



RELATIVES FOR JUSTICE

Submission to Special Rapporteur on Truth, Justice,
Reparation and Guarantees of Non-Recurrence, Pablo
De Greiff November 2015

Relatives for Justice welcomes this opportunity to engage with the United Nations Special Rapporteur on Truth, Justice, Reparation and Guarantees of Non-Recurrence.

This country visit occurs at a most fortuitous moment as the local political parties and British and Irish governments negotiate the implementation of the Stormont House Agreement and its measures for dealing with the past.

For victims and survivors of the most recent period of conflict between Ireland and Britain the matters of truth, justice, acknowledgement and recognition have not been dealt with in a comprehensive manner to date. This submission will argue that they have not been dealt with in a human rights compliant manner.

This submission will further argue that these matters should not be subject to internal negotiation and trade off rather than being treated as matters of governmental and societal legal and moral obligation to all of those who have suffered most during the conflict.

While recognising that the matters are complex and difficult, they are nonetheless clearly identifiable, and comprehensive and compliant solutions are available, as evidenced by the copious numbers of reports and recommendations published to date, including Eolas (2003), Healing Through Remembering (2006), the Consultative Group for Dealing With the Past (2009), Haass O'Sullivan (2013) and lastly the Stormont House Agreement (2014).

The visit of the Special Rapporteur is therefore most welcome at a time when the intervention of international, independence and expertise is most clearly needed and should be most valued.

Relatives for Justice

November 12th 2015

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Background to Relatives for Justice

Established in 1991 by relatives of people killed in the conflict **Relatives for Justice (RfJ)** is an Irish based human rights NGO providing holistic support services to the bereaved and injured of the conflict.

Initially established by relatives of people killed by British soldiers, members of the RUC and by loyalist non-state actors, including in circumstances where collusion with state forces is suspected, RfJ today provides support to the bereaved and injured of all the actors to the conflict on an inclusive and non-judgemental basis. 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.¹

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;
- developing strategic litigation;
- referring families to qualified solicitors for legal advice;
- 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);
- supporting families in making applications for fresh inquests;
- 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.

Equally, and just as importantly, RfJ provides an holistic support package which includes therapeutic support, counselling, complementary therapies, and art therapy.

¹ See www.relativesforjustice.com

The organisation provides a range of support classes and activities for families and the injured and carers including painting, quilting, gardening, creative writing and personal development. All of which are designed and run to support individuals and groups to reconnect with the living and develop positive and healthy responses to the effects of trauma.

This integrated approach to recovery draws on international best practice and in particular the approaches of Dr Judith Herman and Dr David Becker.

Relatives for Justice has also developed a gender analysis to all of its work, recognising that men and women who have experienced the same events may well have experienced it differently and may require different support strategies for recovery and for engagement in truth recovery and justice mechanisms.

As such truth recovery, pursuit of justice and acknowledgement, reparations and trauma support is impossible to separate as essential parts of recovery for victims and survivors. They inter-link and rely on each other and only then can effective and equal participation of victims and survivors be secured in transition.

History of State Violence and Collusion and the Experience of Families' Pursuit of Justice

The following is a chronological narrative entitled "Collusion" delivered as part of Féile An Phobail, St. Mary's University College, Belfast, on August 4th 2015

The British policy of collusion predates our most recent conflict and can be directly traced to other countries occupied, colonized and held by Britain through the use of military force.

Themes such as: fostered division, sectarian strife, structured violence through economic discrimination and inequality, and State violence with total impunity have all characterized policies in these countries much in the same way we here in Ireland have experienced the human hardship, suffering, injury, bereavement and resulting traumas.

Partition too has been a dominant and accompanying theme as well as vilifying, criminalizing and perpetrating extreme violations against entire communities and those engaged in democratic, civil and social opposition to the colonial power; this in addition to those who ultimately engaged in anti-colonial armed actions in pursuit of national liberation.

Dehumanizing sections of society, describing them as 'hostile' and 'terrorist' and using general defamatory descriptions also has the effect of conditioning wider society – even subliminally – to somehow lessen the impact of violations when perpetrated against a particular community and individuals – or at the very least creating ambiguity rather than outrage; the origins of a hierarchy of victimhood.

There is also the derogation of the normal standards of justice and due process; the use of and corrupting of the rule of law through legislative change, often described as 'emergency' and in the guise of 'public interest', where the law that is supposed to protect citizens is itself turned on its head and used as a tool of conflict. This is in addition to impunity where the State uses its sovereignty as a shield for its illegal activities. This legislative power is crafted and couched so as to present a veneer of respectability.

The stroke of that same legislative pen is also about clearing the way for 'special measures'. Measures such as internment and detention without trial, and of what is essentially a conveyor belt

system of incarceration through interrogation centres, where ill-treatment, torture, coercion and forced confessions were the order of the day. This extended to special courts that handed down extreme sentences disproportionate to the alleged offence – if committed at all. This saw thousands sent to special prison camps. These systemic practices are also part and parcel of the political and military approach that encompasses the collusion framework.

The objective of seeking to control the mainstream media through the creation of special sections of the military, military intelligence and ‘security forces’ so-called for the sole purpose of spreading misinformation, disinformation, and propaganda as part of this overall approach is also the common experience. Censorship is too. It’s also worth noting that the British Foreign & Commonwealth Office funded the *BBC World Service* up until April last year.

This activity too seeks to give a form of legitimacy to actions that are unavoidably overt and contrary to democratic values whilst covertly planning, plotting, controlling and directing an underhanded policy of counter insurgency.

The use of illegal methods and techniques through the organized alliance of useful likeminded and sympathetic groups of individuals, often cultivated through serving and former soldiers, into paramilitary gangs, the use of pseudo gangs, counter gangs, agents, and informers, that inevitably result in countless murders are at the core of the collusion policy. The instructive pretext of official deniability also frames these activities.

All of this is completely connected and planned – it should not be viewed in silos or isolation. In doing so we better understand the framework policy and expose the nonsense of the ‘rouge’ element and ‘bad apple’ theory. Collusion is institutional, systemic, approved and resourced at the highest levels of government and military of the time.

The backdrop in which to view these matters is the British Army’s mission in the north of Ireland made public only in recent times and titled ‘Operation Banner’; its mission - to defeat the IRA. Everything else, indeed everyone else, could be described as collateral damage in the pursuit of that stated objective. The fact is that anyone in the way including within their own forces was expendable and if they’re prepared to go to those lengths then we have the measure of what they’re capable of concerning everyone else.

In order to set into context the policy objective of collusion, both militarily and politically, knowledge of the systemic approach and experiences of collusion and direct State violence in former British colonies such as Kenya, Malaya, Aden, Oman, Cyprus, Palestine and elsewhere is an essential prerequisite to contextualizing and fully understanding our own horrendous experience of collusion and State violence in Ireland. It is also about international solidarity too as even today many of the victims of British State violence in these countries, a newer generation of bereaved relatives and survivors, have been to the fore in their continued struggle for truth and justice. We have much in common.

And it's also worth bearing in mind that the policy of collusion developed and became more sophisticated during the course of its deployment over the duration of our recent conflict; and no doubt was and continues to be practiced in countries such as Iraq and Afghanistan. Collusion and the past are ever present here and elsewhere because they remain unsolved.

At the helm of this activity was Brigadier Frank Kitson. He was posted to Ireland for a short yet crucial period from September 1970 to April 1972 commanding the 39th Brigade. Coincidentally, or not, this same period witnessed the worst years of the conflict. Kitson wrote and published extensively on counter insurgency drawing on each colonial experience that witnessed extreme brutality and murder. In November 1971 he published *Low Intensity Operations*.²

Kitson wrote; *"In order to put an insurgency campaign down, one must use a mix of measures – not just military measures – and it's sometimes necessary to do unpleasant things."*

The British government had opted for a military solution to what was essentially a political problem and thus decades of conflict ensued.

During Kitson's time in Ireland there was a sharp rise in British Army killings including mass killings; Ardoyne, the internment killings including Ballymurphy, and Bloody Sunday. And this continued into the Springhill and New Lodge Six massacres.

Sectarian attacks were also on the increase during this early period and Catholic owned bars and pubs were targeted; McGurk's Bar, the Bridge Bar, Strand Bar, The Rose & Crown, the Whitefort Inn,

² Kitson, F. "Low Intensity Operations: Subversion, Insurgency and Peacekeeping" (1971) Faber

the Hunting Lodge, Kelly's Bar and the early bombing of Dublin in 1972 was aimed at influencing an ongoing debate in Leinster House concerning whether or not the Irish government should introduce internment. And of course the UDA was created in September 1971. The Military Reaction Force, MRF, was also formed during this period and sited at Palace Barracks within Kitson's own HQ.

Their tactics included:

- Using guns identical to those used by the IRA to carryout attacks causing confusion, fear, uncertainty, and paranoia;
- Using infiltration, covert ops, and agents to tamper with timing devices causing premature explosions that killed those handling devices, including explosions with horrendous civilian consequences;
- Bugging and tampering with weapons;
- The ultimate aim of groups like MRF was to also inflict as much public damage as possible aimed at lessening support for anti-State armed groups i.e. republicans;
- It was also about destabilizing and sapping the moral of those engaged in armed struggle and their communities;
- It was about trying to turn a community inward on itself;
- And seeking to capitalize around disputes between groups to instigate, fuel and continue internecine feuds.
- Supporting pro-State paramilitary groups to place and plant bombs manufactured by secretive and shadowy military intelligence groups as we've heard;
- And running sectarian terror gangs abducting, torturing and killing Catholics and engaging in attacks generally was the modus operandi.

Albert 'Ginger' Baker was part of a notorious UDA murder gang based in East Belfast, he was also a serving British soldier. *Remembering the instructive pretext of official deniability.*

On February 1st 1973 Paddy Heenan, a West Belfast foreman joiner was killed by the UDA in East Belfast as he travelled with his workmates to build a school in that area. This year his widow Mary and son Eugene lodged a civil action against Sir Frank Kitson and the Ministry of Defence in regard to the direction and actions of MRF.³

³ "The Architects of Collusion to Receive Writ from Bereaved Irish family" April 28 2015
<<http://relativesforjustice.com/the-architects-of-collusion-to-receive-writ-from-bereaved-irish-family/>>

The Mid-Ulster and greater Armagh area was infamously dubbed the murder triangle in the 1970's by clerics Raymond Murray, Denis Faul and the ALJ in their publication report on a series of murders entitled the *Triangle of Death*. It has been documented and written about extensively down the years. However, in more recent times our colleagues in the PFC have carried out what can only be described as a very detailed forensic examination spanning more than a decade and culminating in the publication of the book *Lethal Allies*.

