RELATIVES FOR JUSTICE

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Gaolta ar son na Córa

Submission to
the United Nations Human Rights Committee
on the UK's 7th periodic report

June 2015

Introduction

Relatives for Justice (RfJ) was established in 1991 by the relatives of people killed by British soldiers, members of the RUC and by loyalist paramilitary organisations in circumstances where collusion with state forces is suspected. Today Rfj's holistic support and advocacy services extend to the bereaved and injured of all participants to the conflict. RFJ aims to provide appropriate therapeutic and developmental based support for the bereaved and injured of the conflict within a safe environment. It seeks to examine and develop transitional justice and truth recovery mechanisms assisting with individual healing, contributing to positive societal change, ensuring the effective promotion and protection of human rights, social justice, and reconciliation in the context of an emerging participative democracy post conflict (See www.relativesforjustice.com).

RfJ has supported its members and clients as they negotiate various legal and investigative mechanisms dealing with their loss. This has involved:

- documentation and analysis of information related to incidents;
- publishing case studies putting information in the public domain;
- referring families to qualified solicitors for legal advice;

- assisting in developing legal strategies for families and key cases for strategic litigation;
- accompanying families to attend trials, hearings, inquests and other legal processes;
- supporting families and clients in engagement with investigative mechanisms such as criminal investigations by the Police Service of NI (PSNI), case reviews by the Historical Enquiries Team (HET), investigations into complaints against the police by the Office of the Police Ombudsman of NI (OPONI);
- preparing and making submissions to the above criminal justice and statutory agencies responsible for historic and current investigations;
- providing public commentary on clients' and families' perspectives
- informing the international community of the difficulties involved in holding the British state and its agencies to account for the deaths it has caused or facilitated.

This submission will focus on para 9(c) – UN Council resolution 1325 – and para 13 – conflict-related deaths – of the **List of issues** produced by the Committee on 20the November 2014.

1. What steps has the UK government taken to ensure the participation of women in addressing the legacy of conflict in the north or Ireland in accordance with UN Security Council resolution 1325?

International developments on recognition of gender harms or securing equal participation have not impacted on any process to deal with the past in the North of Ireland.

The international debate on transitional justice has recognised that women experience conflict differently and international law has reflected this in recent years.

It is clear that this international development has not managed to make its way into our debate on dealing with the past. This is despite a peace agreement in 1998, which was

based on human rights frameworks[1] and the recognition at that time of the importance of gender participation and equality.[2]

Of course since the signing of the Agreement, the path to finding comprehensive mechanisms on how to deal with our past has been a very long one. The parallel piecemeal efforts that have been made have failed to address the needs of victims and survivors or wider society.

Until last Christmas' Stormont House Agreement there have been two main political processes that have attempted to devise a mechanism to deal with the past in the post conflict North of Ireland, the Consultative Group on the Past proposals and the proposals from the Haas O'Sullivan Panel of Parties talks. Neither mentioned gender.

This is not that surprising as the debate on dealing with the past in the North of Ireland has been gender blind. However this blindside has been highlighted and significant voices including Relatives for Justice have been long calling attention to the gender gaps. There were several formal submissions to the Haass and O'Sullivan talks in 2013, which highlighted the international obligation and need to include a gender perspective on dealing with the past.[3]

However at the end of the day these observations did not make their way to the tables of negotiation last Autumn between the parties and the two governments and, frustratingly, for victims of the conflict, there is no indication thus far that despite international standards on truth recovery that the experiences, participation and needs of women will be actively included in any process within the Stormont House Agreement.

