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amnesty international news release

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GIBRALTAR INQUEST DID NOT ANSWER FUNDAMENTAL QUESTION, AMNESTY INTERNATIONAL OBSERVERS CONCLUDE

Amnesty International said today (Tuesday, 18 April 1989) that despite the Gibraltar inquest into the shooting of three unarmed IRA members last year the fundamental question of whether they had been deliberately killed rather than arrested had not been convincingly answered.

Releasing a 32-page report based on the findings of its team of observers sent to the inquest last September, Amnesty International said that a full judicial review was needed of procedures that have been used in Northern Ireland and Gibraltar to investigate disputed killings by UK security forces.

"The fundamental issue," the report says of the Gibraltar killings, "was whether the fatal shootings were caused by what happened in the street, or whether the authorities planned in advance for the three to be shot dead even if that was not necessary to prevent their criminal acts or to arrest them."

This issue could not be squarely addressed by the inquest, the report concludes, because Public Interest Immunity certificates issued by the government did not allow the inquest to inquire into government policy, the planning of the operation, and the quality of the intelligence information. The inquest was further hampered by the lack of evidence from Spanish police officers concerning the surveillance of the three prior to their coming to Gibraltar.

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cc Attorney General
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D/4

The report finds that the proceedings were conducted fairly by the coroner within the limits of the Coroner's Rules and the restrictions imposed by the Public Interest Immunity certificates. It welcomes the fact that the inquest took place within six months of the shooting, whereas inquests into similar incidents in Northern Ireland have often taken place, a few years later.

(13) The report is nevertheless critical of the standard of the evidence presented at the inquest and the standard procedures which it says "significantly and unfairly disadvantaged" lawyers for the families of the deceased.

"The system is inherently weighted against the deceased's families in preparing for cross examination," it says.

The report points out that lawyers acting for the soldiers and the police had, between them, access to all the statements which were provided either by or to their clients. But the other side was not given any of the witnesses' statements in advance, did not receive any of the statements made after the incident by the security force personnel and often did not know from one day to another which witnesses would be called or in what order.

1 The Amnesty International observers, led by Canadian lawyer Stephen Owen, the Ombudsman for the province of British Columbia, also found that much of the forensic evidence had been destroyed because standard procedures to preserve evidence at the "scene of the crime" were not followed by the Gibraltar police. The pathologist was not given the forensic and ballistics reports to help him prepare a full report, Amnesty International states. The observers, who were present at the inquest throughout the hearings, reported that a great deal of the testimony was contradictory and it was not possible to get an adequate picture of the sequence of events from the information presented at the inquest.

(24)

(5)

The organization stresses that it has previously called for a full judicial inquiry into the procedures used to investigate disputed killings in Northern Ireland and into the laws governing the use of lethal force. The organization now wants the scope of such an inquiry to include the effectiveness of the Gibraltar inquest in bringing to light the full facts about the incident. It should also examine the government's overall response to the Gibraltar killings, Amnesty International said.

EMBARGOED FOR 0001 HRS GMT TUESDAY 18 APRIL 1989

INTERVIEWS: Stephen Owen, the Canadian lawyer who led the Amnesty International team of observers at the Gibraltar inquest, will be in London to answer questions or give interviews on Monday 17 April (under embargo) and the morning of Tuesday 18 April. Journalists wishing to interview him should contact the Press Office of the International Secretariat of Amnesty International on 833 5162 or 833 5329.

EMBARGOED for Tuesday 18 April 1989

amnesty international

UNITED KINGDOM

INVESTIGATING LETHAL SHOOTINGS: THE GIBRALTAR INQUEST

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SUMMARY

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On 6 March 1988 three unarmed members of the Irish Republican Army (IRA) were shot dead in disputed circumstances by soldiers from the Special Air Services (SAS) regiment of the British Army in Gibraltar, a colony of the United Kingdom. The government said the three were planning a bombing attack which would have caused loss of life. Within a few days it was alleged by several eyewitnesses that the three had been killed without having been challenged and that no attempt had been made to arrest them. It was further alleged that at least one of the victims had been shot several times while he lay incapacitated on the ground after the initial shots.

