

Witness Name: P Cumaraswamy

Statement: No. 1

Exhibits: PC1 – PC17

Dated: Oct. 26, 2007

THE ROSEMARY NELSON INQUIRY

Witness statement of Dato' Param Cumaraswamy

I, Param Cumaraswamy will say as follows:-

Background

1. I was born on [REDACTED] in Kuala Lumpur. I did my legal training in the UK and qualified as a barrister at law in the Inner Temple in London. I am also qualified as an Advocate and Solicitor in Malaysia and Singapore. Between 1967 – 1972 I was a legal assistant in the law firm of [REDACTED] which is one of the three largest firms in Malaysia. In 1973 I was admitted as a partner of the firm and became its Chief Executive Partner in 1988. I now have my own legal firm in Kuala Lumpur and do some occasional work for the UN.

My Mandate – The Independence of Judges and Lawyers

2. I was appointed Special Rapporteur on the Independence of Judges and Lawyers in 1994. Special Rapporteurs are independent monitors who are given a specific mandate by the UN to undertake a defined area of work. Not even the Secretary General of the United Nations or the United Nations High Commissioner for Human Rights (now Human Rights Council), can interfere with the work of a Special Rapporteur once appointed. Special Rapporteurs are directly accountable to the Commission on Human Rights and are appointed by the Chairman of the Commission.
3. One of the first communications that I received after my appointment was from Jane Winter of British Irish Rights Watch (BIRW). Jane Winter wrote to congratulate me on my appointment and

stated that she wanted to make me aware of the work that BIRW were doing in relation to highlighting the intimidation and harassment of defence lawyers in Northern Ireland. Jane Winter also drew my attention to the work that BIRW was doing in relation to the Patrick Finucane case. Following this initial letter from BIRW, I began to receive further correspondence from BIRW informing me of the ongoing work that they were doing in Northern Ireland and providing me with documents and reports. I also received correspondence from other non-governmental organisations (NGOs), such as the Committee for the Administration of Justice (CAJ) and Amnesty International.

4. I do not recall if Rosemary Nelson was mentioned in the early correspondence I received from the NGOs. If she was, she was certainly not the focus of the correspondence then as they tended to focus on the way defence lawyers as a group were generally being treated by the authorities in Northern Ireland, rather than on individual cases. The correspondence detailed the ongoing concerns of the NGOs. I can't recall specifically when I began to receive letters from NGOs that focused solely on Rosemary Nelson, but I do recall that I received a letter from BIRW dated 6 March 1997 that referred to Rosemary Nelson (if not by name) RNI 110.006-007
I subsequently received two specific reports on Rosemary Nelson authored by BIRW on 10 July 1997 RNI 110.011-025
5. My first visit to Northern Ireland was in 1995. It was an unofficial visit; I happened to be in the UK and so because of the correspondence that I had been receiving on a regular basis from various NGOs since my appointment, I decided to make a short visit to Northern Ireland. I met with representatives from the CAJ and with the Finucane family. The CAJ had arranged for me to meet with a small group of lawyers to discuss the way they were being treated by the authorities.
6. I did not meet Rosemary Nelson on this visit and at this time she was not really in my focus. I was concerned with the general way in which defence lawyers were being treated by the RUC rather than specific cases. As I was trained as a lawyer in England, I had a good understanding of English Law and its justice system. From the correspondence that I had been receiving from NGOs, I was very concerned that lawyers could be treated in such a way in the UK. I knew that there was conflict in Northern Ireland but could not reconcile the information received with the

standards with which I was familiar as a UK trained lawyer. I couldn't believe that lawyers were being intimidated by institutions such as the police who should, by their very nature, be protecting people from this kind of behaviour.