[1] Campbell, Ní Aoláin, Harvey "The Frontiers of Legal Analysis. Reframing the Transition in Northern Ireland" Modern Law Review (2003) Vol 66 3 317-345

[2] Paul Mageean and Martin O'Brien "From the Margins to the Mainstream: Human Rights and the Good Friday Agreement" Fordham International Law Journal Vol 22 Issue 4 (1998) 1449

[3] Relatives for Justice "Submission to the Panel of Parties, Dr Haas and Professor O'Sullivan Talks" November 2013 < http://relativesforjustice.com/rfj-submission-to-the-haas-and-osullivan-talks/>

In addition UNSCR 1325 faces a particular challenge in its application to the region. The British Government do not recognise the North of Ireland as having lived through a conflict. Its Action Plan on UNSCR 1325 does not recognise the state has any obligation to develop measures on women peace and security in relation to the North on that basis.

Equally CEDAW has run into the same lack of application and focus from either jurisdiction regarding women who survived the conflict in the North of Ireland.

Somehow international frameworks on recognition of conflict related gender harms have by-passed the North of Ireland since the signing of the peace agreement in 1998.

It prefers to limit SCR1325 to its foreign policy despite the fact that it is one of the UN Security Council's permanent members.

RfJ has developed a gendered-harms project, which seeks to document the specific – and continuing – impacts of the conflict on women. We seek to convince the UK government that the identified issues should be included in the government's UNSCR1325 actions. RfJ's insights, however, have thus far fallen on deaf ears.

RfJ has also sought to encourage the government of the Republic of Ireland to include consideration of the needs of women in the north of Ireland in its UNSCR1325 action plan See: <http://relativesforjustice.com/wp-content/uploads/2014/10/RFJ-submission-to-1325-Irish-2nd-NAP-consultation.pdf>

Also: <http://relativesforjustice.com/wp-content/uploads/2015/02/Dealing-with-the-Past-Where-Are-the-Women.pdf>

Also: <http://eamonnmallie.com/2015/05/why-is-the-debate-on-dealing-with-the-past-in-northern-gender-blind-by-andree-murphy/>

☛ ***Committee members may wish to press the UK government to reconsider its refusal to implement UNSCR1325 in the north of Ireland.***

2. What measures has the UK undertaken to establish a comprehensive framework for dealing with conflict-related deaths?

The matters raised by the committee emphasise in particular the issues of independence and delays before asking for developments in the case of Pat Finucane.

New proposals for legacy investigations

Since the last reporting period, in 2008-2009, there have been two sets of substantive negotiations that have sketched out possible arrangements for dealing with the legacy of conflict. The Haass/O'Sullivan proposals (Dec 2013) were notionally agreed between the parties involved in the devolved Executive at Stormont. This agreement quickly became redundant. The absence of the Irish and British government from the negotiations was seen as a key problem. The issues are too raw for the local parties to take the lead on. In December 2014, agreement was reached between the two governments and the local parties in what became known as the **Stormont House Agreement** (SHA). This has the potential to be the Article 2 compliant investigative mechanism that has been missing for so many years.

Current target dates for operationalising the mechanisms in the SHA are in the autumn of 2016. The key to success will be how effectively implementation is achieved.

However the British government have indicated that the SHA, which includes other agreed areas around welfare reform apart from a proposed Article 2 Historic Investigations Unit (HIU) and an information recovery commission, if not implemented in full will see the agreement fall in it's entirety have caused concern. It is not acceptable that if there is not political agreement between the local parties then an Article 2 compliant investigative mechanism will not emerge and that the funding resource for this will be removed. These convention rights are not predicated on the basis of a successful outcome of agreements such as the SHA, even though we welcome its potential. These rights are enshrined within the conventions to which the UK government is a key signatory. It is therefore wrong for this

threat to be imposed on families who simply seek remedy in a complaint manner for the deaths of their loved ones. It is also wrong that when families seek remedy and challenge years, and even decades, of delay that the continual excuse from the authorities for delay is that there are political talks about finding a solution; solutions that inevitably run into trouble and disagreement and yet more delay for families. It is also not acceptable that the British government seek to abdicate from its convention obligations by continually referring them to the devolved Executive administration in the north of Ireland; the Executive does not sign the conventions, it is the UK.