And we had the UDR that acted as a cover for the activities of UVF especially in Mid-Ulster and the UDA across Belfast, and South East Antrim into County Derry. In 1985 it was documented that approximately 600 UDR weapons were in the hands of loyalists allegedly 'stolen' from UDR armouries and its members.

Terror and fear for northern nationalists had been the experience in every generation since partition and the creation of the State was founded on a sectarian headcount. The early pogroms were a method of checking and putting back into place those who sought to put their heads above the parapet for civil rights, equality and justice. Unionist "security" was the mainstay of the "Protestant government for a Protestant people" in the sectarian State.

The tactic of terror – its very mention and the roaming of sectarian terror gangs – stuck deep within the nationalist/republican psyche and as the conflict continued the extremes of murderous brutality knew no bounds or depths.

The Shankill Butcher gang was active between 1975 and 1982 in Belfast. They were responsible for the deaths of at least 23 people, most of whom were Catholics killed in sectarian attacks. The gang was notorious for kidnapping and murdering random Catholic civilians; each was beaten ferociously and in some cases had their throats cut with butcher knives. The gang also killed six Protestants over personal disputes, and two other Protestants mistaken for Catholics. They even killed a member of the RUC.

During their 7-year reign of terror they were well known from early on yet roamed freely across Belfast.

Despite the voices of condemnation from officialdom it wasn't as if the Shankill butchers had just picked up of the ground the notion of such brutality. There were plenty of military examples from the British Army such as beheadings and extreme mutilations, even of the genitalia, of villagers and

activists of the Land & Freedom Movement in Kenya. The sectarian pathology of loyalism it could be argued suited the British agenda.

Phrases ‘tit for tat’ killings and that ‘one side was as bad as the other’; depicting the conflict purely as a ‘two sides’ narrative and as ‘sectarian’ were regularly used, when the truth was that at key times it was the State’s objective to fuel sectarian divisions;

An official document from July 10th 1972 of a strategic security group comprising of senior politicians including the then SoS William Whitelaw, the British Army GOC, and the RUC Deputy Chief Constable was uncovered by RFJ several years ago.⁴ The document highlighted;

- The levels of cooperation between the British Army and the UDA at a time when the UDA were murdering Catholics;
- And British soldiers should be indemnified against prosecution for shootings and fatalities as it took the war to communities harbouring gunmen and bombers.

1980’s

In 1976 a policy of criminalization was introduced into the prisons removing political status from those imprisoned for conflict related incidents and thus began an epic struggle between successive British governments and republican POW’s.

The prison protests, the blanket protest and the hunger strikes of 1980 and 1981 that saw 10 republican POW’s die had a profound effect on Ireland and indeed the world as they too took an interest.

As the British government took on the prisoner’s relatives of the POW’s, their communities, and supporters campaigned and took to the streets much in the same way they had against internment across the island several years earlier and not least on that fateful day in Derry.

One of the key messages from Margaret Thatcher was that the prisoners were ordinary criminals, had played their last card in terms of the hunger strike, and that they had no support.

⁴ “State Impunity Was Official Policy” 18th June 2012 <<http://relativesforjustice.com/state-impunity-was-official-policy/>>

Of course this was untrue and contrary to Thatcher's assertion the sight of tens of thousands of people mobilizing and marching in support of the POW's and hunger strikers was a clear contradiction if not embarrassing as the world's media observed.

So too was the election of Bobby Sands to the British parliament and Kieran Doherty and Paddy Agnew to Leinster House.

The National H-Block/Armagh Committee played a lead role with the families and as all this played out more publicly from 1980 through to August 1981 the human cost both inside the prison and on the streets was awful.

In 1980 key members of the National H-Block/Armagh Committee were targeted. Bernadette McAliskey and her husband Michael were shot and seriously injured as loyalists broke into their home near Coalisland, County Tyrone, as they and their three young children slept. Members of the British Army's Parachute Regiment who had been secreted at the scene prior to the attack arrested the gunmen. The commanding officer stating that his orders were only to arrest them as they emerged out of the home and not going into it. This was an astonishing yet all revealing admission. Thankfully Bernadette, Michael and their children survived.

Mariam Daly was attacked and brutally murdered at her home in West Belfast; as was Ronnie Bunting and Noel Lyttle. Noel had been staying over in the Bunting home. Here also three young children were at home during the attack and Ronnie's wife Suzanne was also shot and injured as she tackled the gunmen.

John Turnley an independent nationalist Councillor in Carnlough, County Antrim was also targeted and killed as was North Belfast independent Councillor Larry Kennedy.

The death squads were being more ably assisted during this period.

The use of plastic bullets was commonplace against demonstrators and even the civilian population as they went about their business within our communities during this period.

Over 30,000 plastic bullets were fired during the summer of 1981 claiming the lives of 9 people including West Belfast School children Julie Livingstone killed on May 13th aged 14, and Carol Anne Kelly on May 22nd aged just 11 – both killed by the British Army.

The day after mother of three Nora McCabe was shot dead by the RUC using a plastic bullet- July 9th 1981 – the British Army shot and killed 15-year-old Danny Barrett as he sat on the garden wall of his Ardoyne home with friends.

Shoot-to-kill

In 1982 the clearest evidence emerged concerning a policy of shoot-to-kill in which unarmed republicans were ambushed and shot by a specialist intelligence unit of the RUC's – E4A and HMSU.

Three key incidents from November 1982 to December that year claimed 6 lives.

On November 11th Sean Burns, Eugene Toman and Gervaise McKerr were gunned down just outside Lurgan, County Armagh, in the car they were travelling in. The RUC who lay in wait and ambushed the men later fabricated a story that the car had driven through a police vehicle checkpoint and that they fired whilst giving chase. They even went as far as inflicting self-injuries consistent to an officer being struck by the car as he attempted to wave it down at the imagery checkpoint.

On November 24th 17-year-old Michael Tighe was shot and killed at a disused hayshed near his home in Craigavon, County Armagh. Another teenager, Martin McAuley, was also shot and injured. The same RUC unit responsible for the Lurgan killings had the hayshed under surveillance, as an IRA arms cache was allegedly nearby. It later transpired that MI5 had also bugged the hayshed recording the entire shooting incident. The tape has never been made available as part of any investigation.

On December 12th Seamus Grew and Roddy Carroll were also ambushed and killed by the same RUC unit outside Armagh City as they too travelled along the road in their vehicle. A similar story was concocted.

The Deputy Chief Constable of the Greater Manchester Police, John Stalker, was appointed to investigate the killings due to public and international pressure. However, Stalker actually went about the business of conducting a proper investigation rather than the expected and usual perfunctory investigations that characterized State killings.

Stalker was later removed from the investigation under bogus allegations against his character and replaced by another senior British police officer, Colin Sampson, who completed the investigation

report. Stalker later cleared his name but the objective of neutralizing and removing him had been achieved.

Three RUC officers stood trial for perverting the course of justice related to some of the killings. They were not only acquitted they were also meritoriously applauded for involvement in the killings by Lord Justice Gibson who commented on their “courage” and that the officers had “brought those killed to the final court of justice”.

In 1988 the then British Attorney General, Sir Patrick Mayhew who would later be appointed as Secretary of State for the North, in a statement to the British parliament said that prosecutions against any officer would not be in the public interest. He granted an amnesty.

Human rights solicitor Pat Finucane would represent some of the families bereaved in these shootings embarking on a historic legal battle that sought to have those responsible for the killings give evidence before the inquests. In December 1988 Pat won a landmark judicial review that held the RUC officers involved in the initial shootings must give evidence in person.

The British government challenged this decision in January 1989. In February 1989 the British government murdered Pat Finucane using the cover of the UDA.

The Stalker/Sampson report remains secret and unpublished.

The inquests that were indefinitely suspended due to the persistence of Pat Finucane were eventually reopened several years post a 2001 Article 2 ruling from the ECtHR in a series of cases led by Pat’s work colleague Peter Madden and that built exclusively on Pat’s legal strategy of 1988 and known as the McKerr group of cases.

Kitson wrote; “law should be used as just another weapon in the government’s arsenal, and in this case it becomes little more than a propaganda cover for the disposal of unwanted members of the public.”

And that is how we should view shoot-to-kill and collusion.

Response to the Republican Electoral Strategy

The emergence of a republican electoral strategy from the prison protest and election of hunger strikers saw Sinn Féin subsequently lifting the policy of abstentionism and contesting elections and making significant gains by the mid 1980's – as the conflict continued.

By the latter part of the decade Sinn Féin had become an electoral force in councils and Gerry Adams had already successfully taken the Westminster parliamentary seat for West Belfast in 1983.

The British government sought a parallel approach – if Sinn Féin had an 'Armalite and ballot box' approach then they too required a similar strategy. If the 'Operation Banner' objective was to defeat republicans militarily then the political strategy too had to do the same politically.

First there was a time ban on former POW's running for political office. The Anglo-Irish Agreement emerged, a way, a means of providing a greater say for the Irish government through the Anglo-Irish Secretariat in the North's affairs. And by extension this too provided political capital to Sinn Féin's political opponents within the nationalist community North and South. This was as equally about staving off the electoral threat and potential of Sinn Féin becoming a greater force through political isolation.

However, if the project were to defeat republicans politically then having loyalists killing Catholics would be somewhat problematic, if not detrimental.

Unionist/loyalist reaction

In opposition to the Anglo-Irish Agreement loyalism and unionism was united in an unparalleled way since the signing of the Ulster Covenant in 1912 in opposition to Home Rule. Mass protests and the stranglehold that unionism and loyalism had over the North's industry, infrastructure, power stations, ports and airports brought the place to a standstill with 'days of action'.

Riots and disturbances took place and unionist dominated councils refused to do business in protest or deal with direct rule British ministers.

There was even the creation of a 'third force', in addition to the RUC and British Army, by the DUP and others known as Ulster Resistance.

With such opposition, protest and disturbance one would have naturally thought that the inevitable killing of Catholics by the UDA, UVF and others, a pattern and theme consistent with any perceived nationalist gain since partition, would have been commonplace and yet during the height of opposition to the agreement in 1985 only one Catholic was killed by loyalists; Kevin McPoilin on the outskirts of Lisburn, County Down. Effectively loyalism was switched off by the State's security and intelligence agencies.

The Force Research Unit (FRU) & Brian Nelson

At the same time a secretive British Army intelligence unit was also busy at work. If the initial plot to import arms from South African's then apartheid regime by Ulster Resistance, the UDA and UVF, had failed it would later be revived and be successful with deadly consequences.