7. On the basis of the information that had been provided to me by NGOs and what I had heard during my unofficial visit to Northern Ireland in 1995, I decided to organise an official visit in 1997 in accordance with the terms of my Mandate. I should explain that even though my first visit was 'unofficial', I was in law still carrying out my Mission under the Mandate that I had been given by the Commission. The International Court of Justice has ruled that a Special Rapporteur is on a Mission at all times whilst he is working under a Mandate. During my time as Special Rapporteur, I met with Ms Mo Mowlam and Mr John Reid (who took over from her), Secretary of State for Northern Ireland, on occasions when I was in London and these meetings were still under my Mandate. I also met Mr Chris Patten on one occasion when he was carrying out his inquiries into policing arrangements in Northern Ireland. This was after the murder of Rosemary Nelson. I recall mentioning to him the importance of a Public Inquiry into the deaths of Pat Finucane and Rosemary Nelson. Again, this meeting did not take place whilst I was on an official Mission.
8. Following the reports received from BIRW **RNI 110.011-025**, I wrote drawing the issue of Rosemary Nelson to the attention of the UK Ambassador in Geneva; this was on 1 August 1997 **RNI 105.105-106**. I followed that up on 10 September 1997 with a special request for arrangements for a visit in October 1997 **RNI 833.225-226**. I do not have a copy of the letter referred to in the first sentence of that letter. Neither do I have a copy of the letter of 4 April 1997 sent to the Ambassador as quoted in the report that was ultimately produced. I wanted the UK Government to facilitate meetings for me that were relevant to my Mandate both in England and in Northern Ireland. In terms of arranging an official Mission, Special Rapporteurs always deal with the foreign minister of the country that we wish to visit and inform the minister of our Mandate and the visits that we wish to make. In this instance, this was done via the Ambassador's Geneva office. The UK Government was always very co-operative with my requests, unlike some governments. When I asked the UK Government if I could go on a Mission in 1997 to England and Northern Ireland, they agreed **RNI 110.008-009**

straight away and facilitated my visit. They were initially a little reluctant to let me into Belmarsh prison, due to its high security status, but they let me in the end.

9. The main thrust of my 1997 Mission was in relation to the harassment of lawyers in Northern Ireland. I really wanted to understand what was going on there given what I had heard on my unofficial visit in 1995 and what the NGOs had been writing to me about since 1994. After my Mission and after having studied the documentary evidence exhibited to my statement [REDACTED] **RNI 110.006-007** and **RNI 110.011-025**, I realised that Rosemary Nelson was one of the lawyers being intimidated. I had stayed in touch with NGOs such as BIRW and CAJ on a regular basis following my meetings with them on my 1995 visit. The Lawyers Committee for Human Rights (LCHR), who are based in New York and, whom I considered to be a reliable source, had also provided me with materials on the work that they had done in Northern Ireland. I was very appreciative of the information provided to me by NGOs because although I do ask governments for information, as a Special Rapporteur you cannot rely on information from governments alone.
10. I was of the opinion that the modus operandi of organisations such as BIRW, CAJ and LCHR was sound. I had many discussions with their representatives and I had considered in detail the methodology that they applied for their reports and the information that they supplied to me. They were not opinionated reports and they were very factual. I had faith in the information that they provided to me as a good basis for undertaking the Mission in October 1997. I could see that they were themselves exchanging notes on the situation on a regular basis and working together where possible. My overall impression was that there were people who were genuinely concerned about the way in which defence lawyers were being treated by the authorities and that they would not give me misleading information. These organisations gave me assistance when I asked for more information. That said, I do not doubt that the reports were coming from a certain perspective on the basis that they were working closely with those who were being harassed and intimidated. However, I thought that they were generally providing me with well researched information and it was extremely important to me to have this information as they were also on the ground.

11. As I had been provided with a substantial amount of information relating to the way defence lawyers were being treated by the RUC and the threats that they were receiving, it was important to me to get both sides of the story. Therefore, as part of my visit, it had been arranged for me to see the Chief Constable of the RUC, Ronnie Flanagan, now Sir Ronnie Flanagan. I also met with the Minister of State for Northern Ireland at the time (Mr Paul Murphy) and a few other officials. I was there between 23 and 31 October, having spent 22 – 23 October in London en route.
12. I remember meeting with Sir Louis Blom-Cooper QC, the Independent Commissioner for holding centres. He did indicate to me that he would favour an independent investigation into the way in which defence lawyers were allegedly being treated by the RUC. We had a relatively short meeting with him but I do recall that he was quite concerned about some of the things that were happening and we certainly didn't get the same defensive approach from Sir Blom-Cooper as we later did from Mr Flanagan, who was essentially concerned with protecting the RUC's position.
13. I recall meeting Mr Murphy at his office at Stormont House. This meeting was more in relation to issues relating to prisons in Northern Ireland and I do not recall that we discussed anything in particular in relation to the harassment of lawyers.
14. I have been asked if I can recall the names of the solicitors that I met with during the Mission. I cannot now recall their names specifically but, as I have stated, the CAJ arranged most of the appointments on my behalf and so I assume that the CAJ will have a record of the solicitors with whom we met.
15. I should point out that I met with solicitors acting for protestant members of the community as well as those acting for nationalists. We were prepared to listen to whoever had information and it was clear to me that we were getting a consistent picture from all of the defence solicitors regardless of whom they acted for.