Amnesty International was concerned about these allegations and investigated these killings in order to establish whether they were "extrajudicial executions". Amnesty International uses this term to describe unlawful and deliberate killings which can reasonably be assumed to be the result of a policy, at any level of government, to eliminate or to permit the elimination of specific individuals rather than to arrest them.

On 25 March Amnesty International wrote to Prime Minister Margaret Thatcher about some of the allegations that had been made at the time and seeking clarification of the circumstances in which the three unarmed members of the IRA were shot dead. In its letter Amnesty International said it was the government's responsibility to provide a full and public account of the circumstances surrounding the incident. On 31 March an aide to the Prime Minister stated publicly that the Prime Minister thought Amnesty International's letter was "disgraceful". On 18 April the government wrote in a letter to the organization that the Prime Minister regarded the terms of Amnesty International's letter as prejudiced and offensive.

In response to calls made after the killings by Members of Parliament for a judicial inquiry into this incident, the government stated that the only inquiry would be the coroner's inquest in Gibraltar.

Amnesty International observers attended the September 1988 coroner's inquest in Gibraltar into the deaths of Mairead Farrell, Daniel McCann and Sean Savage. The IRA stated that the three were members of an "active service unit" and that they had possession of a large quantity of explosives.

The issue for the jury at the inquest to decide was whether the

killings were "lawful" or "unlawful". If the jury could not decide by a majority in favour of either of these verdicts, they might reach an "open" verdict.

The argument made out for a "lawful killing" verdict was that the evidence would show that it was reasonable for the police and the military to suspect that the three IRA members were carrying a detonating device which if challenged they would use to set off an explosion causing loss of life.

The argument that the killings were not justified involved an assertion that the soldiers went there with the goal of deliberately killing the three IRA members, whether those were their explicit instructions or whether they were briefed with false information so that they would think they had to kill the three to prevent them setting off a bomb.

By a majority of nine to two the jury found that the three IRA members had been killed lawfully.

Amnesty International sent observers to the inquest in Gibraltar with a view to determining whether the aim of the joint police/ military operation had been to kill rather than to arrest the three suspects. The organization also attended in order to assess how effective this mechanism of inquiry was in establishing the full facts about the circumstances of the deaths.

Amnesty International welcomed the fact that the inquest took place six months after the incident, which is much quicker than in Northern Ireland; that the proceedings were conducted fairly by the coroner; and that a great deal more information was brought to light than is usual during inquests in Northern Ireland.

However, the evidence presented at the inquest was insufficient for the organization to reach a definite conclusion on the above questions which Amnesty International hoped would be answered by the inquest. In saying this the organization is not taking issue with the jury's verdict per se. Yet it is concerned that the jury, the public and interested observers could only base their assessment on evidence which from the outset was incomplete. Details about government policy, the planning of the operation, and the quality of the intelligence information were not revealed, partly because Public Interest Immunity certificates issued by the government did not allow such information to be presented to the inquest.

The Public Interest Immunity certificates meant that evidence concerning the official policy level was greatly restricted. It was not possible to examine why the Ministry of Defence had selected the SAS, a "military assault force", to carry out an arrest operation rather than specially trained armed policemen. Also it was not possible to examine the intelligence information on the basis of which the military said they acted.

The effect of the observance of the Public Interest Immunity certificates was that the inquiry was confined to the shootings themselves and to the events immediately leading up to them. The authorities' information and planning decisions outside this context could not be explored.

The fundamental issue was whether the fatal shootings were caused by

what happened in the street, or whether the authorities planned in advance for the three to be shot dead even if that was not necessary to prevent their criminal acts or to arrest them. Once immunity was conferred on the planning of the operation, the fundamental issue could not be squarely addressed by the inquest.

Evidence about the police investigation into the Gibraltar killings showed that much of the forensic evidence was destroyed because standard procedures were not followed to preserve evidence at the "scene of the crime". Yet the results of the police investigation provided the basis for the evidence presented at the inquest. The pathologist was not given adequate facilities to carry out his post-mortem, nor was he given the forensic and ballistics reports to help him prepare a full report.