In 1973 a 'former' soldier of the Black Watch Regiment, who was also a member of the UDA, along with two other UDA members abducted a partially sighted Catholic man. They beat him, electrocuted him, set him on fire and threatened to shoot him before being interrupted by a regular military foot-patrol. Gerald Higgins, a trade union representative from North Belfast, later died, no doubt, as a result of his horrendous ordeal.

That 'former' soldier was Brian Nelson and despite his sectarian murder bid British Army Intelligence recruited him for their operations in 1983. In 1985 Nelson reportedly 'resettled' in Germany where he was later encouraged to return to Belfast to resume operations. Nelson was secreted back into the UDA having a meteoritic rise to the position of Chief Intelligence Officer with responsibility for what effectively was, the State targeting people for murder and political assassination. That specific branch/group of British Army intelligence was the Force Research Unit (FRU) a more modern and sophisticated version of the MRF. Nelson's first major assignment was in June 1985 when he travelled to South Africa to assist an arms importation. *(Nelson wasn't the only agent and after his arrest two other UDA agents were taken into protective custody, Martin McDowell, who worked alongside Nelson, and Noel Walker.)*

Arming the loyalists

In late 1987 a shipment of weapons was imported to the North from South Africa arming all the factions of loyalism and unionism. In addition to facilitating the arming of these factions the RUC and British Army systematically provided thousands of intelligence files on Catholics, nationalists and republicans. The FRU prioritized these.

And so began a resourced strategic and tactical change post what was by now the failure of the Anglo-Irish Agreement in which the combined military approach, effectively parked during the height of the Agreement, was back in the ascendency.

With restrictions orders issued prohibiting the presence of regular police and military patrols by the key joint head security and political group, the Task Coordinating Group (TCG), areas in which loyalists would attack were cleared. Roadblocks were removed. Barriers along peace lines normally closed were opened and security cameras were switched off or not working at the time. Helicopters that were always up were absent.

The tactic was to terrorize the entire Catholic nationalist population through murders and within that to focus a strategy of political assassination and extra-judicial killings against republicans and their families – especially those who stood for political office.

On April 2nd 1987 leading republican Larry Marley was killed at his North Belfast home.

March 1988 saw the first use of the South African weapons at the funerals of three IRA Volunteers summarily executed by the SAS in Gibraltar when mourners were attacked in Milltown Cemetery killing three people and injuring scores.⁵

In July 1988 leading South Belfast republican Brendan Davison was killed. In November 1988 an attack on the home of Sinn Féin Cllr. Francie McNally claimed the life of his brother Phelim. In February 1989 Pat Finucane was killed and two days later in South Derry leading veteran republican, and Sinn Féin Cllr. John Davey, was killed.

In August 1989 nationalist Loughlin Maginn was killed at his County Down home. And it was against this backdrop that loyalists sought to counter claims that in killing Loughlin they had not killed a member of the IRA. Loyalists produced intelligence documents and a video of intelligence information supplied by the 'security forces' of scores of nationalists and republicans who were 'suspect'. Loyalists made public a total of 250 files supplied to them containing the details of 'suspects' within a few weeks of the killing. As a consequence of public and international pressure

⁵ Relatives for Justice "Collusion 1990-1994" (1994)< <http://relativesforjustice.com/wp-content/uploads/2012/12/COLLUSION-REPORT-1990-1994-PDF.pdf>>

concerning evidence, including persistent allegations of collusion, the British government on September 16th 1989 appointed a senior police officer, John Stevens, from London's Metropolitan Police to conduct an inquiry into 'security force' collusion. In January 1990 Stevens arrested Brian Nelson and the house of cards began to shake.

Stevens was no sooner appointed when loyalists killed leading East Tyrone republican Liam Ryan. Michael Devlin was also killed in the attack. And in March 1990 Sinn Féin member and former POW Sam Marshall was killed in Lurgan, North Armagh.

Stevens, in his capacity as the most senior serving British police officer, would return twice again to conduct inquiries spanning a 14-year period. Like Stalker, the Stevens investigation was continually hampered including the burning down of his offices within Seapark RUC barracks. However, his findings that RUC Special Branch and the FRU were procuring and sponsoring the murder of citizens they had a sworn duty to protect were conclusive, earth shattering, and irrefutable. His findings regarding the killing of Pat Finucane showed collusion to be all-pervasive – to borrow a phrase from a former Irish government minister. The majority of his report remains secret too.

The areas disproportionately affected by collusion were Belfast, North Armagh and the infamous murder triangle of Mid-Ulster, especially the South Derry and East Tyrone belt of the constituency, as had been the case in the 1970's through the intensive collusion during that period with the Glenanne Gang. However, as the targets from the 1970's were for the most part concentrated on Catholic and Catholic owned businesses this time republicans were clearly in the sightlines too. In particular the Mid-Ulster UVF were an arm of the State throughout the conflict in this region.

In March 1991 loyalists managed, with great ease, to snake their way through the maze of rural roads, country laneways and hedge ways, into the republican heartland of East Tyrone's Cappagh village. Seemingly undetected in an area as synonymous for its constant saturation of overt and covert military and RUC activity as for its republicanism, loyalists attacked Boyle's bar killing four men, three of them IRA Volunteers and injuring others before making good their escape.

There were also attacks across the border and in May 1991 the UDA killed Donegal Sinn Féin County Councillor Eddie Fullerton.

On Feb 5th 1992 loyalists attacked Sean Graham's bookmakers on the Ormeau Road in South Belfast killing 5 people, including two children.⁶

The SAS too were active and had been involved in a number of ambush assassination and shoot-to-kill incidents of IRA Volunteers especially in Counties Derry, Armagh and Tyrone.⁷

Despite TCG's ability to deploy the SAS against republicans in East Tyrone at a time when loyalists were killing with an unprecedented capacity across Mid-Ulster, North Armagh and elsewhere, the question of why this didn't happen concerning loyalists is, it could be argued, self-evident. It appears the only time loyalists were subject to covert operations was when they killed republicans who were the subject of covert surveillance and yet still they failed to act. Remembering it was TCG that also facilitated clear routes for death squads via restrictions orders.

We now know that up to 9 covert members of the British Army were present and observed the loyalist killing of Sam Marshall as he left Lurgan RUC station⁸. We know that during interrogations at Castlereagh, Gough Barracks, and Strand Rd. death threats were made to republicans and that the threats extended to their relatives not least in the killing of Tyrone pensioner Roseanne Mallon. This attack also took place whilst a covert operation was in place at the Mallon home. The covert team were told to switch off surveillance cameras prior to the attack and ordered, "not to react" as the attack took place. A recent inquest hearing also revealed that a secretive ballistics group in the control of Special Branch, WERC, deliberately provided false ballistic information on the weapon used in this and a series of UVF killings, mostly of republicans in the East Tyrone area. In total the weapon, along with another that was part of the weapons shipment, was deliberately mismatched in ballistics relating to 18 killings and 2 attempted killings.⁹

We know too that many killings took place within close proximity to RUC and British Army bases yet nothing was done; Thomas Hughes, Martin O'Prey, James Carson, Kieran Abram, Joseph McCloskey, and Sean Monaghan are just some of these examples in Belfast.

⁶ Relatives for Justice "Sean Graham's Bookmakers Atrocity" (2012)
<<http://relativesforjustice.com/portfolio/sean-graham-bookmakers-atrocity/>>

⁷ Relatives for Justice "Ambush Assassination and Impunity" (2012)
<<http://relativesforjustice.com/portfolio/clonoe-report/>>

⁸ "British army unit watched as loyalists shot IRA man dead, report finds" The Guardian 5 March 2012
<<http://www.theguardian.com/uk/2012/mar/05/british-army-loyalists-ira-report>>

⁹ Relatives for Justice "It's the Collusion Question in the Mallon Inquest" January 2015

<http://relativesforjustice.com/its-the-collusion-question-in-mallon-inquest/>

Also BBC *Spotlight* 12/05/2015 <<http://www.bbc.co.uk/news/uk-northern-ireland-32700914>>

By the early 1990's loyalists were killing at a ferocious rate with atrocities every day if not weekly. The effective ease of how they entered nationalist and republican communities and killed highlighted for many an obvious collusion. Those who cited collusion were vilified, harassed, and labelled as republican propagandists. Some were even targeted. The RUC and British Army harassed even the funerals of those killed, including mourners paying their respects.

On March 1993 loyalists entered the Dairyfarm complex in the Twinbrook area of West Belfast and killed 17-year-old Damien Walsh and injured another man as they worked. The main RUC response to the attack was to conduct a raid on nearby premises with the focus being that an IRA arms cache was found. Not that a young boy was killed. The raid and subsequent find had nothing whatsoever to do with Damien Walsh. An IRA informant had provided the RUC with the information prior to the attack.

Attacks on the homes of Sinn Féin members, community activists, and nationalists during this period using the weapons imported from South Africa had also dramatically increased. And the NIO and RUC policy of denying personal security measures to nationalists and republicans ensured that they were vulnerable. The period also saw SDLP members being attacked as the term 'pan nationalist front' was born as the SDLP and Sinn Féin leaders worked behind the scenes building the foundations of what would become the peace process.

In August 1993 and for the first time ever Sinn Féin marched to the centre of Belfast under the theme 'A City of Equals'. A small yet determined group of republican women had consistently faced the RUC until they broke the ban on marching to the city centre and City Hall. An estimated 20,000 took part in the historic march. That evening a heavy price was paid by one of the key march organizers, North Belfast Sinn Féin Cllr. Bobby Lavery. Having previously had his brother Martin killed by loyalists, that evening they attacked his home killing his young son Sean, a QUB student. In his public address to the media Bobby stated; "I don't blame the people who killed Sean. I blame the people who sent them." However, an actor had to read his words on television and radio as his voice was banned due to the censorship and the broadcasting ban on Sinn Féin members speaking on the media.

The intensification of loyalist violence was also part of the British strategy to pressurize the nationalist and republican base for a ceasefire irrespective of broader republican goals. It was about

creating the conditions whereby the emphasis was naturally on peace. This coinciding as behind the scenes talks also took place between republicans and the British. This was community/society conditioning for eventual run into political talks and negotiations limiting the potential of republican and nationalist gains. Republicans, the IRA, focused their activities on economic targets in England in a similar way as part of the end game.