Equally the obligation for resourcing these investigations is not the responsibility of the devolved Executive from the block grant allocated by the UK Treasury but rather directly from the UK Treasury as they carry the convention obligations and are the party concerned not to mention the subject of the investigations for the deaths. Many families see this as a further delaying tactic around 'limited resources' and passing the obligations into a political framework that will inevitably by its very nature cause disagreement.

> ☛ ***Committee members may wish to ask the UK government what reassurances it has for the timely implementation of the legacy aspects of the Stormont House Agreement.***

Inquests, disclosure of information and delays

Experience has shown that there are elements within the police who will fight tooth and nail to prevent the exposure of state activity during the conflict. During attendances at inquests, the one current mechanism which can be described as article 2 compliant, RfJ has observed how the Police Service of Northern Ireland (PSNI) has gradually established a system which effectively undermines discovery of documentation. Significant delays have characterised these inquests, mostly arising from the lethargy with which the police deal with requests for information from police controlled conflict-related documentation and intelligence archives. These delays have taxed the patience of presiding coroners. Again and again, coroners and barristers have expressed frustration and annoyance at lapsed deadlines. The PSNI has been incapable to speeding up discovery.

One inquest – related to the murder by loyalists of 76-year old Roseann Mallon 22 years ago – had reached the stage of closing submissions after 18 months of hearings when word came through from the PSNI of more relevant documentation having been found (http://relativesforjustice.com/coroner-lambasts-psni-approach-to-disclosure-of-information-on-pensioners-killings/). The coroner described the police explanation for the delay as like reading Alice in Wonderland!

On top of delays, the number of checks to documents has expanded exponentially. Each item now has to be checked for:

- article 2 ECHR (right to life) issues;
- article 8 ECHR (right to privacy and family life) issues;
- data protection issues;
- freedom of information issues;
- national security issues;
- public interest immunity issues; and
- Official Secrets Act issues.

Where documents relate to army killings, they must be subjected to checks from an army perspective.

The staff who carry out these checks – in a recently expanded Legacy Support Unit – are vetted to high levels of security clearance. RfJ believes that they are supervised by former RUC Special Branch officers. According to senior PSNI officers, they are employed because they understand the systems and have "corporate memory" of what is contained on the databases. In RfJ's view, the LSU staff are more correctly termed "gatekeepers"; they know what secrets must be kept under wraps.

Each document must be personally read and signed off by corporate legal officers, the Deputy Chief Constable of the PSNI and then the Chief Constable of the PSNI. If there are national security and/or official secrets issues, then the British Secretary of State must sign off on the document.

Documents arrive to next of kin and their counsel with multiple redactions that make documents virtually unreadable. RfJ has seen documents redacted so enthusiastically that the only thing left visible has been "the IRA". RfJ has also seen documents where, on public

interest immunity grounds, the day of the month that data has been logged into the police computer has been redacted. In respect of summary executions by police officers in 1981 and 1982, copies of newspaper clippings that were openly published have been marked "Top Secret"! This classification means that they have to be checked for redactions.

These extraordinarily complicated and time consuming procedures have been designed to frustrate the orders of the courts domestically and at the European level to allow for proper investigations into state killings to be carried out. Inquests, with a number of recent changes, have been found to be article 2 compliant. It is precisely because of this that the police have been so eager to dry up the flow of information. Senior officers are summoned to inquest hearings to explain delays. They turn up and assure the court that it is their duty to assist the coroner and this is what they are seeking to do. Yet the flow of information is turned off and when it does trickle out, it does so in ways that frustrate the hoped for transparency.

A similar situation has been used with Public Record Office (PRO) documentation. RfJ was able to use such documentation from inquests and court proceedings to show that a police investigation into the loyalist murder of five people in a betting shop on the Ormeau Road in Belfast in 1992 had missed significant evidential leads which raised questions of state connivance (http://relativesforjustice.com/portfolio/sean-graham-bookmakers-atrocity/).

