

REPORT TO BIRW BOARD: RESEARCH AND POLICY REPORT

REPORT OF THE ROSEMARY NELSON INQUIRY

On Monday 23rd May 2011 the report of the Rosemary Nelson Inquiry was published.

BIRW send a briefing to all members of the Houses of Parliament prior to publication on 16th May (copy attached).

BIRW Director Jane Winter attended the launch of the report at the Stormont Hotel in Belfast. Previously, NGOs have not been allowed any prior access to inquiry reports, but on this occasion we were allowed to joint the Magee family (Rosemary Nelson's natal family) half an hour before the report was published.

Initially, the Northern Ireland Office had said that only two family members could have early access to the report, but after representations from the SDLP and the Irish government, prompted by BIRW, it was agreed that all family members could see the report. Unfortunately, Mrs Magee, Rosemary Nelson's mother is frail and elderly and was unable to travel from Lurgan to be present, so one of Rosemary Nelson's sisters stayed behind with her and a copy of the report was delivered to them. The NIO refused, however, to allow the two parties of the family to communicate until after the report had been published. All these restrictions stem from parliamentary privilege, which dictates that Parliament must see any report addressed to them before anyone else. The Speaker of the House has to sanction any other arrangements. The press and Opposition party leaders received a copy of the report an hour before publication, and the Secretary of State himself had 24 hours' notice.

The report can be found at

<http://www.official-documents.gov.uk/document/hc1012/hc09/0947/0947.asp>

It is 505 pages long, has no executive summary, and no index. It is therefore a difficult document to analyse.

The Inquiry's terms of reference were:

"To inquire into the death of Rosemary Nelson with a view to determining whether any wrongful act or omission by or within the Royal Ulster Constabulary, Northern Ireland Office, **Army or other state agency** facilitated her death or obstructed the investigation of it, or whether attempts were made to do so; whether any such act or omission was intentional or negligent; whether the investigation of her death was carried out with due diligence; and to make recommendations."

The section highlighted in bold was inserted after BIRW provided evidence that soldiers had threatened Rosemary Nelson before her death.

It will be noted that, even though the inquiry headed by Judge Cory, who recommended the inquiry, was called The Collusion Inquiry, and despite the fact

that he found that there was a case to answer in relation to allegations of collusion, the word "collusion" does not appear in the terms of reference. BIRW asked that they be amended to include collusion, but our application was unsuccessful.

The main conclusions can be found at <http://www.caj.org.uk/contents/912> The Inquiry found that there was no evidence of any act which directly facilitated the murder, but could not exclude the possibility that rogue RUC officers or soldiers assisted the murderers to target Rosemary Nelson. They also said that they were sure that Rosemary Nelson was abused and assaulted by police officers on the Garvaghy Road; they believed leakage of intelligence from the RUC increased the danger to her life; and that they believed that RUC officers made abusive and threatening remarks to Rosemary Nelson's clients which legitimised her as a target.

However, there were significant omissions by both the RUC and the NIO which increased the risk she faced and made her more vulnerable.

The RUC failed to take account of intelligence and open source information that Rosemary Nelson was "an obvious trophy target". RUC management failed to stop abuse and threats against defence solicitors, including Rosemary Nelson. Locally, the RUC failed to protect her at her home or her office. There was no analysis or evaluation of intelligence relevant to Rosemary Nelson. These omissions amounted to a corporate failure by the RUC to warn Rosemary Nelson or to offer her security advice.

The NIO did not press the RUC hard enough, especially in relation to conducting a proper threat assessment, and they "dealt in a mechanistic way" with NGO concerns, managing the situation rather than addressing it.

The combined effect of these acts of omission was that "the state failed to take reasonable and proportionate steps to safeguard the life of Rosemary Nelson."

The Inquiry found that there was no obstruction but Special Branch's co-operation was incomplete. They were "over-possessive" about intelligence and "unjustifiably defensive and resentful" of enquiries "which they interpreted as treating them as potential suspects". Special Branch omitted to disclose all items of relevant intelligence and on one occasion were supported in this by MI5.

The murder investigation was "exhaustive, energetic and enterprising", but not perfect in every respect. It should have made more detailed enquiries about Rosemary Nelson's contacts in the last weeks of her life, and it should have documented its thinking on other lines on enquiry other than loyalist murder. Nonetheless, the investigation was carried out in difficult circumstances with due diligence.

