *Just News*, December 1993, p. 1.

danger of being fired at and he reacted by firing. When he found that Kevin McGovern had no weapon he probably persuaded himself that he had seen him in a firing position and it was a short step to having a state of mind in which he believed that he had seen the man with a revolver or pistol in his hand.

The constable was reinstated immediately after the verdict.<sup>6</sup>

As we did in our first report on human rights in Northern Ireland,<sup>7</sup> Human Rights Watch/Helsinki again calls on the U.K. and the Northern Ireland Office (NIO) to control strictly the use of lethal force by security forces, to investigate promptly, independently and thoroughly each death caused by security forces and to prosecute those responsible, pursuant to the standards set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Article 2; the United Nations Code of Conduct for Law Enforcement Officials; and the United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

Human Rights Watch/Helsinki urges the U.K. to:

\* appoint an independent official to investigate killings by police and army in Northern Ireland, and to establish an independent public inquiry into allegations that security forces carry out a shoot-to-kill policy;

\* enact legislation and issue guidelines that strictly control the use of force in Northern Ireland. The standard for the use of lethal force by security forces should be "absolute necessity"; the force used should be in proportion to the actual danger; and

\* add to the Northern Ireland Criminal Code the offenses of "manslaughter" and "unreasonable or excessive use of force" for cases involving the use of lethal force by security forces.

### **COLLUSION BETWEEN SECURITY FORCES AND LOYALIST PARAMILITARIES**

The question of possible collusion between security forces and loyalist paramilitaries has yet to be answered satisfactorily. In a hard-hitting February 1994 report, *United Kingdom: Political Killings in Northern Ireland*, Amnesty International stated:

Allegations of collusion range from direct involvement of security force personnel in Loyalist "death squads", complicity by authorities in such killings, to aiding and abetting such actions through the passing on of intelligence information. ... Amnesty International considers that a wide-ranging investigation is needed into the human rights implications of covert intelligence operations as well as into the specific allegations that through both action and deliberate inaction state authorities have been complicit in Loyalist murder operations.

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<sup>6</sup> Quoted in CAJ *Just News*, February 1994.

<sup>7</sup> Helsinki Watch, *Human Rights in Northern Ireland*, October 1991.

Human Rights Watch/Helsinki urges the U.K. to establish promptly an independent public inquiry into allegations of collusion between security forces and loyalist paramilitaries.

### **CORONERS' INQUESTS**

Coroners' inquests, often the only way in which victims' families, the press and the public can obtain information on a killing by security forces, continue to pose problems. These include extensive delays, limited powers of jurors, ability of security forces to provide a written statement instead of testifying, and the lack of legal assistance to indigent families of victims.

Human Rights Watch/Helsinki again urges the U.K. to make the following changes in the Coroners' Laws and Rules for Northern Ireland:

In cases in which criminal charges may be brought against a suspect, the coroners' inquest should be adjourned for a specific period of time; if at the end of that time the Director of Public Prosecutions has not decided whether to prosecute, the inquest should be resumed.

Coroners' juries should have the power to reach a full verdict, such as "unlawful killing by unnamed persons."

Persons who are suspected of causing the death at issue should be compelled to testify in person, but should not be required to answer questions that might incriminate themselves.

Families of victims killed by security forces should be eligible for legal aid assistance so that they can be aided before and during the inquest by an attorney.

Families of victims and their representatives should have access to autopsy reports, documents, witnesses' statements and other evidence to be introduced at an inquest, and adequate time to prepare for the inquest after receiving this information.

### **PLASTIC BULLETS**

Plastic bullets continue to be used as a method of crowd control. These bullets have caused extensive physical injuries and deaths; on July 3, 1993, four people were injured by plastic bullets fired by security forces during riots following the funeral of a UVF member.<sup>8</sup> Human Rights Watch/Helsinki urges the U.K. to ban the use of plastic bullets in Northern Ireland.

### **ILL-TREATMENT IN DETENTION**

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<sup>8</sup> *Fortnight*, September 1993, p. 31.

Human Rights Watch/Helsinki continues to receive reports about physical and psychological ill-treatment of suspects in detention. Although there was a significant decrease in 1993 in the number of complaints we received about such ill-treatment, we are disturbed by a recent increase in the number of complaints.