In September 1993 loyalists killed Sean Hughes at his hairdressing business at the junction of the Donegal and Falls Road. In the aftermath of his killing the deputy leader of the Ulster Unionist Party, John Taylor, said that the killing was *“something which may be helpful because they (Catholics) are now beginning to appreciate more clearly the fear that has existed within the Protestant community.”*

Taylor described loyalist violence as having *“achieved something which perhaps the security forces would never have achieved.”* He said loyalist violence was *“making a significant contribution to the IRA finally accepting that they couldn't win.”*

The intensification of attacks on nationalists and republicans saw atrocities such as Castlerock and Greysteel, and the killings of Roger Bradley, Tom Donaghy, Danny Cassidy, and Cllr. Bernard O'Hagan in South County Derry; the mobile shop attack, the Hyster Factory, the Cairns family, Gavin McShane and Shane McArdle, in County Armagh; the Fox family, the McKearney family, the Shields family, Frank Hughes, Sean Anderson, Patrick Shanaghan, and many others across Tyrone; the Kennedy Way Depot attack, the bookmakers in North Belfast, and numerous bars, pubs and places of work across Belfast and the North; the attack on the Sinn Féin centre at Sevastopol St., rocket and bomb attacks at other centres including in Monaghan, and at the Widow Scallan's pub, Dublin, killing Martin Doherty whilst working at a Sinn Féin function.

The fear was palpable for nationalists and republicans.

Women too were targeted and deliberately killed through collusion; Philomena Hanna, Sharon McKenna, Sheena Campbell, Eileen Duffy & Caitriona Rennie, Anne-Marie Smith, Teresa Fox, Maire-Thérèse Dowds, Karen Thompson and Moira Duddy, Margaret Wright, Theresa Clinton, Coleen McMurray, Roseanne Mallon, Kathleen O'Hagan, and Caroline Moreland. From January 1988 until September 1st 1994, mostly using the imported weapons, loyalists killed 229 people and carried out over 300 attempted murders, many which left people seriously injured.

On June 18th 1994 in the sleepy County Down village of Loughinisland, a mostly unknown of and unheard of hamlet, loyalists attacked the O'Toole family bar, the Heights, as locals settled in watching the Republic of Ireland soccer team play Italy in the World Cup Finals, broadcast live from New York. Together at the stadium watching the game were two of the most influential figures in the peace process, An Taoiseach Albert Reynolds and Irish-American entrepreneur Bill Flynn, an emissary on behalf of the US government assisting and nurturing the process behind the scenes. In particular Bill Flynn was working closely with those loyalists keen to seek a political path. Of course others were opposed to this including those within the 'security forces' and intelligence services – the securocrats. That Loughinisland is an area dear to Bill Flynn, and from where his maternal grandparents hail, is significant in contextualizing the attack.¹⁰

The attack was as much an attack on the development of the peace process by those who had a tunnel vision and only interested in defeating the IRA even though it had been by then accepted that 'Operation Banner' had not achieved that main objective. In the few short moments of the attack 6 people lay dead and several seriously wounded.

Of course collusion also claimed the lives of many ordinary members of the Protestant community – agents freely able to kill across North Belfast, Mid-Ulster and elsewhere. On February 19th 2000 the Mid-Ulster UVF killed Protestant teenagers David McIlwaine and Andrew Robb, their mutilated bodies being dumped just outside Tandragee, County Armagh.

Collusion also claimed the lives of ordinary policemen, policewomen, British soldiers, and loyalists. It also included the infiltration of republican groups, recruiting republican agents and facilitating a clear route for them within their respective organizations to kill and move through, within and up the chain of command. Most notable is the agent Freddie Scappaticci who headed up the IRA's Internal Security Department, tasked with catching agents and informers within the IRA.

A former GOC of British Army in the North, Sir General Wilsey, in what he thought was a private conversation more recently described Scappaticci as a 'jewel in the crown' for the British Army in terms of agents. Wilsey also revealed he took the unusual step of meeting Scappaticci.

¹⁰ Relatives for Justice & KRW Law "Loughinisland Massacre" (2011) <<http://relativesforjustice.com/wp-content/uploads/2011/06/loughinisland.pdf>>

It's also rumoured that personally aware of and so intrigued by his role that Thatcher met him at Chequers in March 1988. Wilsey also publicly stated that he was not ashamed of the role of Brian Nelson.

The families of some of those killed as alleged informers by the IRA argue that they may have been sacrificed in order to keep Scappaticci in place. No doubt Scappaticci's agent handlers would have been aware of his activities and that as such sanctioned his actions in condemning to death many people. Ultimate culpability for his actions, as with loyalists, rests with those in power and who made such decisions.

Agents handlers sometimes also fed back to organizations those working for them once they served their usefulness; and manipulated and crafted situations in which they had people killed that either were or may have been in the way of a particular agent progressing to a senior position. Thus the handlers and their agency were more in control, effectively directing operations.

The Walker report,¹¹ drafted in 1980 by the then head of MI5 in the North, Patrick Walker who would later head that agency, drew up guidelines for agent handling that gave primacy to RUC Special Branch over all policing matters. This meant that regular policing, and crucially the CID, before processing conflict related matters for prosecution had to first pass this through the Special Branch.

Special Branch could then determine the value of whether or not to intervene, recruit, and prevent the prosecution of an individual on the grounds that the intelligence value of the person outweighed everything else – even if this involved murder.

At a meeting in Downing Street in the late 1980's concerning intelligence and agent handling Margaret Thatcher is quoted as asking a senior RUC Special Branch officer, referred to in the de Silva Review as R/15, what more was needed to '*...combat terrorism effectively...*' In the exchange the Special Branch officer highlighted that agents were operating in a 'grey' area and involved in the '*...commission of terrorist offences...*' and in the absence of a legal framework guidance was required. The answer he got was that this was too difficult an area and that Special Branch should continue as before. R/15 interpreted this as "*carry on with what you are doing but don't tell us the details.*"

¹¹ Sir Patrick Walker. "The Walker Report" (1981) <<http://www.patfinucanecentre.org/policing/walker1.html>>

More recently a former head of Special Branch, Raymond White, told *RTE's* documentary, *Collusion*,¹² that his interpretation of that same meeting, which he attended, was “*carry on with what you are doing but don't get caught.*”

Of course the end game is all about shifting culpability, as inevitably the colonial power will always seek to extract itself without blame; hence the blame game.

It's also worth bearing in mind these were the same RUC heads that also briefed Downing St. prior to Tory Junior Minister, Douglas Hogg's, statement to the British parliament about; “*some lawyers in NI being unduly sympathetic to the cause of the IRA*”. When challenged he refused to withdraw the remarks stating he based his comments on the “*advice received*” and “*guidance given*” directly from those who knew best. A few weeks afterwards and Pat Finucane would be dead.

Despite being responsible for several hundred killings the largest loyalist paramilitary group, the UDA, was in British law a legal organization. The British government refused to ban the UDA for over two decades. Only on August 10th 1992 did that position became untenable.

Politicians, commentators and people will often say that the State were only responsible for around 10 percent of conflict deaths, insulting as that is to the bereaved of direct State violence, this claim falls flat when examined against the hidden hand of the State in directing and facilitating collusion. And the truth must be told.

On a final note that provides a sense of what was happening with the policy and practice of collusion; of the 210 people that Sir John Stevens spoke to during his enquiries, and this figure excludes members of the state's ‘security forces’ (RUC & British army) & secret services (MI5 & MI6), civil servants and politicians, 207 of the 210 were agents of the above agencies working for the state within illegal organizations involved in murder.¹³

The ceasefires created space for families and communities to reflect and to deal with the past. Accountability is the key frame for all of this and for all actors to the conflict.

While this piece focusses on collusion and State violence all the political, structural, social and

¹² RTE “Collusion” June 15th 2015

¹³ BBC Panorama “Britain's Secret Terror Deals” Jun 2015

economic, violence must be addressed.

There must be examination of all these issues beyond controlled vested interest. The only way is via an independent investigative mechanism compliant with the UK's domestic and international legal obligations.

Families deserve nothing less.

ENDS

Background to Processes for Dealing with the Past

Despite a highly significant and comprehensive peace agreement signed in 1998¹⁴ the issue of past violations was “kicked down the road” during the Agreement phase of the peace process. Since there have been piecemeal official approaches to individualised calls for truth and justice.¹⁵

“Piecemeal” approaches to the past

The Bloody Sunday Public Inquiry into the deaths of 13 civilians killed by the British army in Derry January 1972 was established by then Prime Minister Tony Blair in **1998** following decades of campaigning by relatives.¹⁶

The Independent Commission for the Location of Victims’ Remains was established by an intergovernmental agreement between the Irish and British Governments, signed on 27 April **1999**, and by legislation enacted in the two jurisdictions. The purpose of the Commission is to obtain information, in confidentiality, which may lead to the location of the remains of victims who were killed and buried in secret. There were sixteen people who ‘disappeared’ during the conflict. The IRA admitted responsibility for thirteen of the sixteen, while one was admitted by the INLA. No attribution has been given to the remaining two. To date ten bodies have been recovered.

The Weston Park Agreement in August **2001** was a negotiation on the implementation of the Good Friday Agreement. This Agreement recommended the two governments “appoint a judge of international standing from outside both jurisdictions to undertake a thorough investigation of allegations of collusion in the cases, of the murders of Chief Superintendent Harry Breen and Superintendent Bob Buchanan, Pat Finucane, Lord Justice and Lady Gibson, Robert Hamill, Rosemary Nelson and Billy Wright.”¹⁷

Canadian Judge Peter Cory was appointed to carry out the investigations. He recommended public inquiries into all cases other than that of Lord Justice and Lady Gibson. All inquiries have now

¹⁴ The Agreement Reached in Multi-Party Negotiations April 1998 <<https://www.gov.uk/government/publications/the-belfast-agreement>>

¹⁵ See Christine Bell Dealing with the Past in Northern Ireland Vol 26 Issue 4 (2002) 1095

¹⁶ The report of the Bloody Sunday inquiry can be accessed at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/279133/0029_i.pdf>

¹⁷ Agreement reached at Weston Park on the Implementation of the Good Friday Agreement August 2001 <<http://cain.ulst.ac.uk/events/peace/docs/bi010801.htm>>

completed their work other than that of the case of human rights solicitor Pat Finucane.¹⁸ This case was contentiously addressed by the British Government by a review carried out by Sir Desmond De Silva in 2012¹⁹. This decision is still the matter of judicial challenge.

Of course these inquiries touched only a tiny percentage of all killings during the conflict.

Since **2001** the Police Ombudsman for Northern Ireland has carried out historical investigations of RUC and PSNI misconduct and wrongdoing. This is particularly for the period 1968-1998. This includes allegations of collusion by members of the RUC with non-state actors. Since **2010** these investigations have been carried out by the Historical Investigations Directorate. Currently over 300 cases reside in the PONI. This office has in the past faced significant interference, matters which meant significant delay to independent investigation of families' cases and compromise of the integrity of the office. Which will be touched on later.