Meeting with Ronnie Flanagan

16. When I met with Ronnie Flanagan fairly early on in the Mission I had my assistant, Mr Alan Parra, with me and Mr Flanagan also had an assistant with him. The meeting was not "off the record" in any way, or stated to be "in confidence". Mr Flanagan knew that I would be reporting back to the UN following my Mission and would be making my findings public. Mr Flanagan had

been briefed on the purpose of my Mission and knew Alan Parra was taking notes. I explained to Mr Flanagan that information had been provided to me by NGOs in relation to the harassment of defence lawyers. Mr Flanagan was fully aware of why I wanted to meet with him and I explained that I was there under the terms of my Mandate and that I was extremely concerned by information that I had received from NGOs and others indicating that defence lawyers were being harassed by his officers.

17. Mr Flanagan told me not to believe the information that I had received from the NGOs and that most of what I had heard was not true. He told me that there were some minor issues and that he was in the process of arranging some training for the police. I afforded Mr Flanagan the opportunity to put his case forward and I told him that I would come back to him if there was anything else that I needed to discuss with him at the end of my visit.
18. It was very important to me to get both sides of the story. People often think that we have already made up our minds before we write our reports; this is not true. I did not think when I started the Mission that I would end up making a statement to the press in relation to state collusion but, after reviewing the evidence, I felt I had to say something.
19. In the course of this meeting Mr Flanagan, made a comment to the effect that he felt some of the defence lawyers were working for paramilitary agenda. I was immediately alarmed by this comment. If the Chief Constable could hold such an impression, then I could barely imagine what the police officers lower down the rung thought of the defence lawyers they encountered on a daily basis at the Holding Centres.
20. During this meeting Mr Flanagan spoke without much interruption from me. I did not ask him anything specific that led to this comment.
21. I am aware that Mr Flanagan denied that he made the comment at that meeting. There was a written record of what he had said as Mr Parra had taken notes. The relevant section of Mr Parra's notes is appended at RNI 110.033-034. I remember wondering later how he could deny the comment when we had contemporaneous notes.
22. I remember that after Mr Flanagan made that comment, I asked him if he had reported the solicitors concerned who were working for the paramilitaries to the Law Society as it was clearly a

matter that should be brought to their attention if it was true. He said that he had not done this but assured me that he had evidence to support his claims. I did ask to see this evidence but have never been provided with it. It bothered me that a Chief Constable could make such allegations and yet not report his concerns to the Law Society.

23. I was particularly bothered by Mr Flanagan's comment because of the similarities to the Finucane case when a Government MP, Mr Douglas Hogg, made a similar comment in the House of Commons along the lines that some solicitors in Northern Ireland were sympathetic to the IRA. Shortly after that comment was made, Pat Finucane was murdered.
24. I also remember addressing Mr Flanagan about the fact that the lawyers tended not to submit complaints of harassment to him and I asked him if he made investigations following the receipt of reports from NGOs. He said that he did not investigate when he received reports from the NGOs alleging harassment and intimidation because he was not obliged to start an investigation on the receipt of such reports. Essentially, he ignored the complaints that he received from international organisations and NGOs.

Meeting with Defence Lawyers

25. During the Mission and, following my first meeting with Mr Flanagan, I heard from several different lawyers who all claimed that they were being harassed by the RUC. I cannot recall their names now. There was a group of 20 or so lawyers who were being intimidated by the police and who were not being allowed to advise their clients properly. I was concerned that the Law Society of Northern Ireland did not take action to protect these lawyers who were its members. No other lawyers other than this group would take on high profile criminal cases with terrorist connections, yet this small group of lawyers were put into a position where they were threatened and not protected. The lawyers that I met were quite consistent over the derogatory remarks that were made about them by the police, and often via their clients. They told me that their clients were often told by the police that their solicitors were not to be trusted and how they would do them more harm than good. I saw the lawyers individually and so I don't think that they had agreed their stories beforehand and I found them all very genuine. I became convinced that the police were harassing them and, to some extent, intimidating them.

