



10 DOWNING STREET

From the Private Secretary

25 October 1985

Dear Jim,

I enclose a copy of a letter to the Prime Minister from Amnesty International about shootings of unarmed persons by the security forces in Northern Ireland.

I should be grateful for a draft reply.

*Yours sincerely,
Charles Powell*

(Charles Powell)

Jim Daniell, Esq.,
Northern Ireland Office.



amnesty international

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Our reference: TG EUR 45/85.17

Direct line:

The Right Honourable
Margaret Thatcher, MP
Prime Minister
10 Downing Street
London SW1

24 October 1985

R. S.

Prime Minister

I am writing to express Amnesty International's concern at the government's failure to deal adequately with issues raised by a series of fatal shootings of unarmed persons by security forces in Northern Ireland since 1982. Amnesty International believes that the mechanisms used to investigate these incidents have not produced sufficient clarification of the facts to relieve concern at possible unlawful use of lethal force by the security forces. Amnesty International also believes that these incidents raise serious concern that the laws and regulations governing the use of lethal force by the security forces are inadequate to prevent unjustified use of lethal force, at least in the circumstances of Northern Ireland.

Amnesty International respectfully calls on the Government to establish a full, independent judicial inquiry into these incidents, with a particular view to evaluating a) the existing mechanisms for investigating and publicly clarifying such events and b) the effectiveness of existing legislation on the use of lethal force in law enforcement for preventing deliberate killings by members of the security forces.

There have reportedly been 31 fatal shootings by police or army personnel in Northern Ireland since the autumn of 1982, in 18 of which the person killed was unarmed. In some of these cases the killings took place in conditions which would not be incompatible with the allegations that there was a deliberate plan to kill the individuals. It is those cases that Amnesty International has been anxious to study.

Amnesty International has a specific mandate in this area: to work against deliberate killings by security or other government agents of people targetted on account of their beliefs, ethnic origin or race, and carried out with the support or acquiescence of the government. We have

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Amnesty International is an independent worldwide movement working impartially for the release of all prisoners of conscience, fair and prompt trials for political prisoners and an end to torture and executions. It is funded by donations from its members and supporters throughout the world. It has formal relations with the United Nations, Unesco, the Council of Europe, the Organization of African Unity and the Organization of American States

not been able to reach a firm conclusion on these allegations. However, Amnesty International believes that it is the Government's responsibility to ensure that effective procedures and safeguards are instituted against the occurrence of such practices, and if such practices occur, that effective mechanisms are instituted to investigate and establish the facts and to make them public.

Such incidents are difficult to investigate. They take place against a background of a campaign of murders of members of the security forces by at least two paramilitary groups (PIRA and INLA) and violent activities by other groups (e.g. UVF and UFF). Security forces personnel are at serious risk at all times (including when they are unarmed and off duty). One consequence is that in most incidents, it is difficult to say with certainty that a policeman or soldier was not acting in self-defence. The cases lend themselves to claim and counter-claim. In these conditions, the Government is in the best position to ensure that there is a thorough investigation - a process requiring full support of the forensic sciences and examination of many witnesses, including members of the security forces. The existing mechanisms relied on by the Government have not provided adequate clarification of the events in question.

One of the mechanisms relied on for investigating suspicious deaths is the coroner's inquest. Although according to the Coroners' Rules inquests should be held "as soon as practicable after the Coroner has been notified of the death", the opening of inquests may be and normally is postponed while the decision is made whether or not to prosecute anyone for the killing. There have been lengthy delays (as much as almost three years) in holding an inquest in cases involving deaths of civilians at the hands of security forces. It is alleged that the police and the Director of Public Prosecutions deliberately request delays so that public concern can subside. The Coroner of Armagh County, at the opening of the adjourned inquest on six people killed in November and December 1982, stated on 2 September 1983 that he was prevented from carrying out his statutory duty by the "unexplained delay by the DPP". On 22 August 1984, the Armagh Coroner resigned saying that he had found grave irregularities in the police files on the killings of Seamus Grew and Roddy Carroll (who were killed on 12 December 1982).

Amnesty International is also concerned about reports received from lawyers that the families involved are not allowed, under present procedures, to see witness reports by security personnel until the evidence is presented at the inquest, and that material witnesses are often not summoned to give evidence and be cross-examined. Furthermore, the access of families to forensic evidence gathered by the government is narrow. These restrictions make it virtually impossible for the families of the deceased - and also, of course, for the community at large - to challenge effectively official versions of what happened in these incidents. They are further hampered by the absence of free legal aid related to inquest proceedings for properly interested persons.

