BITTER LEGACY

STATE IMPUNITY IN THE **NORTHERN IRELAND** CONFLICT

REPORT OF THE INTERNATIONAL EXPERT PANEL

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GLOSSARY

AGS: An Garda Síochána – the police force of the Republic of Ireland.
B Specials: Members of the Ulster Special Constabulary (USC) – a part-time Northern Ireland police force until 1970.
CAJ: Committee on the Administration of Justice – Belfast-based human rights NGO.
CID: Criminal Investigations Department of the police, staffed with detectives.
DFA: Department for Foreign Affairs, Irish ministry whose remit includes Northern Ireland.
DPP: Director of Public Prosecutions.
ECHR: European Convention on Human Rights.
ECtHR: European Court of Human Rights.
FRU: Force Research Unit – NI-specific intelligence unit of the British Army tasked with operating agents in paramilitary groups.
GAA: Gaelic Athletic Association (in Irish, Cumann Lúthchleas Gael).
GFA: The 1998 Good Friday Agreement.
HET: Historical Enquiries Team – a police unit established in the PSNI from 2005-2014 to review conflict-related deaths.
HIU: Historical Investigations Unit – an independent investigative body that was to be established under the 2014 UK-Ireland Stormont House Agreement.
HMIC: Her Majesty's Inspectorate of Constabulary – inspects and assesses police forces and policing organisations in England, Wales and Northern Ireland. (Changed in 2017 to Her/His Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS)
ICIR: Independent Commission for Information Retrieval, an international truth recovery body envisaged under the Stormont House Agreement to take protected statements relating to conflict related incidents..
ICRIR: Independent Commission for Reconciliation and Information Retrieval – a new legacy body established under the UK 2023 legacy act to 'review' certain conflict related cases and issue immunity certificates.
INLA: Irish National Liberation Army – a republican armed group formed in 1975.
IRA: Irish Republican Army –the main Irish republican armed group during the conflict, sometimes referred to as the 'Provos', formed in 1970 following a split with the Official IRA.
JFF: Campaign group 'Justice for the Forgotten' focusing on conflict related incidents in the Republic of Ireland.
LIB: Legacy Investigations Branch, unit of the PSNI responsible for historic cases from 2014.
MI5: British security service responsible for domestic counter-intelligence.
MI6: British security service responsible for foreign counter-intelligence.
MLA: Member of Legislative Assembly – member of the Northern Ireland Assembly.
MP: Member of the elected house of UK Parllament.
MRF: Military Reaction Force - covert intelligence-gathering and counter-insurgency unit of the British Army operational in the early 1970s; aka Military Reconnaissance Force.
NAI: National Archives of Ireland.
NAUK: National Archives of the United Kingdom.
NIO: Northern Ireland Office – the UK Ministry for Northern Ireland.
NGO: Non-Governmental Organisation.
OPONI: Office of the Police Ombudsman for Northern Ireland.
PFC: Pat Finucane Centre.
PPS: Public Prosecution Service
PRONI: Public Record Office of Northern Ireland.
PSNI: Police Service of Northern Ireland (changed from RUC on 4 November 2001).
RHC: The Red Hand Commandos – a section of the UVF.
RMP: Royal Military Police – the internal police force of the British Army.
RTÉ: Raidió Teilifís Éireann – Ireland's national broadcaster.
RUC: The Royal Ulster Constabulary– the police force in Northern Ireland from 1 June 1922 to 4 November 2001.

SAS: Special Air Service – a special forces regiment of the British Army.
SCRT: Serious Crime Review Team – set up to re-examine conflict-related deaths prior to the establishment of the HET.
SHA: Stormont House Agreement a 2014 bilateral peace process accord and 2015 treaty to provide for new transitional justice mechanisms including the HIU and ICIR.
TD: Teachta Dála: Member of Dáil Éireann, main house of the Irish parliament (Oireachtas).
UDA: Ulster Defence Association – loyalist paramilitary group formed in 1970 and not declared illegal until 1992, the UDA used the cover-name of Ulster Freedom Fighters (UFF).
UDR: Ulster Defence Regiment – a Northern Ireland recruited regiment of the British Army between 1970 and 1992.
UFF: Ulster Freedom Fighters (see UDA, above).
UTV: Northern Ireland TV channel.
UVF: Ulster Volunteer Force– loyalist paramilitary group originally formed on 1 January 1913 and reorganised as the Ulster Special Constabulary before being reformed in 1966 as the UVF. Outlawed in June 1966, de-proscribed in May 1974 and re-proscribed in October 1975.
VCP: Vehicle checkpoint.