The Historical Enquiries Team was established in **2005** by the PSNI's Chief Constable Hugh Orde to re-investigate all conflict related killings, other than those falling under the remit of the Police Ombudsman. This Team has been the subject of significant controversy in its practice and policy, particularly in relation to investigations of killings by security forces. It was disbanded in 2013.²⁰

Currently there are 55 outstanding inquests with the coronial service into 96 deaths. It is notable that this has ground the inquest system to a halt but again is a tiny percentage of the deaths of the conflict.

¹⁸ The report of the Inquiry into the death of human rights solicitor Rosemary Nelson in March 1999 in a bomb explosion under her car can be accessed at < <https://www.gov.uk/government/publications/the-rosemary-nelson-inquiry-report>>

The report of the Inquiry into the killing of Robert Hamill by a sectarian mob which was alleged to have been observed by members of the RUC has not been placed into the public domain due to files sent to the Public Prosecution Service emerging from the Inquiry. Details can be access here: <

<https://www.gov.uk/government/publications/the-rosemary-nelson-inquiry-report>>

The report of the Inquiry into the shooting dead of Loyalist Volunteer Force Commander and prisoner Billy Wright in 1997 in Long Kesh Prison allegedly with the assistance of prison or military personnel can be found here < <https://www.gov.uk/government/publications/the-billy-wright-inquiry-report>>

The report into the killings of RUC Chief Superintendent Harry Breen and Superintendent Robert Buchanon killed in an IRA ambush in March 1989 and alleged to have involved Garda agents working for the IRA can be found here < <https://www.gov.uk/government/publications/the-billy-wright-inquiry-report>>

¹⁹ "The Report of the Patrick Finucane Review" Rt Hon Sir Desmond De Silva December 2012 < https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/246867/0802.pdf>

²⁰ See 'Inspection of the Police Service of Northern Ireland Historical Enquiries Team' accessed here < <http://www.justiceinspectorates.gov.uk/hmic/publication/hmic-inspection-of-the-historical-enquiries-team/>>

Additionally many families have resorted to initiating civil proceedings against actors responsible for killings or their planning. This private route is wholly in response to the lack of an adequate process.

Comprehensive Proposals to Deal with the Past

In the absence of formal political engagement with the past until last year's Stormont House Agreement, there were two significant attempts by civil society to recommend processes for dealing with the past.

The first came from a group called "Eolas" (Irish for knowledge) in 2003 and the second from Healing Through Remembering in 2006.²¹

It was clear from both of these initiatives, alongside growing frustrations of victims and survivors that a more comprehensive approach was required.

The first significant set of proposals came from the British Government appointed Consultative Group on the Past which suggested a comprehensive range of measures which touched on areas of reparation, acknowledgement, investigation, ex-prisoners' reintegration, accountability and memorialisation.²² Despite its thoughtful, wide ranging and responsive proposals the report was subject to sustained attack due to the publicity surrounding one proposal of an acknowledgement payment to all bereaved families.

The second set of proposals emerged from the internal political parties in the North of Ireland. The "Haass O'Sullivan" proposals, facilitated by Dr Richard Haass and Professor Meghan O'Sullivan, were agreed but not formally signed off in Stormont New Year's Eve 2013, while not as comprehensive or detailed, drew on many of the Consultative Group's recommendations on investigation, accountability and acknowledgment and also included for the first time the potential that the most serious injuries might be investigated.²³ However the two governments were not involved in the process, a significant gap.

²¹ Eolas "Consultation Paper on truth and Justice" Relatives for Justice
<http://www.healingthroughremembering.org/images/j_library/lib/Eolas.pdf>

Healing Through Remembering "Making Peace With the Past" 2006 <
<http://www.healingthroughremembering.org/images/pdf/Making%20Peace%20with%20the%20Past.pdf>>

²² Report of the Consultative Group on the Past January 2009 accessible here <
http://cain.ulst.ac.uk/victims/docs/consultative_group/cgp_230109_report.pdf>;

²³ Proposed Agreement 31 December 2013 - An Agreement among the Parties of the Northern Ireland Executive on Parades, Select Commemorations, and Related Protests; Flags and Emblems; and Contending with the Past Available at <
<http://www.northernireland.gov.uk/haass.pdf>>

In December 2014 the Stormont House Agreement²⁴ provided an agreed four pronged approach to dealing with the past. Its emphasis on human rights, victims' needs and a multi-layered approach gave hope to many families.

Additional Comments

The investigation arms of the Stormont House Agreement place almost exclusive emphasis on the dead of the conflict. This raises the significant gaps of accountability or proper redress for the experience of torture, injury and other non-fatal violations.

While a pension for the most seriously injured has been agreed in principle there remains significant contest around an inclusive approach which supports all of those who suffered serious injury. The pension's debate highlights the lack of a proper programme of reparations, or even a discussion that pays cognisance of the international standards on reparations.

None of the initiatives or frameworks mentioned above or the Stormont House Agreement mention gender.²⁵ There is no indication thus far that the emerging awareness of international standards on truth recovery that the experiences, participation and needs of women need to be included in any process might feature in any of the agreed mechanism. The international developments on recognising gender harms have not impacted on any process to deal with the past in the North of Ireland. 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. The Irish Government does not have sovereignty over the North. Its measures on the North have therefore been limited, although the most recent action plan attempts to be imaginative in this jurisdictional regard.²⁶

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.²⁷

²⁴ Stormont House Agreement December 2014

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/390672/Stormont_House_Agreement.pdf>

²⁵ Catherine O'Rourke *Dealing with the Past in a Post Conflict Society: Does the Participation of Women Matter? Insights from Northern Ireland* William and Mary Journal of Women and the Law Article 4 Volume 19 Issue 1

²⁶ Karen McMinn and Dr Catherine O'Rourke "Baseline Study on UNSCR: Women and Peacebuilding Toolkit: Sharing the Learning." Submitted to the Community Foundation for Northern Ireland, the Women's Resource and Development Agency and the National Women's Council of Ireland, as part of the Women and Peacebuilding Project funded by the PEACE III Programme (December 2012)

²⁷ *ibid*

Barriers to Truth Recovery and Justice

Families bereaved by our recent conflict cite numerous barriers to truth recovery and justice.

Currently there are two live forms of investigations – inquests and cases with the Police Ombudsman.

This is clearly limited and therefore the greater number of bereaved families do not have any avenue for investigation and anxiously await the outcome of negotiations regarding the implementation of the Stormont House Agreement.

Of those few families who are engaged in investigations for conflict related violations the most structural barriers pertain to lack of **disclosure** and **delay**.

Disclosure

Disclosure of information has developed into a massive problem. A blanket has been thrown over previously public information to prevent the most elementary information being released without screening. Thus, documents already held in the Public Record Office and up until recently publically available must now be checked by sponsor agencies before they can be released.

For example, inquest papers have been, for many years, held by the Public Record Office (PRONI) in Belfast. In recent years, NGOs such as RfJ have been accessing these papers on behalf of families. In a number of occasions, it has been possible to challenge police conclusions about particular incidents by virtue of forensic or ballistic information made publicly available at the time of an inquest. In response, the PSNI and the NIO clamped down on the Public Record Office and established the new system. This operates as follows:

- a request is made to PRONI for inquest papers;
- this must now be forwarded on to the Northern Ireland Office and the Department of Justice who, in turn, forward the matter to the police;
- before release, each document is then checked by the PSNI and the NIO and redacted as required;
- the file can then be released;
- but not before the family have to sign an undertaking that the file will not be shown to anyone outside the immediate family and their legal advisers.

This absurd and byzantine procedure is mirrored in disclosure to inquests where the information is still held in police registries and has not been released to the PRONI. Time and again the police claim that they are agents of the coroner in respect of disclosure of information. Yet the system the police

have established has made the inquest system grind to a halt. The police hold the information and they have appointed staff who a) wish to protect the reputation of the old RUC against allegations of mal-practice during the conflict and b) are risk-averse in disclosing information anyway.

The best example is the documentation relating to the killing of Gervaise McKerr, Sean Burns, Eugene Toman, Michael Tighe, Seamus Grew and Roddy Carroll in late-1982. These Shoot-to-Kill incidents are the subject of one of the longest running inquests in legal history. The inquest into the killings by an SAS-trained group of RUC officers known as E4A is among the lead cases being monitored by the Committee of Ministers.

According to civil servants, the archive related to these deaths is contained in a row of large plastic bins, which are stored in a nine high row that measures perhaps forty metres. In the course of discussions during the inquest about how long it is taking for the police to release documentation, it has emerged that each document in the considerable archive is marked "Top Secret", the highest level of security classification available. Because of the "Top Secret" classification, each document must be screened and redacted. This includes press cuttings that are available in public libraries. Despite this, each press document – like all other documents – is reviewed and redacted as required under the PSNI's new system.

It emerged during inquest hearings that there has never been a review of the "Top Secret" security classification of the shoot-to-kill archive.

When the relevant staff are screening the documentation, an ever-growing list of factors now requires redaction:

- there is an Article 2 check lest any information is released which might put someone's life in jeopardy;
- there is an Article 8 check lest any information is released which would compromise anyone's right to privacy and family life;
- there is a Freedom of Information check lest any excepted information is released;
- there is a data protection check lest protected information is released;
- there is an official secrets check, to ensure that material covered by the Official Secrets Act is not released;
- there is a Public Interest check, to assess whether information should be subject to a Public Interest Immunity certificate; and

- there is, finally, a national security check which allows for a final legally undefined check which seems to be discretionary if not arbitrary.

After all these redactions are proposed, each document to be released to the inquest must be approved by the Chief Constable and the Secretary of State. The coroner has sight of the document and, in theory, has to agree the redactions. It is not known how often, if at all, a coroner has objected to redactions.

However, it has become increasingly clear over the course of the past year that coroners are frustrated by the delays caused by the police screening and redaction process²⁸. In case after case, there are police excuses and complaints by the coroner about how long the discovery process is taking²⁹. In RfJ's considered view, from having attended many such occasions, the police have established a system designed to prevent transparency by instead becoming the arbiters of what information can be put in the public domain. As a result, the inquest system has been progressively tied up in a snail's pace discovery process that yields information slowly and in manageable chunks. Families are therefore frustrated and grow old while kept in ignorance of what the state really did to their loved ones.

As a final comment on the British state's attitude to disclosure, a recent Freedom of Information Tribunal judgment is instructive.³⁰ In this case, an Irish historian, Barry Keane, requested a file from the Home Office, which had been freely available in the Public Record Office until 2009. It related to payments made to informants in Ireland between 1892 and 1910, a pivotal period of growing nationalist activism in the lead up to the Easter Rising. Despite the fact that the material dates from a century ago, the Tribunal rejected Mr Keane's request as it might endanger the recruitment of current informants as well as put the family of the informants at risk. It is stated explicitly in the course of the judgment that, in relation to informants: "the policy is to guarantee confidentiality in perpetuity".