When subsequent requests to the Public Records Office in relation to other murders were made, blockages were erected by the police and the British Secretary of State. When the Sinn Féin minister responsible for the PRO, Caral ní Chuilin, personally ensured that the files were handed to RfJ, the police and the British Secretary of State sought a court injunction against the minister and RfJ seeking to take control of the files.

Since then, new controls over documentation have meant that the PRO can no longer release files before police and the British Secretary of State have checked them and made their redactions. Files that RfJ has requested two years ago have still not been released.

Thus does the British Sate and its security agents seek to control its role during the conflict.

☛ ***Committee members may wish to explore with the UK government why such unnecessarily complex disclosure arrangements have been put in place.***

Evidence of collusion accumulates

Despite the extraordinary efforts at managing information, a series of recent television programmes has highlighted the extent to which the then police force (the Royal Ulster Constabulary) and secret military intelligence units relied on the use of informants and agents during the conflict. While it appears there were agents in all paramilitary groups, the links between state security agencies and pro-state illegal groups appears to have been close and intimate. On the BBC's *Panorama* programme (29.05.2015) Lord Stevens, who investigated collusion between loyalists and the security forces said that, during the course of his 14 year-long series of investigations, he arrested 210 suspects. Remarkably, only three were not agents or informers.

The review of documents related to the murder of Patrick Finucane by Sir Desmond De Silva (**The Report of the Patrick Finucane Review**, Dec 2012) also considered the question of linkage and co-working between loyalists and state security agencies. De Silva had sight of an MI5 assessment of where loyalist assassination group obtained their information on targets and targeting in the mid-1980s. In fact they assessed that 85% of loyalist information came from state sources.

There is a range of other disturbing information in the De Silva review. The British government response was to apologise.

However, there was no accountability for wrong-doing and illegality. The Stevens investigation sent files recommending prosecution of 25 senior officers and employees in state security agencies to the Director of Public Prosecutions. In each case, it was decided not to prosecute.

The Stevens report has yet to be put into the public domain.

☛ ***Committee members may wish to explore with the UK government full disclosure of official reports into collusion would not be the more effective means of redressing the legacy of its security policy during the conflict.***

Visit by EU Human Rights Commissioner, Nils Muižnieks

In November 2014, EU Human Rights Commissioner Nils Muižnieks visited Belfast at the invitation of the Sinn Féin MEP, Martina Anderson, to speak at a conference on legacy issues. He took the opportunity to characterise the UK government's approach in protecting its agents and employees as virtual "impunity".

In an interview with the BBC (http://www.bbc.co.uk/news/uk-northern-ireland-29941766), he outlined his views in respect of the UK's Article 2 obligations on conflict-related killings:

> "The UK government cannot wash its hands of the investigations, including funding of the investigations. These are the most serious human rights violations.
>
> "Until now there has been virtual impunity for the state actors involved and I think the government has a responsibility to uphold its obligations under the European Convention to fund investigations and to get the results.
>
> "The issue of impunity is a very, very serious one and the UK government has a responsibility to uphold the rule of law. This is not just an issue of dealing with the past, it has to do with upholding the law in general."

This was a timely intervention in view of the negotiations the following month.

Disclosure and the SHA

As stated earlier, RfJ has welcomed the proposals outlined in the Stormont House Agreement and is following closely the planned legislation. Within the Agreement (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/390672/Stormont_House_Agreement.pdf), the UK government makes the following commitment at paragraph 37:

> "The UK Government makes clear that it will make full disclosure to the HIU

> "In order to ensure that no individuals are put at risk, and that the Government's duty to keep people safe and secure is upheld, Westminster legislation will provide for equivalent measures to those that currently apply to existing bodies so as to prevent any damaging onward disclosure of information by the HIU."

The apparent commitment to transparency in the first sentence is vitiated by the second which suggests that the UK will delegate its cover-up fetish onto the Historical Investigations Unit. In fact, paragraph 37 is really a commitment by the UK government "to prevent any damaging onward disclosure".