Meeting with Rosemary Nelson

26. I met with Rosemary Nelson at the CAJ office. She was one of the group of lawyers who acted in those high profile cases. I recall that I was already in the room when she came in and introduced herself. She had requested a one to one meeting with me. Mr Parra did not attend the meeting. We started talking and she told me the kind of work that she was doing, her experiences at holding centres, what her clients had told her about threats that had been made by the RUC against her, and threats that she herself had received directly from the police. I cannot recall the specific details of the words used, but in general terms her clients were reporting that the RUC had been insulting her and passing on messages that her life was at risk. Rosemary Nelson told me that she frequently received derogatory comments and that these often related to her facial disfigurement. She said that the RUC simply disliked her and that they didn't like her acting for clients who had been arrested for terrorist related offences. Rosemary Nelson indicated to me that she was being targeted by the RUC. She also showed me anonymous threats that she had received through the post. Unfortunately, I did not take any notes as I wanted her to feel free to talk to me candidly. I cannot recall the terms of the threats. It was immediately clear to me that Rosemary Nelson was extremely distrustful of the police and that she was fearful of the police following and watching her. She was certainly concerned that the police were targeting her.
27. Although Rosemary Nelson was one of a small group of lawyers who had complained of harassment by the RUC, Rosemary Nelson's case was more serious. From what she said, it appeared that the RUC were really gunning for her. The kind of remarks made by the RUC via her clients as repeated to me were the worst examples I heard from listening to the evidence of solicitors out there. Part of my concern for Rosemary Nelson was because I think she had taken over some of the clients from Pat Finucane.
28. I have been asked if the solicitors with whom I spoke told me why they were of the opinion that it was not worthwhile to lodge complaints about their treatment with the RUC. All of the solicitors had similar views; that nothing would have come out of their complaints and that it was therefore a waste of time.

29. I recall that Rosemary Nelson was the only solicitor who I actually asked if she was concerned about her safety. This was perhaps partly because she was the only woman with whom I met (apart from Patricia Coyle who I think I saw) and partly because the allegations that she was making were so serious. I remember that I asked her if she was married and had any children and she replied 'yes'. Although Rosemary Nelson was clearly troubled by the threats that she was receiving, she was an extremely courageous lady. Towards the end of the meeting, when I asked her if she was concerned about the safety of her and her family, she replied 'no'; she said she had a greater duty to her clients and her profession. She made it quite clear that she was not going to be dissuaded from carrying on with the work that she did. I said that it was great to hear such conviction from a lawyer but I told her to take care. I really admired her courage.
30. At this point in time Rosemary Nelson did not appear to be particularly disturbed by the threats that she had received. I remember seeing video footage of Rosemary Nelson confronting police at some parade (I cannot remember the detail) and she was clearly a very tough lady, although she was very soft spoken.
31. I do recall that Rosemary Nelson told me about one case in particular that she was handling for Colin Duffy. Rosemary Nelson told me she had received derogatory comments from the RUC when she went to the detention centre to meet with her client. Unfortunately I did not have the opportunity to meet any of Rosemary Nelson's clients as they were mostly in detention centres.
32. The meeting mainly consisted of Rosemary Nelson telling me about her experiences; she did not actually ask me to do anything. Rosemary Nelson had a lot of integrity and she did not ask for anything from me but she just wanted to tell me what was going on. She did not say she was seeking protection; she simply wanted to be able to get on and do her work.
33. Rosemary Nelson was one of the last solicitors that I saw before I went back for a second meeting with the Chief Constable. My meeting with Rosemary Nelson lasted for approximately one and a half hours and, as I have stated, I did not take any notes or tape record the meeting because I don't think that she would have agreed to that. Rosemary Nelson had specifically asked for a one to one and I thought this was because she simply wanted to apprise me of the situation rather than cause a fuss. Maybe at that time Rosemary Nelson did not realise the seriousness of her situation.