If this is the approach of the British state to such historical material, one must hesitate to believe the UK government's assertion at para 37 of the SHA:

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

²⁸ "Drew Harris shows RUC Special Branch legacy is safe in his hands" Mike Ritchie 25/11/2014

<<http://relativesforjustice.com/drew-harris-shows-ruc-special-branch-legacy-is-safe-in-his-hands/>>

²⁹ "Leaving Court With Two Arms the One Length" Mike Ritchie 13/02/2015

<<http://relativesforjustice.com/leaving-court-with-their-two-arms-the-one-length-blog-by-mike-ritchie/>>

³⁰ http://www.informationtribunal.gov.uk/DBFiles/Decision/i1625/EA-2015-0013_13-08-2015.pdf

Indeed, in the SHA, this bald statement of apparent transparency is immediately rendered nugatory by what follows:

“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.”

Fully three-and-a-half pages of the Summary of Measures issued by the NIO in September 2015 outline the extensive pre-cautionary approach, which is to be imposed on the HIU in respect of “onward disclosure”. The impression is that there will be little scope for proper independence on the part of the HIU to make its own decisions in respect of providing information to victims.

The irony is that the UK government and the PSNI claim that such disclosure is dangerous on human rights grounds. In the ruling by the Information Tribunal cited above, the assertion is made that the state has a duty to protect the descendants of informants from danger under Articles 2, 3 and 8. Such respect and awareness for human rights obligations is notable.

One is left with the feeling that, had the various governmental and police authorities been as assiduous – and respectful of human rights – in implementing the procedural obligations of Article 2 in respect of investigating deaths caused by its agents during the conflict, their current approach to neutering the HIU would not be necessary.

Inquests

As already adverted to, disclosure has hobbled the capacity of inquests to investigate controversial deaths in the jurisdiction. Ever since cases were won at the ECtHR setting out criteria by which inquests could be deemed to deliver Article 2 compliant investigations, the row-back began. Steps forward in discovery, with coronial decisions requiring the police to yield information to the relatives of deceased, have been followed by tactical decisions to make disclosure more and more restricted. These deliberate cover-up methodologies feed into increasing reliance on secrecy at institutional levels when national security is claimed. Screening of witnesses, closed material proceedings, viewings by the coroner in the absence of the deceased legal team are all increasingly-used mechanisms to

frustrate efforts to access information. Reports are common of coroners and lawyers expressing frustration at delays.³¹

A further issue relates to the number of coroners and the lack of staff available to them. There is now a back-log of 55 “legacy” inquests into 96 deaths. Presiding over these is a much reduced complement of coroners. The long-standing senior coroner, John Leckey, retires at the end of October 2015. His successor is unlikely to be in post until April 2016. John Leckey’s two colleagues, Suzanne Anderson and Jim Kitson, are on long-term sick leave. It has been agreed that High court judges should be appointed and that they could hear linked cases in order to increase the throughput. In this regard, the Lord Chief Justice, Declan Morgan, has been asked to take a role that might enhance the status of inquests and thereby expedite them.

While Declan Morgan has agreed to this approach and will in token and in due course assume the Presidency of the Coroners’ Courts he recently³² sought to spell out the challenges in addressing the logjam. He stressed that “significant additional resources” would be required if any major impact on the build-up was achievable. He has also suggested that, at current rates, legacy inquests would not likely be completed until 2040.³³

In the meantime, and recognising that previous inquests were so truncated and hampered by lack of proper independent investigation and scrutiny, the Attorney General continues to order new inquests into conflict-related deaths where new information or circumstances give rise to doubt about the original inquest reaching Article 2 standards of thoroughness and independence.

An interesting development (laying bare the operation of the distinction between devolved and non-devolved powers) occurred in relation to the inquest into the deaths of 9 men in Loughgall in May 1987. These SAS killings are the subject of the ECtHR case *Kelly & others v. UK*.³⁴ In this case, an application was made to the NI Attorney General to re-open the inquest. John Larkin agreed; however, the Secretary of State Theresa Villiers intervened to block this decision saying that, because national security is engaged, the decision is properly one for the UK Advocate General as opposed to the NI Attorney General. While the supposition was that this was intended to prevent a new inquest from

³¹ See, for example: <http://www.belfasttelegraph.co.uk/news/northern-ireland/coroner-fury-over-inquest-delays-30894968.html>; <https://www.thedetail.tv/articles/the-stories-behind-the-inquest-delays-as-coroners-crisis-continues>; and <http://www.bbc.co.uk/news/uk-northern-ireland-30223100>

³² <http://www.bbc.co.uk/news/uk-northern-ireland-34180103>

³³ <http://www.newsletter.co.uk/news/northern-ireland-news/inquests-into-contentious-troubles-deaths-could-go-on-until-2040-1-6421833>

³⁴ [http://hudoc.echr.coe.int/eng-press?i=001-59453#{%22itemid%22:\[%22001-59453%22\]}](http://hudoc.echr.coe.int/eng-press?i=001-59453#{%22itemid%22:[%22001-59453%22]})

taking place, in fact, the UK AG eventually made the same decision as the NI AG.³⁵ It remains to be seen whether, when the inquest gets under way, the invocation of national security will ensure that the truth of what took place remains as opaque as ever.

Meanwhile, with considerable irony, the PSNI Chief Constable told the Policing Board in late September 2015 that the inquest system is “chaotic”.³⁶ Claiming that the police simply want to assist the coroners in their work, he claims that they are open to improving the way in which information is provided. In RfJ’s view, however, it has been the PSNI themselves who have set up the convoluted disclosure system which is the cause of all the delays. Now that, thanks to ECtHR judgments and the oversight of the Committee of Ministers, we finally had an inquest system that delivered an Article 2 compliant level of inquiry. At that very point, the process of discovery and disclosure was targeted. It now suits the authorities to criticise the coronial process rather than provide the information and leave it for the coroner to decide on what is relevant.

Police Ombudsman

The Police Ombudsman (PONI) is another of the “package of measures” that the UK government claimed amounted to an Article 2 compliant environment dealing with conflict-related Article 2 cases. Michael Maguire is the current incumbent, having taken over in 2012 from his predecessor, Al Hutchinson. Under the latter, the office had lost credibility and was seen as too close to the police and, particularly, former Special Branch officers of the RUC. Ombudsman Maguire, however, has restored some public confidence in his role through adopting a more robust approach to the police.

In 2014, he resorted to the courts as a way of forcing the police to provide access to information that he required to investigate complaints. It was notable that the police claimed that they were not required to provide access where national security issues were engaged. It was also clear that the police objective was to prevent independent assessments of how agents and informants were handled. In the event, when the case came to court in September 2014, the Chief Constable conceded.³⁷ The ombudsman has now the access he needs.

³⁵ <http://www.irishnews.com/news/northernirelandnews/2015/09/23/news/guarded-welcome-for-new-loughgall-inquests-from-families-271015/>

³⁶ <http://www.u.tv/News/2015/10/01/NI-inquest-system-chaotic-Hamilton-46103> and "Chief Constable's 'Chaos' is Madness of his Own Making" Mark Thompson 01/10/2015 <<http://relativesforjustice.com/chief-constables-chaos-is-madness-of-his-own-making/>>

³⁷ <http://www.bbc.co.uk/news/uk-northern-ireland-29034151>

The level of public confidence in the office has since grown and many victims now look to the Ombudsman to deal with issues they have relating to RUC investigations and killings. According to recent figures, PONI now has 350 cases relating to 400 killings on their books, an intimidating list by any measure.

However, coinciding with the legal proceedings brought by the Ombudsman against the Chief Constable, an arbitrary cost-cutting exercise by the devolved Department of Justice – passing on Treasury restrictions – imposed disproportionate cuts on the Ombudsman’s budget. Since then he has had to reset his estimate of achievable completion of reports given his reduced staffing levels.

Here is yet another barrier to families seeking answers to questions about what happened to their loved ones in the most controversial conflict-related cases:

- First of all the British state **denies** wrong-doing on the part its agents;
- When the evidence mounts and the ECHR judgments condemn it, the British state **delays** providing information;
- When all credibility is lost due to procrastination, the British state **cuts resources**.

Less Visible Barriers

The effects of trauma can disrupt the ability of victims and survivors to engage with processes of truth recovery in an equal and participative fashion.

Traumatic experiences are not necessarily either long lasting or debilitating. On the contrary, traumatic experiences also give rise to self-help and the development of new life skills, as we learn from the experience and how to make things better. Often the energy bound up in trauma is expressed in art and literature, dance and drama or indeed as we all know, fuels the development of community and voluntary action and organisations. However having said that, our lives are changed dramatically by these events and we cannot go back to the way it was before.

And of course we don’t experience these traumatic events in isolation. We live in families and communities and often they have directly or indirectly shared these experiences. When even one person experiences overwhelming events, there is a profound ripple effect on our families and friends and the community as a whole.

That connection between community, truth recovery and personal recovery has not been appreciated in official processes to date. Processes of support have operated in isolation to the investigation mechanisms. Re-visiting traumatic memories are an unavoidable part of engagement

with investigations. Yet structured support that acknowledges truth and justice as contributors to recovery has been lacking in favour of a medicalised approach to trauma “treatment”.

The experience of trauma is not mental illness. However, when the right support is not available sometimes help is needed. Not everyone who has experienced traumatic events will need individual psychotherapeutic support. But a significant number will do so. Given our experience of the conflict what everyone needs is information and guidance to understand the impacts of trauma and how to work with that.

People usually seek support when the impact of trauma intrudes into our own daily life or the life of someone close to us. For many, this becomes an endless, repetitive, often despairing, search for ease and relief. This is especially the case when truth is elusive and there are structural obstacles to truth recovery and justice. The cycle of re-traumatisation is reinforced.

In the first instance people may seek medical intervention for symptom relief through medication. Often this can help to reduce ***symptoms in the short term***. This relief is to be welcomed though it must not be seen as the resolution or integration of the impact of the events. Many times the symptoms persist or the distress returns. Then - often as a result of a referral by the GP – they seek other forms of help e.g. counselling, self-help groups.

Recent attempts to medicalise trauma and remove the connection of recovery from trauma to truth recovery and effective reparation programmes has proven to be harmful and directly affects the experience of victims and survivors. This is a highly political approach which serves to isolate and individualise the victim. Recovery is based on reconnection and the re-establishment of positive relationships. These recent developments have been most harmful.