A similar approach is detectable from senior police officers. They say they wish to hand over all relevant information (http://www.belfasttelegraph.co.uk/news/northern-ireland/psni-chief-constable-george-hamilton-i-want-to-hand-over-vault-of-secret-police-files-on-troubles-murders-31296388.html) as part of any overarching legacy process. When pressed more closely, they insist that the protections and systems that have now been established must continue to operate after the material in the archive is handed over.

One can envisage therefore a situation where a new – apparently article 2 compliant – mechanism is established, yet information is managed in the same way because primary legislation prevents "onward disclosure".

Given the experience of UK government political and security prevarication and delay, one suspects that the impunity described by Mr Muižnieks may continue to be the order of the day.

☛ ***Committee members may wish to ask the UK government how it intends to ensure that disclosure to the SHA mechanisms is sufficient to enable an article 2 compliant investigation which can lead to the identification and prosecution of perpetrators of illegal collusion within state security services***

Continuing failure to allow full examination of the circumstances of Pat Finucane's murder

It is worth re-emphasising that the UK government has still not delivered on its promise to have a judicial inquiry into the Pat Finucane murder. This was an issue that the Human Rights Committee raised with the government at the last reporting session. The government will say that Sir Desmond De Silva's review of the papers is sufficient. In fact this matter is awaiting judgement after a four-day judicial review of the government's decision to downgrade its promise of a full inquiry to the paper review. The hearing took place from 11 – 14 May 2015.

Judicial Review of David Cameron refusal to order public inquiry

The background to the judicial review (http://relativesforjustice.com/pat-finucanes-murder-as-bad-as-it-gets/) is that this is the only case of the 6 identified in the Weston Park agreement which has not had the promise of a public inquiry fulfilled. The Finucane family, therefore, has been treated uniquely and unfairly. The procedure agreed at Weston Park was for retired senior Canadian judge, Peter Cory, to examine the files in all six cases. He could conclude the need for a public inquiry if he found sufficient evidence suggesting collusion between the police force in each case and one or other paramilitary group. Judge Cory recommended an inquiry into all six cases.

Other key developments were the sudden promulgation of the Inquires Act in 2005. This gave government ministers considerable powers to intervene in the running of an inquiry. They could direct private hearings, interfere in the publication of documents and otherwise protect "national security" concerns. This legislation was widely felt to be an unscrupulous attempt to "load the deck" in advance of a public inquiry into the Finucane case. The last thing the government would countenance, many felt, was a properly independent

examination of all documents and open testimony from military intelligence operatives, former RUC Special Branch officers and government ministers.

In the end, Prime Minister Cameron opted for another review of documents by Sir Desmond de Silva QC, who produced a report in December 2012. The family rejected this could be viewed as an independent, effective and thorough investigation as required by Article 2 of the European Convention on Human Rights.

Documents obtained through discovery showed how significant the case was thought to be. In an email prior to a ministerial meeting in July 2011, Downing Street Cabinet Secretary, Sir Jeremy Heywood wrote to Simon King, a Prime Ministerial adviser: "Does the prime minister seriously think it's right to renege on a previous government's clear commitment to hold a full judicial inquiry? This was a dark moment in the country's history – far worse than anything that was alleged in Iraq/Afghanistan. I can't think of any argument to defend not having a public inquiry. What am I missing?" A responding email seemed to assure Heywood, that the Prime Minister "shares the view that this is an awful case, and as bad as it gets, and far worse than any post 9/11 allegation". In another document, the same official described the case as "a horror story" adding the Ministry of Defence are "in denial" over the case. Despite all this, in October 2011, the Prime Minister finally informed the Finucane family of his decision to refuse an inquiry.

During the hearing, the judge asked the government barrister whether "a state colluding in the murder of lawyers" would constitute a serious crime under international law. Remarkably, the reply was: "I'm not sure it would".

Judgment is awaited.

> ☛ ***Committee members may wish to raise with the UK government when the Finucane family and their legal advisers will have the opportunity to test the available documentation related to the involvement of state security services in the murder of Pat Finucane.***