EXECUTIVE SUMMARY

INTRODUCTION

This report assesses the extent to which there has been impunity in relation to serious human rights violations that occurred during the 30-year period of the Northern Ireland conflict. In particular, the report examines whether the UK Government has met its international legal obligations to take effective action to combat impunity.

As evidenced within this report the Panel concludes that state impunity in the conflict in Northern Ireland can rightly be described as widespread, systematic and systemic.

The Independent Panel on State Impunity and the Northern Ireland Conflict (hereafter the Panel) was convened by the Norwegian Center for Human Rights, at the request of human rights organisations based in Northern Ireland: The Committee for the Administration of Justice, and the Pat Finucane Centre. The Panel, consisting of independent international experts, set out to provide an authoritative record of the extent to which there is evidence of patterns of impunity by the UK Government in relation to human rights violations. This work was carried out in the context of an acknowledged absence of effective official mechanisms for accountability and truth in relation to the Northern Ireland conflict.

> Impunity means the impossibility, de jure or de facto, of bringing the perpetrators of violations to account – whether in criminal, civil, administrative, or disciplinary proceedings – since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.

Combatting impunity is widely recognised in human rights law and practice as a binding legal obligation on states to take appropriate measures that ensure truth, justice, reparations, and guarantees of non-recurrence of abuses. Several international standards outline the obligations of states regarding serious human rights violations: the duty to investigate and inform victims of the truth, emphasising the right of victims to know what happened to their relatives and the collective right of societies to know the truth about past events; the obligation to prosecute and punish perpetrators, prohibiting measures such as statutes of limitations and amnesties that hinder justice; the duty to provide reparations to victims, including restitution, compensation, rehabilitation, and satisfaction; and the obligation to adopt measures to prevent the recurrence of violations through institutional reforms and promoting a culture of respect for human rights.

The 1998 Good Friday Agreement did not include an overarching transitional justice mechanism nor concrete measures to address impunity. In the years since, the UK has been criticised for failing to meet its obligations under Article 2 of the European Convention on Human Rights (ECHR), which imposes on the state a duty to hold effective investigations into killings, as well as for failing to meet other obligations to victims of human rights violations. It has also been criticised, for example, by the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, who noted an "impunity gap" in Northern Ireland.

While more information about conflict-related human rights abuses has emerged since 1998, the absence of an effective transitional justice process means it has come from isolated ad-hoc inquiries, inquests and civil actions, mechanisms with limited mandates and capacity, and the efforts of civil society groups and victims. Much is still unknown or unacknowledged, and there has been little progress towards achieving overall accountability and the truth.

The recently enacted Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 (hereafter the Legacy Act) seems designed to curtail such efforts. The Act has been highly criticised by both international and domestic actors: for example, it was described by the Council of Europe and the UN special rapporteur as a flagrant breach of the UK's international obligations. It has also been the subject of a rare consensus among Northern

Ireland political parties, as all major parties – nationalist, unionist and others – are united in opposition to it. It has also been strongly opposed by the Irish Government, all political parties in the Republic of Ireland and the current opposition parties at Westminster. This report is published in the context of ongoing political debates and litigation in relation to the Legacy Act.

THE GOALS, SCOPE AND METHODOLOGY OF THE REPORT

This report aims to highlight the struggles of victims and survivors, many of whom have been publicly disbelieved or demonised, could not afford a costly and risky campaign for accountability, or saw little hope of finding justice. As much of the violence occurred some fifty years ago, the window of opportunity to collect these voices and present them publicly may be closing soon, and it has become critical to address their grievances against the impunity which has affected their lives and the well-being of their communities and society.

The Panel also hopes that the information and analysis contained in this report will assist those who continue to act and advocate against impunity in relation to the Northern Ireland conflict, and contribute to ongoing efforts to combat that impunity.

A third goal is to provide an international perspective on the issues at stake, placing the human rights violations and impunity in Northern Ireland in a broader international and historic context. It appears that questionable policies and practices used during the Northern Ireland conflict were later "exported", directly or indirectly, to places such as Iraq or Afghanistan and in relation to the "war on terror". The absence of effective inquiries into such policies and practices has therefore seemingly contributed to the ease in which they have spread globally.