Suspects in detention can still be held incommunicado and denied access to a lawyer for 48 hours. Moreover, suspects can be detained for up to seven days without being charged with a crime. The European Court of Human Rights ruled in 1988 that a detention that exceeded four days and six hours violated the European Convention on Human Rights' (ECHR's) provision that suspects be brought promptly before a court. The U.K. subsequently derogated from that provision of the ECHR.

The European Committee for the Prevention of Torture visited Northern Ireland in July 1993 and is preparing a report; Human Rights Watch/Helsinki urges the U.K. to release the report to the public when it is completed.

Human Rights Watch/Helsinki again urges the U.K. to provide detainees with immediate and regular access to attorneys, to permit attorneys to consult privately with detainees and sit in on their interrogations, and to permit the video- and audio-taping of interrogations. Abuse of detainees should be prevented; police found to abuse suspects should be appropriately disciplined. Helsinki Watch again urges the U.K. to repeal its derogation from Article 5(3) of the European Convention on Human Rights.

### **RIGHT TO A FAIR TRIAL**

Questions continue to be raised as to whether suspects in Northern Ireland accused of acts of political violence or related offenses receive fair trials. These questions concern the denial of a trial by jury in the Diplock Courts (special courts set up under the Emergency Provisions Act); restrictions on the right to remain silent; and changes to the standard of admissibility of confessions that permit the introduction of confessions that would not be allowed in other criminal cases.

Moreover, lawyers who represent defendants charged with acts of political violence continue to be harassed, threatened and intimidated. The 1989 murder of Pat Finucane, a lawyer who represented paramilitary defendants on both sides, has not been adequately investigated in spite of evidence suggesting the collusion of security forces (responsibility for his killing was claimed by the Ulster Freedom Fighters).

Human Rights Watch/Helsinki urges the U.K. to:

- \* gradually resume jury trials for "scheduled offenses" (offenses related to political violence and certain others) in Northern Ireland, and take steps to prevent the intimidation of witnesses and jurors;
- \* abolish the EPA standard for the admissibility of confessions;
- \* rescind the Criminal Evidence (NI) Order, which permits a court to draw adverse inferences from a suspect's refusal to answer questions asked by police during interrogation or at trial;

\* protect lawyers who represent defendants in political violence cases from interference, harassment or intimidation; and

\* establish an independent public inquiry into the 1989 murder of solicitor Pat Finucane.

### **HARASSMENT BY SECURITY FORCES**

Security forces, police and army, continue regularly to harass children and adults on the streets in troubled areas. Children under 18 as well as adults are often stopped on the street, hit, kicked, insulted and threatened by members of security forces. House raids by security forces continue to terrorize residents and cause considerable property damage. The U.S. Department of States's Country Report on the U.K. for 1993 highlighted the problems of street harassment and abusive house searches in Northern Ireland.

Human Rights Watch/Helsinki urges the U.K. to end random street stops and searches to ensure that all searches are conducted without degrading or harassing measures. We also urge the U.K. to order an end to routine street harassment of children and adults and to discipline appropriately any security force members found to have carried out such harassment.

### **FREEDOM OF MOVEMENT**

The Prevention of Terrorism Act gives the Secretary of State the authority to issue orders excluding from Northern Ireland, from Great Britain, or from all of the United Kingdom, people suspected of involvement in terrorism. Terrorism is defined as "the use of violence for political ends, and includes any use of violence for the purpose of putting the public or any section of the public in fear" (Section 20(1)).

People excluded by these orders have no right to hear the evidence against them, to cross-examine witnesses, to present a defense, to be represented by counsel or to appeal for a judicial review of the order. Currently, about 80 people are subject to exclusion orders.

In 1993 seven exclusion orders were issued; two received considerable attention. In July John Matthews (22) was served with an exclusion order hours after a court had cleared him of causing an IRA explosion in London; the prosecution had offered no evidence against him.

In October the U.K. excluded Gerry Adams, the president of Sinn Fein, the political arm of the IRA, from Great Britain. Mr. Adams had been invited to address Parliament concerning the proposals that he and John Hume, the leader of the Social Democratic Labor Party in Northern Ireland, had made to British Prime Minister John Major and to Irish Prime Minister Albert Reynolds.