Reparations and Guarantees of Non-Recurrence

The notion of comprehensive reparations as part of transition has not featured in public discourse. However while the issues of comprehensive truth, justice and reparation have so far eluded our transitional society the matter of financial recognition of those who served in some branches of the state agencies was incorporated into some of the processes of transformation.

Half a billion pounds is associated with payouts to ex-RUC who retired as part of Patten Severance. Without identifying exactly why the RUC needed to transform or why some serving members of the RUC would not be able to be part of the new PSNI service, 500 millions of pounds was spent to “build confidence” in this transformation. £20million was paid to the RUC Reserve members in recognition of their service as it was dismantled. £250million was paid to former members of the UDR and £70million has been paid to former members of the prison service. A Police Rehabilitation and Retraining Trust was established. Funded by public money it has a private consultancy practice. Its primary focus is on psychological recovery.

However those harmed by the RUC, UDR, prison officers or affected by the collusive actions of RUC Special Branch did not receive as much as verbal acknowledgement that it was actually the hurts they had suffered that were the catalyst and created the necessity for such root and branch change.

That the overwhelming majority of members of state forces came from one community this adds to the inequality of payments that have been made.

To add insult to grave injury we witnessed the surreptitious rehiring of RUC Special Branch through the back door into the PSNI, astonishingly into the historic investigative units. So those who got the pay offs were then rehired as civilian staff – paid wages in addition to receiving their pensions. Only this time they were hired and paid as civilian staff, which means they now operate with no scrutiny from the Police Ombudsman.

This is an appalling vista made possible by the Patten process, an outcome never envisaged. But because we never said why change was required, guarantees of non-recurrence were never incorporated into the transformation process.

The George Cross was established to acknowledge the many harms endured by serving RUC officers and their surviving relatives. The Police Fund was also established as a practical acknowledgement to support these families. These are ongoing payments received exclusively by the “police family”.

For those harmed by police actions who live in abject poverty as a direct result of the deaths and injuries this was incredible and hurtful.

And there is nothing wrong with any of that except that they were not the only community to suffer from our conflict. While all of these payments were being made to those who served in these agencies – and continue to be made – everyone else – the vast majority – are left with very inadequate schemes which do not meet their needs and are subject to cuts and suspension without notice.

There is a small financial scheme for some of the bereaved and injured of the conflict to provide relief, this is administered by the Victims and Survivors Service. This replaces a previous Memorial Fund. In 2012 Victims Commissioners Bertha McDougall, Brendan McAllister and Patricia McBride facilitated the exclusion of siblings and grandchildren from schemes in the Memorial Fund. This decision is perpetuated into the Victims and Survivors Service.

This decision served to tell those who survived that they were not worthy of support. With one stroke of the pen their pain was dismissed, by the commission that was created to speak for them. This is just one of many acts that created a disparity that have undermined attempts to heal and reconcile. And for the overwhelming majority who were excluded, it has undermined their confidence in the potential for transformation, and the belief that they have an equal role to play in the transition or the dignity of equal participation. Because quite clearly they do not. The disparity between this and the experience of those whose loved ones served in state agencies is very stark.

State payments were presented as confidence building measures, and these payments might have built the confidence of some, but severely undermined the confidence of others. The majority of victims and survivors are demeaned in the pursuit of monies for the most basic of items and services, while others have pensions and payments as of right.

While other victims face underfunded mental health support and long waiting lists, former RUC can access PRRT in an escalated framework.

For victims of the conflict the factors that lead to poverty and dependence are particularly cruel.

The conflict was played out on the streets where disadvantage and poverty were already at their highest, having suffered from decades of Unionist sectarian mis-rule. Deaths and injuries occurred in disproportionately higher numbers in areas already reeked with unemployment and ill health. For those who experienced death of a loved one or a serious life diminishing injury that relationship can be devastating.

Once the devastation of trauma, death and injury occurred any already reduced potential for educational achievement and gainful employment were all but obliterated. Dependence on welfare became inevitable.

There were no pensions for civilians bereaved or injured during our conflict.

This was especially the case for women. With 91% of those killed being men it was women who struggled to survive and pick up the pieces. If the men killed were employed the change in circumstance economically was overwhelming. Not only were young mothers coping with their own trauma and that of their children they were also immediately thrown into poverty. A poverty that was never to be reversed. The effects of the necessary suspension of trauma on individuals' mental and physical health have been under reported and under recognised but nonetheless deeply complex and severe.

The stories from the civilian compensation courts are chilling. Examples such as a widowed mother of 12 children told that because her husband was on sick benefit when he was killed by the British army and she was now on widow's state pension she was one shilling a week better off and then sent away with no payment. Or a woman with four young children who was under 25yrs being told she was still young enough and good looking enough to get another man, receiving no compensation. The burning inequality and ignominy of those moments is still felt decades later.

For some families there was a catch net of a pension – those families whose loved ones were in the RUC or UDR. However for the over whelming majority of those bereaved and injured by conflict there was no catch net whatsoever. No support services and no economic support.

For the children in families affected by conflict death and injury their access to educational achievement was immediately affected. As traumatic reaction became normalised rather than supported many, many younger members of families played caring roles for younger siblings and surviving parents. Their potential was never realised. They became the inevitable second generation dependent on welfare.

In some schools the effects of trauma resulted in young people being excluded from school entirely. There was no understanding of trauma and the needs of young people. There was no support for teachers to spot the signs of PTSD or traumatic reaction after a child's parent had been killed or injured, or their siblings, let alone the support services to put in place had it been spotted at all. Very

few paid attention to this as the young people came from areas of high deprivation and low educational achievement anyway. Their pathways out of poverty were blocked at every turn.

There was disadvantage heaped on deprivation and there was little or no analysis of the needs of victims of the conflict who were thrown onto the welfare system after the incident and forced to stay there. It was not a choice then and it still is not now.

Support systems for victims of the conflict were limited. Only in recent years has there been support services provided in the community. Funding for these services have always been short term and subject to cuts.

This is where the matter of connecting welfare reform to dealing with the past becomes so painful.

For those families worst affected by our conflict who have lived lives defined by conflict death and injury, who have subsequently lived lives of poverty and need, and who have survived with minimal support or reparation there is no choice between Welfare Reform and Victims Support Funding. Welfare cuts are unimaginable in their context. Support services are essential to any recovery from trauma.

All political parties have declared their intention to support victims of conflict. All must recognise the huge dependence for survival this implies on current welfare provision. They must also recognise that long term sustained support services are also essential. It is not an either or choice.

Ignoring international frameworks for recovery, reparation and non-recurrence have facilitated this place we now find ourselves in. Human rights could support inclusive transformative programmes which support all those harmed – and are long term, sustainable confidence building measures. Reparations must be carried out on a needs basis as a right - without favour, double dipping, or political interference.

Gender Discrimination

In Relatives for Justice we have mainstreamed a gender analysis to all of our work. We have made concerted effort to apply the idea and promise of UNSCR1325 and CEDAW General Recommendation 30. The promise that societies will encourage participation of women most hurt by conflict and put in place support that is appropriate to their experience of conflict.

Where the governments have failed to act on these international obligations Relatives for Justice has created a shadow framework to demonstrate that even in the absence of political will, with dedication and awareness, much can be achieved on very little resources.

We all know, and it is recognised in international doctrine, that women experienced conflict differently, and indeed that women experience trauma differently. In our context in the North of Ireland women from every community founded support groups and saw the necessity for peer support, group work, talking and gentle solidarity. With 91% of those killed being men there was a particular experience of violation that belonged to women. Women recognised this themselves and gave expression to it through grassroots support organisations. That is not for one second to say that hard issues were not grappled with.

RFJ most certainly could not be accused of avoiding difficult conversations. RFJ's founders are case examples of this. Eleanor McKerr, wife of the late Gervaise, stood as a stalwart against the cover up of Shoot to Kill before her untimely death, Emma Groves herself blinded by a rubber bullet travelled the world to end their use, Eilish McCabe whose brother Aidan McAnespie was killed by the British Army spoke out on policies of state impunity. There is certainly no essentialising of women's role or voices in favour of soft options.

The Good Friday Agreement gave tacit recognition to that work when it talked about the value of and need to resource community and voluntary self-help groups. But now that work is undervalued. Instead we have seen concerted moves to individualised support programmes, cutting the funding for group activities. The promotion of individualised "interventions" over long term processes of recovery and reconciliation impacts women disproportionately. Individualised approaches discriminate against women, and their place in family and community, and disregards the role that family and community, with women at their centre, play.

This is linked to the issue of reparations and to the matters of truth recovery and pursuit of justice.

As previously explained none of the processes have benefitted from a gender lens. There is a grave danger that any emergent process will have the ignominious status of being one of the very few international examples of where gender did not figure.³⁸

This will serve to exclude women from participation in the very processes designed to address their experiences. All societal barriers which women face are compounded by trauma and violent loss. A lack of gender lens will compound this even further.

³⁸ "Dealing With the Past: Where Are the Women?" Relatives for Justice February 2015 < <http://relativesforjustice.com/wp-content/uploads/2015/02/Dealing-with-the-Past-Where-Are-the-Women.pdf>>
"Gender Principles for Dealing with the Past" September 2015 < <http://relativesforjustice.com/wp-content/uploads/2015/09/genderprinciples.pdf>>

Current Negotiations – National Security: The enemy of families' rights?

The section of the Stormont House Agreement on dealing with the past was recognised as an opportunity to put in place a comprehensive set of proposals, which would deliver truth, justice, accountability and a small measure of reparations to victims and survivors. Indeed it was promoted as such by the UK Government itself to the Committee of Ministers and to the House of Commons' Joint Committee on Human Rights in January 2015.

The legislation drafted by the British Government, as leaked to the media and to some victims of the conflict, in early October 2015 in no way, shape or form meets that promise or that commitment to fulfil human rights obligations.

The draft bill deals with the Historical Investigations Unit (HIU) and the Oral History Archive. There are 12 pages missing from the disclosure. These 12 pages relate to the Independent Commission for Information Retrieval. Given that this is a joint responsibility between London and Dublin the British Government had not included it in the leaked pages.

The Stormont House Agreement laid out the following principles:

21. As part of the transition to long-term peace and stability the participants agree that an approach to dealing with the past is necessary which respects the following principles:

- promoting reconciliation;*
- upholding the rule of law;*
- acknowledging and addressing the suffering of victims and survivors;*
- facilitating the pursuit of justice and information recovery;*
- is human rights compliant; and*
- is balanced, proportionate, transparent, fair and equitable*

In the context of those principles the following was agreed regarding the HIU:

30. Legislation will establish a new independent body to take forward investigations into outstanding Troubles-related deaths; the Historical Investigations Unit (HIU).