Second Meeting with Ronnie Flanagan

34. Following my meeting with the defence lawyers and, in particular, Rosemary Nelson I took the unusual step of going back to see the Chief Constable. Alan Parra did attend and he did take notes. Mr Flanagan was not expecting a second meeting, but after meeting with the defence lawyers, I was keen to counter-check with him the information that I had received and get his response.
35. The second meeting with Mr Flanagan also took place at his office and he had two assistants in attendance. I specifically remember this because one of his assistants was a specialist in a matter that was nothing to do with the issues that I was concerned with so I remember wondering why he was there. I told Mr Flanagan that I was concerned by the facts that had been brought to my attention during my Mission. He was clearly surprised that I had gone back to see him to get his response on what I had heard and I think that he was actually expecting me to raise new issues. I think that is why he brought his assistants along.
36. When I explained to Mr Flanagan the nature of the allegations that were being made by the lawyers against his officers, he denied that such a thing could be going on. He said that this was the first he had heard of such things and that he had no information from his officers on which he could comment. I recall asking him if, based on the information that I had been provided, he thought he should call for an Inquiry into the alleged harassment of defence lawyers in Northern Ireland. He did not agree that this was necessary. He took my comments lightly until he read the newspapers the next day when I had made certain comments to the press stating that, in my opinion, there was evidence to justify an inquiry into state collusion in Patrick Finucane's murder. An example of one of the press articles is appended at **RNI 208.305**. I also stated that there was sufficient material that raised concern that threats were being made by the RUC against defence lawyers.
37. It was at this second meeting that I asked Mr Flanagan if I could have a copy of the original Stevens Report into Mr Finucane's murder. I had written to Mr Stevens, now Lord Stevens, directly to request this prior to my Mission, but Mr Stevens had told me that he could not release the Report without Mr Flanagan's consent. Mr Flanagan agreed to release the Report to me when

I expressed my concerns about Mr Finucane's death. He actually tried to call Mr Stevens to ask him to send me a copy of the Report whilst I was there, but he couldn't get through to him. Following my comments to the press about collusion shortly after my meeting with Mr Flanagan, he apparently must have withdrawn his consent on this matter and I was not provided with a copy of the report, and could not get one directly from John Stevens.

38. Mr Flanagan refuted many of my findings that I included in my draft report in 1997 [REDACTED] **RNI 106.018-074**. This was simply not satisfactory. I think that Mr Flanagan fell flat towards the end by ignoring international concerns. I would have thought that someone of his position would have taken action to investigate such serious allegations.
39. I also raised this issue in my report the following year (1998 – published in 1999). The relevant extract is appended as **RNI 103.175-177**. The RUC showed complete indifference to the allegations in NGO reports, and I was critical of this disregard on the part of Chief Constable Flanagan; he failed to do anything constructive, such as take the rather obvious step of calling in the lawyers for a discussion. My brief report of 1998 was therefore very direct, and highly critical.

Reporting

40. As I have stated, following my Mission to London and Northern Ireland in 1997, I prepared a report based on what I had heard during the Mission and the information with which we had been provided by the NGO's **RNI 106.018-074**. Unfortunately, we don't have the resources to have a full team to record detailed statements and take notes of all of our meetings. However, where possible, a Special Rapporteur's assistant records notes of the meetings. In terms of our internal procedure, Alan would have prepared the first draft of the report in Geneva and then sent it to me in Kuala Lumpur for review. I would then have revamped it; taken things out and added things. I am meticulous and anything that I put in my reports I must be able to substantiate.
41. I do recall that Alan Parra took notes throughout most of the meetings and so I was assisted by these and lots of documents that had been provided to me by the NGO's when I was reviewing the draft report. I also drew on my personal impressions from the meetings. All of the notes of our

meetings would have been handwritten. They are not formal minutes. The content of the report is essentially my perception of what I had heard and read. It is procedure to send a draft to the government involved to allow them the opportunity to respond to what we have said in draft, and to prepare themselves to respond to the report when it is finally published. Following my amendment and approval, the draft of the report following my Mission in 1997 was sent to the UK

RNI 106.017

Government under cover of a letter of 6 February 1998, which is also included in

RNI 106.017-074

RNI 106.027

42. I have been asked about certain paragraphs of this draft report. In connection with paragraph 15 of my draft 1997 report, I can confirm that the material provided to me originated from BIRW and various other NGOs. I would suggest that it would be useful to obtain a copy of the letter sent to me by Jane Winter in or around May to August 1994 which is the first time that I received any information from her. I do not have a copy.

RNI 106.028-029

43. I refer to paragraph 18 of my draft report. I have been asked if I remember meeting with Patricia Coyle. We did meet with Patricia Coyle and I remember that she was a very friendly lady. She didn't feature so prominently in the report because her situation was not as severe as Rosemary Nelson's. Again, I assume that Mr Parra will have notes of the meeting with her but again she gave me consistent information; that she was being harassed by the RUC. I do not recall a meeting with the Mr Winters who is referred to in paragraph 19 of the draft report.