The exclusion power of the Prevention of Terrorism Act violates international law and standards that require freedom of movement. Moreover, excluding suspects is a form of internal exile and an unjustified deprivation of due process of law.

Human Rights Watch/Helsinki urges the U.K. to abolish the power of exclusion set forth in the Prevention of Terrorism Act.

### **FREE EXPRESSION**

The Broadcasting Ban remains in effect. This order affects interviews with people representing banned organizations like the IRA and the UDA. The ban also applies to Sinn Fein, a legal political party. Under the ban a person's face can be seen and the words the person speaks can be read by someone else, paraphrased, or printed on the screen, but the individual's own voice cannot be heard. The ludicrous result is recorded interviews with, for example, Gerry Adams, in which Adams is seen talking while an actor simultaneously speaks his words.

The Broadcasting Ban violates international laws and standards; Human Rights Watch/Helsinki again urges the U.K. to abolish it.

### **RUC'S ABANDONMENT OF NORMAL POLICING IN TROUBLED AREAS; ABUSE OF CIVILIANS BY PARAMILITARY ORGANIZATIONS**

Police in Northern Ireland have largely abdicated normal policing in troubled areas. As a result, paramilitary groups--both republican and loyalist--have stepped in to fill the vacuum and "police" their own communities. These groups act as investigator, prosecutor, judge and jury, and carry out their own sentences. These informal justice systems have ordered maimings and shootings and have banished people, including children, from Northern Ireland. Their actions are unjust and inhumane, and are forbidden by international humanitarian law (the laws of war).

During 1993 eighty-four people were injured in punishment shootings, fifty-seven by loyalist groups and twenty-seven by republican groups, according to the Northern Ireland Office. In addition, paramilitary groups continued to exile "anti-social" members of their communities. Recently the IRA ordered three young people from Newry, County Down, to leave Northern Ireland for two years.<sup>9</sup>

Human Rights Watch/Helsinki urges the U.K. to order the resumption of normal policing in all areas of Northern Ireland. Human Rights Watch/Helsinki urges paramilitary groups on both sides to put an end to alternative criminal justice systems and their punishment shootings, punishment assaults and banishments.

### **TRANSFER OF PRISONERS**

Prisoners from Northern Ireland are serving sentences in prisons in England and Wales, cut off from their families. Visiting is difficult, time-consuming and expensive. Although the government in November

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<sup>9</sup> *The Irish Times*, February 18, 1994.



1992 accepted the recommendations of the Ferrers Report to use "extended temporary transfers" of prisoners to Northern Ireland, none of the fourteen eligible long-term prisoners has yet been transferred.<sup>10</sup>

The United Nations' Body of Principles for the Protection of all Persons Under any Form of Detention of Imprisonment states that prisoners should if possible be kept near their usual places of residence.

Human Rights Watch/Helsinki urges the U.K., in keeping with U.N. standards, to make every effort to transfer to Northern Ireland any prisoners who wish to be transferred, and to make public its reasons when denying such transfers.

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This newsletter was written by Lois Whitman, Deputy Director of Human Rights Watch/Helsinki.

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote observance of internationally recognized human rights in Africa, the Americas, Asia the Middle East and among the signatories of the Helsinki accords. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director; Juan E. Méndez is general counsel; and Susan Osnos is the communications director. Robert L. Bernstein is the chair of the executive committee and Adrian DeWind is vice chair. Its Helsinki division was established in 1978 to monitor domestic and international compliance with the human rights provisions of the 1975 Helsinki accords. It is affiliated with the International Helsinki Federation for Human Rights, which is based in Vienna. The staff includes Jeri Laber, executive director; Lois Whitman, deputy director; Holly Cartner and Julie Mertus, counsels; Erika Dailey, Rachel Denber, Ivana Nizich and Christopher Panico, research associates; Christina Derry, Ivan Lupis, Alexander Petrov, and Isabelle Tin-Aung, associates; and Zeljka Marki\_ and Vlatka Miheli\_, consultants. The advisory committee chair is Jonathan Fanton; Alice Henkin is vice chair.

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<sup>10</sup> CAJ, *Just News*, December 1993; *Fortnight*, January 1994, p. 10.