The body will take forward outstanding cases from the HET process, and the legacy work of the Police Ombudsman for Northern Ireland (PONI).

A report will be produced in each case.

31. Processes dealing with the past should be victim-centred.

Legacy inquests will continue as a separate process to the HIU.

Recent domestic and European judgments have demonstrated that the legacy inquest process is not providing access to a sufficiently effective investigation within an acceptable timeframe.

In light of this, the Executive will take appropriate steps to improve the way the legacy inquest function is conducted to comply with ECHR Article 2 requirements.

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.

There can be no grey area as to the commitment to human rights standards and the necessity to deliver for victims of conflict. Importantly, the British Government made explicit commitment to full disclosure. The draft legislation needs to be measured against these commitments. If it does not meet those standards then it requires change.

The reference to Article 2 in the heads of Agreement document is significant as this is the central issue for families affected by conflict. They have never had an Article 2 compliant investigation; this requires investigations that are **effective, independent and transparent**.

In the proposed British legislation, in the introductory provisions for the HIU it is clear that these requirements have been side-lined in favour of British national security interests. However, it is in the matter of **disclosure** that the problems become most visible.

On Page 6 of the draft bill, at Section 12 subsection 4, the legislation requires any relevant authority to whom requests are made for information to give that information to the HIU. However, in Section 13 subsection 5 and 6, this requirement is entirely undermined when it says that this requirement does not apply:

*“in relation to
(a) a disclosure to the Secretary of State;
(b) any information which a relevant authority has identified as sensitive information or prejudicial information.*

Indeed Section 13 closes down all avenues for either receipt or dissemination of any information determined to be “sensitive”.

And it is not just the Secretary of State who will decide that information is likely to be sensitive it is any of “the relevant authorities”. These are listed on page 8 at Section 14 (1) (b):

- The Chief Constable
- The Ombudsman
- ANY minister of the Crown
- The Security Service
- The Secret Intelligence Service
- GCHQ (which has the same meaning as in the Intelligence Services Act 1994)
- ANY other department of the United Kingdom Government
- ANY of Her Majesty’s Services.

This is a pretty comprehensive list of state interests who have a veto on any disclosure.

Depressingly the next section defines what “sensitive information” looks like:

*“information, which, if so disclosed, would, or would be likely to, prejudice the national security interests of the United Kingdom and
“information which has been supplied by (i) Security Service; (ii) the Secret Intelligence Service; (iii) GCHQ; (iv) any part of Her Majesty’s forces, of the Ministry of Defence, or of the Police Service which engages in intelligence activities”.*

This means any information whatsoever on covert actions or collusion by the state with loyalist groups cannot be disclosed. These are the very areas of greatest controversy and where cover-up has been the traditional approach. Nothing in the draft bill suggests a change of heart.

Equally, section 13 sub-section 7 explicitly states that the HIU itself even if it was to receive such information:

“must not make the proposed disclosure if, or to the extent that, any of the information has been identified as sensitive or prejudicial information”

either by the HIU itself or by any of the relevant agencies listed above. Essentially, therefore, if something manages to slip through the net to the HIU, the HIU itself is prevented from making any disclosure! The use of the words “must not” reveal the strength of the duty placed on the HIU in respect of non-disclosure.

The legislation goes on in that vein throughout.

It is also worth noting the references to “prejudicial information”. This is not defined in the same way as “sensitive” information and is therefore open to a much wider interpretation. But by Schedule 8 (page 55) it is made clear that potentially “prejudicial” information must be cleared directly by the British Secretary of State.

And then there is “protected international information”. Again this is not defined in the exacting way that “sensitive” information is. However whatever that information might be determined to be, by Schedule 9 (3) on page 56: “the disclosure is not permitted to a court or tribunal in the United Kingdom”. Neither is the HIU permitted to make disclosure “insofar as any of the information has been identified as protected international information by the Secretary of State” (Section 13, Subsection 8 on page 7) This has particular significance for any cases brought by families affected by our conflict in the South of Ireland, Germany or elsewhere.

The legislation also raises concerns about the roles of the PSNI in operational matters and the Department of Justice. There are matters of concern in the legislation related to recruitment of staff. Oversight of the HIU in respect of reserved and excepted matters is, as flagged in the Summary of Measures policy paper, is allocated to the Secretary of State; another matter of concern. However, these matters are all in the context of the architecture of British national security, which is writ large in this proposed legislation.

The commitment in the SHA to full disclosure by the state has been made a nonsense of and the apparent commitment to families for truth from the state was a lie. The British Government has no intention whatsoever of participating in good faith with the HIU.

This draft legislation is not a genuine attempt at the development of an Article 2 compliant investigation in line with international legal obligations.

The Stormont House Agreement is not reflected in the proposed legislation³⁹. This must be sent back expeditiously to drafters to write a piece of legislation for dealing with our past in a human rights compliant fashion. The current draft reeks of the fear and insecurity of the British establishment regarding their role in our conflict; it seeks to protect their interests.

As a constant theme there has been no attempt to insert a gender perspective, target or lens on any of the processes. Despite the issue now being visible and both governments and all parties now being aware of obligations to ensure equal and effective participation there is no indication that this will be the case.

³⁹ "British SHA Legislation Unacceptable For Families" Relatives for Justice 06/10/2015
<<http://relativesforjustice.com/proposed-british-legislation-on-past-unacceptable-for-families/>>

Conclusion

The Stormont House Agreement is an opportunity to begin the process of dealing with the past and supporting the recovery of truth for victims and survivors. There is an immediate threat to the integrity of the Agreement in the guise of “national security”.

The minimum standards set by Article 2 requires investigations into controversial killings involving the state, including where collusion is evidenced or alleged, to be open, transparent, impartial, independent, effective, prompt, and adequately involve the next-of-kin. “National security” is a barrier to Article 2 compliance.

Under the proposed HIU model, as determined by the NIO policy paper and the leaked legislation and not the December 2014 SHA agreement, the role of the Director of the HIU will be severely compromised and will not be independent.

We argue that the role of Director of HIU should be exactly the same as the Police Ombudsman (PONI) in accessing and obtaining intelligence regarding investigations.

As Michael Maguire said when he took the judicial review of the then PSNI CC; this isn't a case of investigation by negotiation. I'm not going to negotiate with the people who are the subject of my investigations about what they are prepared and not prepared to provide me with in order for me to conduct those investigations.

Similarly the process exists whereby a high court judge can determine the relevance of a piece of evidential material and whether or not this will be provided to the court.

It also existed for example in the assessments by Justice Peter Cory following Weston Park and whether or not inquiries were required; and with Stevens in his investigations. However, subsequent to both these processes even more material existed that had obviously been deliberately withheld that was revealed in the de Silva Review⁴⁰ into the murder of Pat Finucane.

However, the process of accessing information and obtaining it for judicial and prosecutorial decisions are well established by existing bodies as outlined above.

⁴⁰ “The Report of the Patrick Finucane Review” Rt Hon Sir Desmond De Silva December 2012 <
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/246867/0802.pdf>

Under the current plans, via the leaked legislation with regard to 'national security' and which we understand will remain, there is a serious departure from these legal and established norms.

The argument must be made that 'national security' can be replaced by Article 2 of the European Convention, which currently is the case with PONI and the courts etc. in which there would be no, and there is no, onward disclosure that would place the life of anyone at risk.

Further the International Tshwane Principles⁴¹ could be inserted into the legislation, thereby ensuring the rights of victims of conflict still pursuing truth and justice.⁴²

Significant consideration needs to be given to the experience of conflict related harm which is not the detail of how individuals met their deaths. This is a significant gap and left unresolved matters such as torture, injury and gender based harms will cause long term damage to our transitional society.

On Gender the British Government must move immediately to compliance with UNSCR 1325 for women living in its own jurisdiction affected by the conflict between the islands. This, alongside lack of compliance with CEDAW Gen Rec 30 is the root of the discrimination against women in all matters pertaining to dealing with the past, from truth recovery to reparation. Immediate steps should be taken to ensure that a gender lens is applied to any of the mechanisms established as part of the Stormont House Agreement including ensuring a mechanism for the examination of gender based harms and their impact.

On Reparations the parties and the two governments should establish a comprehensive inquiry into the matter of reparations, frameworked by international principles. This should be with a view to putting an end to the disparity between the treatment of state actors and all others harmed by conflict, supporting the needs of those living with long term injury and acknowledging the harms inflicted.

Once again we would like to thank Mr De Greiff and his team for their time and focus on our transitional processes.

⁴¹ The Global Principles on National Security and the Right to Information (The Tshwane Principles) June 2013 <<https://www.opensocietyfoundations.org/publications/global-principles-national-security-and-freedom-information-tshwane-principles>>

⁴² See Relatives for Justice paper on National Security and Families' Right to Truth <<http://relativesforjustice.com/relatives-for-justice-paper-on-british-national-security-and-families-right-to-truth/>>

Appendix

Abbreviations

ALJ	Association for Legal Justice
BA	British Army
CAJ	Committee on the Administration of Justice
CEDAW	Convention on the Elimination of Discrimination Against Women 1979
CID	RUC Criminal Investigations Division
CO	Commanding Officer
DOJ	Department of Justice
FRU	Force Research Unit
GOC	General Officer Commanding of the British Army
HET	Historical Enquiries Team
HIU	Historical Investigations Unit
INLA	Irish National Liberation Army
IRA	Irish Republican Army
Leinster House	Seat of Government in the South of Ireland
LVF	Loyalist Volunteer Force
MI5	Military Intelligence
MI6	Military Intelligence
MRF	Military Reconnaissance Force
NGO	Non-Governmental Organisation
NIO	Northern Ireland Office of the British Government
PAF	Protestant Action Force
PFC	Pat Finucane Centre
PONI	Police Ombudsman for Northern Ireland
POW	Prisoner of War
PRRT	Police Rehabilitation and Retraining Trust
PRONI	Public Records Office of Northern Ireland
PSNI	Police Service for Northern Ireland
PTSD	Post-Traumatic Stress Disorder
RUC	Royal Ulster Constabulary
SAS	British army covert unit Special Air Service
SB	RUC Special Branch
SDLP	Social Democratic and Labour Party

SF	Sinn Féin
SHA	Stormont House Agreement
SoS	British Secretary of State for Northern Ireland
TCG	Task Coordinating Group
UDA	Ulster Defence Association
UDR	Ulster Defence Regiment
UFF	Ulster Freedom Fighters
UNSCR	United Nations Security Council Resolution
UVF	Ulster Volunteer Force
VSS	Victims and Survivors Service
WERC	Weapons and Explosives Research Centre – a covert Special Branch forensics unit