RNI 106.029

RNI 106.029-030

44. The meetings with barristers referred to in paragraph 20 of the draft report were also organised by the CAJ. There were only two to four meetings with barristers in comparison with the 10 - 12 meetings that we had with solicitors. As I have stated, I was keen to find out how widespread the harassment was and so it was important to speak to the barristers as well as solicitors.

45. I was of the opinion that the information that had been provided to me by the Chief Constable reinforced the information which I had been given by NGOs and the defence lawyers with whom I met. The comments that he made about solicitors working for the paramilitary agenda convinced me that there must be some truth to the allegations that the RUC identified lawyers with their clients' cases, and made threats against solicitors. I was therefore very clear that I wanted the UK government to investigate this matter and be transparent about what it found.

46. I recall that shortly after forwarding the draft report to the UK government, I received a call at home from the British High Commission in Kuala Lumpur. Steve Bridges, a Senior Staff, urged me to remove Rosemary Nelson's name from paragraph 16 of the draft report. He said that if we mentioned solicitors names in the report, peoples lives would be at risk. He specifically mentioned Rosemary Nelson's name and requested I took this out for her protection.

RNI 106.027

47. I distinctly recall receiving this telephone call because I remember that Mr Parra called me a short time after I received the call to say that he had received a similar call in Geneva. I could tell from the nature of the calls we had received that there was some urgency on the part of the RUC to get the report amended. This indicated to me that there was a serious problem as far as the RUC was concerned. The clear message from both of these calls was that the RUC wanted me to remove Rosemary Nelson's name from the report on the basis that her life would be in danger if it was not removed. I found this strange because, as I have stated, the main focus of the Mission had not been on Rosemary Nelson and I remember that throughout the Mission and even at our meetings with the Chief Constable, Rosemary Nelson was not the main focus as she was simply one of a group of lawyers who were being threatened, albeit that her case was slightly more concerning than the others. Whilst she was the name discussed, I was of the opinion that other solicitors names had to be removed too, if I agreed to taking out reference to Rosemary Nelson.

48. It was therefore strange to me that when I specifically identified her in the report, the Government intervened saying that there were fears that she would be targeted. I remember asking Mr Bridges where the request to remove her name had come from. Although he told me that he couldn't say, it was clear to me that it must have come directly from the RUC through the Geneva mission, particularly given the call that Mr Parra had received in Geneva whom he said was from the RUC.

49. Although I was extremely surprised at the call from Steve Bridges, and even though I had explained to him that it was not the practice for states to interfere in the Special Rapporteur's report, I told him that I would think carefully about what he had said to me particularly given the fact that he was telling me someone's life could be at risk.

50. Alan Parra also reported to me that the Chief Constable had called him and wanted us to amend paragraph 21 of the report as he denied the comments being attributed to him. That again was a very unusual and surprising call for us to have received.

51. I gave both the request for the removal of Rosemary Nelson's name from the report and the request from the Chief Constable to amend paragraph 21 a great deal of consideration. I was really troubled by the way in which the RUC had reacted to the naming of defence solicitors in the report. I was very clear that the Chief Constable had made the comment about solicitors being part of the paramilitary and so this was not really of concern to me, particularly because I had Alan Parra's notes to substantiate this **RNI 110.033-034**.

52. My main concern was the similarity with the Finucane case. I obviously did not want to be responsible, in some way, for Rosemary Nelson's death. I was well aware that publication of my report could automatically highlight the issue and could increase the risks to all of the defence lawyers because of the public nature of my role. This obviously puts a burden on me to act appropriately with the information that I had. I therefore decided to remove the names of the defence lawyers who were named in paragraphs 16, 18 and 19 of the draft report. I also amended paragraph 21 of the draft report, the final version being a somewhat "watered down" version; I should emphasise that all these amendments, drafted by me were motivated solely due to my concerns as to lawyers' safety, and not to any concerns as to inaccuracies in the draft report. The amendments to paragraph 21 of the draft were drafted by me. The revised report is attached as **RNI 106.084-109** to my statement. I did not report the Chief Constable's words that solicitors were working for paramilitaries; I used words that solicitors may be involved in an agenda of ensuring the silence of detainees. These changes were made on the basis that I did not want to jeopardise the security of anyone – the Douglas Hogg/Finucane issue was heavy on my mind, but whilst amending paragraph 21, I still wanted my report to maintain its impact, so my drafting was done carefully. **RNI 106.089-090**

53. I have been referred to paragraph 22 of my final report. I am of the opinion that Mr Flanagan had a duty as he held such a high public office to do something with the allegations that he was

making against defence solicitors. He should have taken his evidence to the Law Society and also provided it to me. However, I never received any such evidence.