The proceedings appear to have been conducted fairly by the Coroner within the limitations of the Coroner's Rules and the restrictions imposed by the Public Interest Immunity certificates.

However, Amnesty International is concerned that the legal representatives of the deceased's families were significantly and unfairly disadvantaged in comparison with the representatives for the other interested parties. The system is inherently weighted against the deceased's families in preparing for cross-examination. The only reports the families' lawyer received prior to the inquest were the pathologist's and ballistics reports. He received the other forensic reports after the inquest began. He did not receive any of the witnesses' statements in advance, and even during the inquest he did not receive the statements made by security force personnel shortly after the incident. Without access to these statements in advance he was not able to cross-examine witnesses on the basis of what other witnesses, who testified at a later stage, said about the same incident. Thus, for example, he was not able to question the soldiers, who testified in the second week of the inquest, about information which was presented in later weeks by police officers or civilian eyewitnesses. He also did not have witnesses' earlier statements to compare with their court testimony. In this he was at a considerable disadvantage in that the other lawyers, who acted for the soldiers and the police, between them had access to all the statements which were provided either by or to their clients.

Insofar as the unavailability of statements in advance hindered a fully-prepared cross-examination by the families' lawyer, this inhibited the inquest from bringing out the full facts concerning the killings.

The inquest received a great deal of evidence but it was restricted in some ways and flawed in others. The police investigation of the incident was inadequate in terms of finding eyewitnesses. Moreover important and standard "scene-of-the-crime" police procedures were not followed: no chalk outlines were made of two of the bodies, nor of the spent bullet cases; spent bullet cases were removed before there was any formal documentation of where they lay, the bodies were removed from the site before photographs were taken. The pathologist claimed that he did not get access to the necessary information to prepare a full report, including the results of various tests carried out in London, the ballistics and other forensic reports. The SAS soldiers were not formally interviewed and did not give statements until one or two weeks after the incident.

A great deal of the evidence was contradictory and it was not possible to get an adequate picture of the sequence of events from the information presented at the inquest. This was partly due to the lack of forensic evidence, the Public Interest Immunity certificates, the lack of evidence

from Spanish police officers and the inquest procedure itself. Some of the contradictory evidence was a natural result of different people's perceptions and memory of the same occurrence.

After 19 days of hearing testimony from 80 people, the coroner gave his 45-page summing-up to the jury. Any criticism of the coroner's summing-up must be coupled with acknowledgement of its overall fairness and the coroner's repeated emphasis that it was for the Jury, not him, to assess the evidence and reach a verdict.

The most important criticism that can be made is that the coroner explicitly discouraged the jury from reaching an open verdict. Amnesty International believes that in the circumstances it was wrong to discourage an open verdict. The evidence was complex in important areas; there were significant contradictions and discrepancies in the evidence; there was inadequate "scene of the crime" forensic evidence; lines of inquiry that might have been crucial were blocked by the Public Interest Immunity certificates. In the circumstances, the open verdict was a reasonable and entirely logical verdict for jurors who, like Amnesty International's own observers, could not be certain on the evidence of how the deaths had come about.

Amnesty International concludes that the most important question in its view, namely whether the three suspects were killed as a result of an official policy of deliberate planned killings of suspected members of armed opposition groups, cannot be answered by the inquest procedure, as it is presently constituted. It considers that this procedure of inquiry into disputed killings has failed to alleviate public concern that these suspects were killed rather than arrested.

Amnesty International has in recent years called for a full judicial inquiry into disputed killings in Northern Ireland since 1982, with particular reference to the procedures used to investigate such incidents and to the legislation governing the use of lethal force. The organization now believes that such an inquiry should also review not only the effectiveness of the Gibraltar inquest in investigating all the circumstances surrounding the Gibraltar killings, but also the government's overall response to the Gibraltar killings.

This summarizes a 34-page document, United Kingdom. Investigating Lethal Shootings: The Gibraltar Inquest (AI Index: EUR 45/02/89), issued by Amnesty International in April 1989. Anyone wanting further details or to take action on this issue should consult the full document.

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