The Panel also emphasises that British policies and practices that lead to impunity can have broader international repercussions. The UK is a member of the UN Security Council, G7 member, and generally has been seen as a prime example of a democratic, law-abiding country. If its decision to effectively allow impunity for human rights abuses – through the Legacy Act – is allowed to go ahead, it is likely to be used by repressive regimes around the world to justify and legitimise their own policies of impunity. Similarly, the apparent lack of respect for human rights demonstrated by the Legacy Act could contribute to a human rights backlash in established democracies and also give succour to authoritarian regimes around the world. It could also diminish the UK's authority and legitimacy when intervening for the purpose of human rights protection in other countries. In short, while the effects of impunity on the people of Northern Ireland are critical, the stakes are also high when considering the international consequences and reverberations.

The report focuses on three thematic areas: direct killings by state forces; torture and ill-treatment by state actors; and killings attributed to non-state actors where there are allegations of collusion with state actors. These issues were chosen because of their gravity, their effects on individuals, communities and society, and the clear legal obligations that they engage. Unjustified killings by or with the complicity of state actors represent the extreme abuse of state power, and torture is a crime under international law and is not allowed under any circumstances.

It is important to clarify that the specific focus of this report is on state policies and actions, not on non-state actors, such as those belonging to illegal paramilitary groups. It is the State which is authorised and obligated to carry out investigations and inquiries, and where required prosecutions and criminal punishment. Clearly, the majority of the killings during the conflict were at the hand of non-state actors. Yet apart from in the context of collusion, there are no credible claims that the State had a policy or practice of providing impunity for the groups attacking its own citizens and security personnel. Indeed, it is estimated that during the conflict, around 30,000 individuals were imprisoned by the State as members of non-state armed groups, while only a handful of state actors were imprisoned during that period. This report therefore concentrates on the impunity gap in relation to state actions. Nevertheless, the Panel recognises that the UK Government has procedural obligations regarding the effective investigation of harms committed by non-state armed groups during the conflict, and any future overarching mechanism tasked with providing full as possible accountability, truth and reparations should also examine the actions of armed non-state actors, hold them to account against binding international standards and provide adequate reparations to their victims.

While the report concentrates on the responsibility of the UK Government for actions resulting in impunity, it also addresses failures by the Irish Government in relation to the treatment of victims and survivors of attacks carried out in its jurisdiction.

The Panel has based its research on information from a variety of sources. Delegations from the Panel conducted a total of seven site visits to Northern Ireland to gather primary evidence. Members held meetings with over 40 individuals and families of victims and survivors during visits to Belfast, Derry, Dublin, and Armagh. Panel members also met with and considered evidence and information from lawyers and legal firms representing victims, NGOs working on relevant issues, and a range of other experts. In addition, panel members met with people who were involved in official mechanisms investigating past abuses, and with senior legacy representatives of both the British and Irish governments, including the office of the Northern Ireland Office and the Irish Department of Foreign Affairs.

The Panel also met with the Police Ombudsman Marie Anderson, former Police Ombudsman Dr Michael Maguire, Chief Commissioner Designate of the ICRIR Sir Declan Morgan; and Jon Boutcher, Officer in Command Operation Kenova (who was shortly after appointed the PSNI Chief Constable).

The Panel also relied heavily on a range of documentary evidence including: official archives; official documents of the British and Irish governments which are released on a yearly basis; British government memos and other documents that have been declassified; legal judgments; reports of public inquiries; and reports of the Office of the Police Ombudsman for Northern Ireland and the Historical Enquiries Team.

BRIEF BACKGROUND TO THE NORTHERN IRELAND CONFLICT AND DEALING WITH ITS LEGACY

The Northern Ireland conflict (referred to by some as 'the Troubles') which occurred from the late 1960s to the end of the 1990s, entailed a level of violence not seen in Ireland since the early 1920s. Thousands of people were killed by various parties, including by (Irish) republican armed groups; (British) loyalist paramilitary groups; and the UK security forces (police, military). An unknown but large number of attacks were committed by paramilitaries acting in collusion with the State. Overall, an estimated 3,720 people were killed, and 47,541 injured. An estimated 54% of deaths were of civilians, and 68% of those injured were civilians. Northern Ireland's population during these years was just over 1.5 million people.