A particularly serious constraint on the effectiveness of inquest proceedings as a means of a thorough, independent and public investigation is the restriction of coroners [under the Coroners' (Practice and Procedure) (Amendment) Rules, 1980] to making only "findings" as distinct from verdicts: "Neither the coroner nor the jury shall express any opinion on questions of criminal or civil liability." Thus the coroner's court cannot make the finding of an unlawful killing by an unnamed person, as is possible in England and Wales.

Responsibility rests on the RUC to investigate allegations of unlawful acts by the police or army. This process too has not been effective in casting light on the events in question. Detailed findings of the investigation are not made public unless the investigation results in a trial. Moreover, in some recent trials it was shown that the police investigations did not result in the truth becoming known, either because the army refused to co-operate, or because police officers had falsified or concealed information.

When criminal trials do take place, they make public more information than any other of the official proceedings mentioned above. However, in most cases of disputed killings, the DPP has not brought a prosecution; such decisions have been taken without any public explanation. In other instances, the decision to prosecute was made after considerable delay.

Moreover, the criminal trial is directed solely to determining the guilt or otherwise of the accused person. It is not intended to answer wider questions concerning official involvement in the killings. As a means of exposing the facts, the trial procedure has also been impaired in some recent cases because the Official Secrets Act has been invoked to prohibit security forces' personnel from providing full testimony concerning controversial incidents. Amnesty International believes that criminal proceedings against members of the security forces cannot serve as an effective mechanism for investigating the truth if crucial facts or material witnesses can be withheld.

Amnesty International believes that the effectiveness and openness of official investigation of alleged unlawful actions by the security forces are essential to the prevention of such practices. However, the means used in Northern Ireland, as outlined above, have not adequately served that end.

The ineffectiveness of criminal prosecutions as a deterrent to potential unlawful action on the part of the security forces also lies in the nature of charges that might possibly be brought. When an officer or soldier in the course of duty kills a suspected or alleged criminal, and is found to have used excessive force in the circumstances, according to present practice he may be charged with murder but not with manslaughter. The elements of the crime of murder are more difficult to prove than those of manslaughter, and this is one explanation for the low rate of prosecutions and convictions of police officers and soldiers in such cases.

Since the beginning of 1983, six members of the security forces have been prosecuted in connection with killings while on duty, and one has been convicted.

Amnesty International's principle concern regarding prosecutions and trials is that the law may be too permissive regarding the use of lethal force by the security forces.

Article 2 of the European Convention on Human Rights, which guarantees the right to life, says the following with regard to the use of lethal force:

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

- a. in defence of any person from unlawful violence;
- b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- c. in action lawfully taken for the purpose of quelling a riot or insurrection."

The Code of Conduct for Law Enforcement officials which was adopted by the United Nations General Assembly in 1979 also lays down a more stringent requirement for use of force by law enforcement officials, saying that they "may use force only when strictly necessary and to the extent required for the performance of their duty".

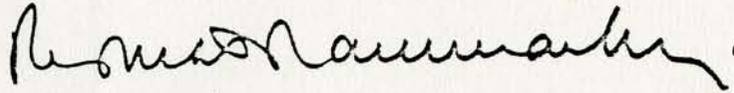
Whereas international standards speak thus of "absolute necessity" and "strict necessity", the law in the United Kingdom is couched in broader terms of "reasonableness". The relevant statutory provision is Section 3 of the Criminal Law (Northern Ireland Act) 1967, which says "a person may use such force as is reasonable in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large". [This provision does not differ from that in the Criminal Law Act (1967), which applies in the rest of the United Kingdom.]

Amnesty International is concerned that the concept of "reasonable" use of force may be too elastic both as a means of imposing such standards on the behaviour of security forces as to prevent excessive use of lethal force, and as a means of deterrence. This is suggested by the high proportion of cases of disputed killings in which members of the security forces have either been prosecuted or have been acquitted.

Amnesty International urges the Government to establish a judicial inquiry soon, and to ensure that the findings and recommendations of that inquiry are made public. Amnesty International believes that a judicial inquiry is required both to investigate impartially the incidents which have caused concern and to ensure that in future the mechanisms used to investigate suspicious incidents are sufficiently prompt,

thorough and open. Amnesty International also believes that the inquiry should review, in the light of international standards, the effectiveness of the existing laws in providing clear guidance on the circumstances in which the use of lethal force is permissible, and as deterrents to possible misuse.

Yours respectfully and sincerely

A handwritten signature in dark ink, appearing to read 'Thomas Hammarberg', with a long, sweeping flourish at the end.

Thomas Hammarberg
Secretary General