RNI 106.092

54. In relation to paragraph 31 of my final report, Rosemary Nelson did not provide me with copies of her complaints and, in fact, she did not give me any documents at all. **RNI 106.093**

55. I have been referred to paragraph 38 of my final report. I still stand by what I said in the report. Having gone through all of the materials that were provided to me, and after having listened to the oral statements by the solicitors concerned, it would not have been appropriate for me to be "wishy washy" in my language. As a Special Rapporteur I have to be firm about my findings and I am confident that the information on which I based my comments in this paragraph was correct. However, Special Rapporteurs and indeed the Commission is not a Court of Law and we do not test the materials which are provided to us. We do not take evidence under oath. As a Special Rapporteur I am an international monitor and, faced with the evidence of harassment and intimidation, it was impossible for me to come to a different conclusion. I was convinced that there was truth to the allegations that I heard. The fact that changes were subsequently made within the RUC eg. audio and visual recording of interviews of detainees at holding centres, and the establishment of the Police Ombudsman, were vindication of what I had said. If it wasn't for international exposure, such changes may not have been made.

56. I have been asked about my attendance at an interview with journalist, John Ware. I recall being interviewed by John Ware of the BBC in Geneva after submission of my report. I am aware that I feature on the programme and have a copy of the video tape back in Kuala Lumpur.

57. I have been shown a press release (**RNI 101.226-227**) that was drafted in relation to my report by the RUC. Following my report I would have expected the RUC to take steps to investigate the allegations that had been raised against them. Special Rapporteurs are not in the position to investigate matters, to the extent that they identify evidence that proves their findings, beyond reasonable doubt or even on the balance of probabilities. It would simply be impossible to do this given the size of our Mandates and the fact that our Missions are often short. As I have stated, Special Rapporteurs are not a Court of Law and we are not there to examine witnesses under oath. It is for this reason that I called for a Public Inquiry into the allegations

against the RUC and the murder of Pat Finucane. I would have expected the RUC to take action particularly given the fact that there was a substantial amount of information in the public domain that only served to reinforce the allegations in my report, and what had already been said by the NGOs.

58. I wrote to the UK Ambassador on 5 March 1998 to make my position clear [REDACTED] **RNI 110.004-005**). The correspondence on this issue continued over a period of time. I received other correspondence on this issue, including unusual correspondence with the Chief Constable himself; he wrote to me on 13 March 1998 **RNI 101.215** and I responded to him on 27 March 1998 **RNI 110.138** . He replied on 8 April **RNI 110.148-149** . I reiterated the same point in a letter to the Police Authority on 11 August 1999 **RNI 112.031-032**).
59. Following my report to the UN after my Mission to Northern Ireland in 1997, I continually drew the attention of the UK government that, from the information I was still being provided with from the NGOs, Rosemary Nelson's life was in danger.
60. For example, I remember that after I amended my report, I wrote to the British Government to inform them that the threats had intensified; I was calling for Rosemary Nelson's protection. This was included in my letter of 5 March 1998 [REDACTED] **RNI 110.004-005** . I was in no doubt that something was going to happen. The minute I had any new information in from the NGOs suggesting that the threats against Rosemary Nelson had intensified, I made it a priority to get back to the government to ask them to do something because of my concerns.
61. Although I knew that Rosemary Nelson would not have wanted protection from the RUC, an organisation in which she had no trust, I think that the government should have taken steps to protect her anyway. In my opinion, the UK government must have left the decision regarding her protection to the Chief Constable's Office on the assumption that they would take the necessary steps. To my knowledge, there was no official record that she had been offered and refused police protection. I think that the UK government could have done a lot more to protect her but they did not put their hearts and minds into it; it was as if they were either not bothered, or that when it was

clear Rosemary Nelson was determined to carry on, they realised that they had to get rid of her – that was my general perception.