Of course, as Judge Cory pointed out, acts of omission can constitute acts of collusion in the same way as acts of commission. The Inquiry's key finding that

the state (not merely its agents or rogue elements) failed to safeguard Rosemary Nelson's life does, in my view, amount to collusion. It is unfortunate that the Inquiry side-stepped the issue of collusion itself, and coming to no conclusions about it and offering no definition.

These findings are very stark and give no examples, so a detailed critique will have to await an in-depth analysis of the content of the report.

Although the Inquiry stuck rigidly to its terms of reference in framing its collusions, it entirely failed to meet one of its terms, which was to make recommendations; there are none. In an Afterword, the Inquiry said that there had been major changes in policing in Northern Ireland since the late 1990s, such as the introduction of video- and audio-recording of police interviews of suspects and the creation of the post of the Police Ombudsman. This has meant that there is no obligation on the authorities to ensure that attitudes of the police towards defence lawyers has improved, or that no police officers or civil servants remain in post who by their acts of omission put Rosemary Nelson's life at risk. The Inquiry has also conveniently overlooked the fact that MI5 is not subject to public scrutiny by the Police Ombudsman or a similar authority.

The Secretary of State for Northern Ireland, Owen Paterson MP, seized on the findings of the Inquiry to announce that there was no collusion in the murder of Rosemary Nelson, which rather took the shine off his these days mandatory apology. The short parliamentary debate can be found here <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110523/debtext/110523-0001.htm#1105237000002>

The Chief Constable of Northern Ireland, Matt Baggott, offered a more sincere apology, and, despite the lack of recommendations in the report, said:

“You have my assurance that I will discuss in detail the findings and implications with the Policing Board, to ensure that we are held accountable for any lessons and actions required. I am particularly anxious that, in spite of the massive changes to policing over the past decade, such as the embedding of human rights and better support for victims, we move quickly if there is more to be done.”

The report attracted considerable media attention on the island of Ireland, and in Northern Ireland it ousted President Obama's visit to second place in the headlines. Jane Winter provided interviews for RTÉ (Irish television), UTV (where she headed up the 6 o'clock news), the BBC and the Press Association. She also appeared in longer documentary-style pieces for RTÉ and UTV.

As a footnote, the report devotes a whole chapter to the role of BIRW and other NGOs in drawing attention to Rosemary Nelson's situation. Of BIRW, the Inquiry said:

“The intervention of BIRW on Rosemary Nelson's behalf was significant. It not only served to interest the UN Special Rapporteur in Rosemary Nelson's case (which as we shall see below was in itself a significant factor in alerting the UK Government to her dilemma). It succeeded also in bringing Rosemary

Nelson's case directly to the attention of the Secretary of State and the Security Minister. Thus Ministers were made aware of allegations of serious police misbehaviour and of the inadequacy of the mechanism for dealing with it."

While this and remarks made about other NGOs, such as CAJ, the Lawyers Committee for Human Rights (now Human Rights First), Human Rights Watch and Amnesty International, legitimates the role of NGOs, the conclusions reached by the Inquiry about the role of NGOs are not entirely helpful:

"As this chapter shows, the NGOs gave many prompts to both the RUC and the NIO to consider Rosemary Nelson's safety. It seems to us that the NIO regarded these letters as, essentially, correspondence to be managed. We have seen no evidence of any discussion within the NIO, either about Rosemary Nelson's vulnerability, or about the treatment of defence lawyers more generally. The RUC, for its part, clearly felt irritated by what it saw as the partisan nature of the NGOs' interventions. But a campaigning NGO, by its very nature, must have an agenda to pursue. It is not the business of an NGO to be detached and objective. Its business is to raise concerns. That is exactly what the NGOs did in respect of Rosemary Nelson. The role of a government department or other state agency is to think about those concerns, evaluate them, and take appropriate action. Even if those putting them forward are pursuing an agenda, the concerns may be real, and in this case they were. In our view, neither the NIO nor the RUC dealt with the NGOs' concerns thoughtfully and effectively, with the result that no action was taken to safeguard Rosemary Nelson."

Although clearly well-intentioned, these remarks misunderstand the role of human rights NGOs, which is to hold governments to account for their actions (or omissions) as measured against domestic and international human rights standards. This is an objective role, not an "agenda", and all the NGOs mentioned above, including BIRW, stand or fall by their reputation for detachment and objectivity, rather than their ability to campaign effectively, which is simply an activity that springs from their analysis of the problems they identify and the need to address them.

Jane Winter,
Director.