Under the 1998 Good Friday Agreement (GFA), which marked the end of the large-scale conflict, Northern Ireland remained part of the United Kingdom, subject to the consent of its population. The GFA included provisions for the early release of prisoners convicted of conflict-related offences, demilitarisation, and paramilitary disarmament, along with police and justice reform.

While all parties to the agreement agreed to embed human rights in the country's new politics in a document underwritten by the British and Irish governments, the GFA did not contain provision for a truth commission or other transitional justice mechanisms. But it did require the UK to incorporate the European Convention on Human Rights (ECHR) into Northern Ireland law, which was done through the Human Rights Act 1998.

Absent an overarching mechanism to deal with violations in the context of the conflict, a series of piecemeal initiatives were undertaken to address what became known as legacy cases, including torture and killings, with mixed success. These included public inquiries, investigations by the Police Ombudsman, coroners' inquests into conflict-related deaths, police-led investigations and reviews by the Police Service of Northern Ireland (PSNI) under first the Historical Enquiries Team (HET) and then the Legacy Investigation Branch (LIB); and independent police investigations, where UK police officers from outside Northern Ireland have been 'called in' to conduct an investigation into conflict-related deaths or torture. There has also been a very small number of criminal prosecutions of former British soldiers charged with killings, with only one sole conviction for a conflict-related killing, which resulted in a suspended jail sentence.

In many cases, the State has pushed the onus of truth recovery onto families and NGOs rather than on itself. The State has proved to be an unreliable ally in establishing the truth, habitually losing evidence, taking a long time to find witnesses, and fighting in the courts for timelines to be pushed back.

In 2014 a new deal to address the past was struck between the British and Irish Governments, and the main Northern Ireland parties. The Stormont House Agreement (SHA) proposed setting up two new bodies: a Historical Investigations Unit (HIU) to conduct ECHR-compliant investigations into unsolved conflict-related deaths, and to produce a family report in each case; and an Independent Commission on Information Retrieval (ICIR) for victims and survivors to seek and privately receive information about conflict-related deaths of family members on the basis of protected statements that could not be used in civil or criminal proceedings. The Panel found that the British Government failed to meet its obligations under the SHA and instead passed The Northern Ireland Troubles (Legacy and Reconciliation) Act 2023.

This report finds that the Legacy Act will prevent new legacy inquests, close down many outstanding inquests, debar indefinitely the initiation or continuation of any criminal investigations into conflict-related crimes, introduce a type of amnesty in the form of a 'conditional immunity scheme' for perpetrators of crimes including murder, torture, and sexual violence, prohibit all conflict-related civil action (including more than 500 such claims against the British military) from the date the Act was introduced into the UK Parliament, 17 May 2022, and impose a 1 May 2024 completion deadline for all court cases and ombudsmen investigations. Although the Act has created the Independent Commission for Reconciliation and Information Recovery (ICRIR) to examine legacy cases, this will have a much weaker investigative mandate than the judicial and police-led bodies that it replaces.

STATE KILLINGS

State actors killed at least 374 people between 1969 and 1998. Several patterns emerge from the data examined by the Panel: the majority of victims of state violence were civilians, over seventy percent were undisputedly unarmed at the time of their deaths, and the victims were disproportionally Catholic. Articles 1 and 2 of the ECHR, read in conjunction, impose on the parties to the Convention a duty to conduct effective investigations into deaths caused by agents of the State, both deaths caused by lethal force and deaths caused by negligence.

During the conflict, only four soldiers were convicted of killings committed on duty between 1969 and 1998. No prosecutions of state actors were brought between 1969 and 1974, when at least 200 people were killed by security forces. From 1970 to 1973, the RUC and the military entered into an agreement which replaced police investigations into military killings with 'presentational' inquiries conducted by the Royal Military Police (RMP). The blatant deficiencies of this system shielded soldiers from accountability for state violence and is arguably the reason why not a single state actor was prosecuted between 1969 and 1974. In legacy cases the judiciary has, in recent times, repeatedly stated that those investigations were neither adequate nor fair.

During the conflict, prosecutorial decisions suffered from two major limitations. First, the Attorney General, an official of the British Government from 1972 onwards, controlled the Director of Public Prosecutions (DPP)'s prosecutorial decision making. Second, the DPP did not provide reasons for decisions not to prosecute in cases of state violence.

Although approximately a third of the cases investigated by the Legacy Investigation Branch (LIB) within the PSNI have been cases of state killings, the vast majority of direct state killings remain unprosecuted.