My Second Meeting with Rosemary Nelson – at the US Congress in 1998

62. Following my meeting with Rosemary Nelson during our 1997 Mission I did not see or speak to Rosemary Nelson again until we both met in Washington on September 29 1998 at a meeting covered by the Sub-committee on International Operations and Human Rights of the Committee on International Relations of the US House of Representatives to discuss my Mission Report on Northern Ireland. The meeting was Chaired by Mr Christopher H Smith, the Chair of the Sub-Committee. They were trying to get me to testify on what I had heard during my 1997 Mission. I told them that there was no way I was going to do this as I was an independent monitor who was therefore not in a position to testify, but that I was happy to contribute to a round table discussion. Rosemary Nelson was also invited and she spoke about her work and the threats on her life. Again I felt that Rosemary Nelson was troubled by her safety and I noted that her case always reminded me of Pat Finucane's situation; I think that it is extremely useful to look at both of the cases in terms of the threats that they experienced in the two months prior to their murders.
63. I did not meet with Rosemary Nelson beforehand or make any specific arrangements to catch up with her during the day. However, during the course of the day we did have the opportunity to very briefly discuss how she was. She mentioned to me that she was still being harassed by the RUC but she seemed to be resilient and not further perturbed by the threats that had been made. I think she attended the Congress on her own, and I don't think that she had any kind of security or escorts.
64. During the meeting Rosemary Nelson was seated by me. Rosemary Nelson spoke very clearly and concisely about the way that she and other defence lawyers were treated by the RUC. The way she spoke, her demeanour and the way she presented herself did not give the impression that she was letting threats affect her work. Rosemary Nelson was not seeking sympathy. She was simply putting forward her situation as part of what other defence lawyers were also experiencing. Rosemary Nelson clearly did not want to be singled out.

65. The Chair of the meeting, Mr Chris Smith invited Rosemary Nelson and me for lunch. I recall that we had general discussions over lunch about the situation in Northern Ireland but our discussions did not focus on Rosemary Nelson and were certainly not specific to her. Rosemary Nelson continued to give the impression that she would not be easily shaken by the police and made it clear that she would not be prevented from exercising her profession. I think that everybody who heard her speak really admired her courage.
66. Although Rosemary Nelson and I didn't have much opportunity to speak on a one to one basis then, Rosemary Nelson did not tell me then that the threats were getting worse. During my time as Special Rapporteur she did not directly write to me or phone me. On reflection this was perhaps slightly strange as when a matter is brought to my attention I usually do get direct contact from affected lawyers and Judges but I don't ever recall receiving anything from her directly. That said, at no point did I contact her directly myself.
67. After Rosemary Nelson was murdered, her murder took centre stage. I recall that there was another lady who took over Rosemary Nelson's work; I think she was called Drinan. After what happened to Rosemary Nelson the UK Government was concerned that protection should be offered to Miss Drinan. I do recall seeing subsequent documentation that indicated that Miss Drinan was not co-operating. I remember I wrote to her directly or maybe through the BIRW and asked to meet her.

Similarities between the murder of Rosemary Nelson and Pat Finucane

68. In my opinion, the pattern leading to the murder of Rosemary Nelson was similar to that of Patrick Finucane. If you look at the situation that Rosemary Nelson was in i.e. threats from the RUC, it seems to me that the RUC just wanted to get rid of her, as they did in the case of Finucane.
69. I recall that I met with the Chief Constable of Kent, Colin Port, on several occasions. We discussed the investigation. I suggested that he look at the pattern of intimidation in both cases. I suggested that he would find that the intimidation was systematically done in both cases; that the pattern of the threats was similar towards the end in both cases and that neither lawyer received adequate protection from the State.

70. I was glad that John Stevens came to the same conclusions as mine in the Finucane case as this vindicated my initial statements on that murder which were, at the time, criticised.
71. I have been asked about the documentation to which I refer in paragraph 3 of an email to [REDACTED] [REDACTED] dated 28 May 2003 **RNI 833.198-199** [REDACTED]. I cannot recall the details of the documentation to which I refer to in this email. I do recall that a bundle was given to Ms [REDACTED] in London. That bundle could be obtained from the Cory Inquiry file.

Conclusion

72. When I heard of the tragic death of Rosemary Nelson, I was appalled by it though not surprised. I immediately wrote to Secretary of State Mo Mowlam on 17 March 1999 about it [REDACTED] **RNI 107.063.500** [REDACTED]. Such was my frustration at the lack of response to my two reports, I suggested that the murder investigation be conducted entirely independent of the RUC.

Statement of Truth

I believe that the facts stated in this witness statement are true.

Signed: 

Param Kumaraswamy

Dated: 09.26.2007