The Panel evaluated whether state killings were the subject of a fair and effective investigation, in accordance with Article 2 of the European Convention on Human Rights (ECHR). This involved breaking the concepts of fairness and effectiveness down into investigative steps and actions that were available to investigators at the time, and subsequently examining to what extent those steps and actions were taken.

Any present-day investigation must recognise that what might be considered fair and effective can change over time. In an attempt to overcome these challenges, panel members examined a number of investigations that took place in the 1970s, 80s and 90s. The investigations were broken into steps that formed a baseline of what might be considered reasonable to expect from an effective investigation at the time. The Panel based its final assessment on reports detailing investigations into 54 persons killed.

The majority of cases examined by the Panel demonstrated poor execution and/or omission of key investigative steps. Most showed signs of certain steps being undertaken – such as the setting up of police cordons, the taking of crime scene photos, the taking of witness statements, the gathering of forensic evidence, and so on – but many of these were carried out in a perfunctory manner. Investigations appeared superficial and incomplete, with a clear failure in many instances to perform some of the most obvious and rudimentary steps. The investigations lacked adequate suspect and arrest strategies, and strategies for securing, testing and probing evidence. Arrest strategies failed by either delaying the arrest or not arresting the suspect at all. Other suspect-related failures include failing to search the homes of suspects, test suspects' alibis, or seize suspect vehicles for forensic examination.

The assessed cases also highlight forensic failures to compare blood on the scene or on the victims with a suspect's blood type. Both witness and suspect interviews (and associated written statements) were short and failed to seek sufficient detail. Suspect interviews lasted 20-30 minutes and were of poor quality, with information unexplored and unchallenged. These failings resulted in investigations where important lines of enquiry were not followed up, and where large gaps in the findings and conclusions existed.

In the materials examined, the Panel found only a few examples where the UK Government complied with its obligations relating to Article 2 of the ECHR. The investigations examined in detail generally demonstrated gross incompetence and negligence at best. Accordingly, the Panel finds that the State did not conduct fair and effective investigations in relation to state killings. Overall, the investigations failed the relatives' rights to truth, justice and reparation.

TORTURE AND ILL-TREATMENT

The Panel examined allegations of violations committed during the conflict by individuals acting on behalf of the State in their official capacity. Numerous sources have revealed that many individuals were subjected to abuse that met the threshold of Article 3 of the ECHR ("No one shall be subjected to torture or to inhuman or degrading treatment or punishment"). Torture mostly took place within formal detention contexts, but also occurred outside of it, for example, when people were subjected to ad hoc beatings during everyday street and house searches.

The Panel examined cases involving practices such as waterboarding, electric shock treatment, mock execution, the administration or threat of the administration of drugs, sexual abuse, sexual degradation, and humiliation. The Panel also examined instances where the authorities did not provide adequate medical care for persons deprived of liberty, which is also contrary to Article 3 ECHR. In addition, it examined cases where detainees were hospitalised following assaults, and found evidence that there are at least three deaths (in custody or immediately following release from custody) that were not properly investigated by the State.

Branches of the security forces were responsible for this violence, either directly or indirectly. Direct violations were carried out by units of the British Army, the Royal Ulster Constabulary (the Criminal Investigations Department and Special Branch), and prison staff. Less direct violations were carried out by politicians, legal advisors, and civil servants (mainly in the Northern Ireland Office and Ministry of Defence). The latter cohorts contributed to the culture of impunity which enabled torture and ill-treatment to occur unchecked by enabling a culture of impunity which fuelled further abuses.

Sites in which torture and related abuses proliferated in Northern Ireland included army barracks, such as the Palace Barracks, Holywood (jointly run by the RUC and Army until 1972), RUC police stations, places of internment (e.g. Long Kesh and Ballykinlar), and the specially designed off-grid interrogation centre at Ballykelly where the "Hooded Men" were tortured in 1971. The "Hooded Men" refers to a group of detainees who were, in addition to death threats and brutal beatings, subjected to the "five techniques" of torture (hooding, stress positions, white noise, sleep deprivation, and deprivation of food and water.) Later interrogations were conducted in dedicated RUC Police Holding Centres, such as Castlereagh, Omagh, and Gough Barracks. Abuse commonly occurred in local police stations, and in prisons such as the Maze and Armagh Women's Gaol.

The chaplain at Armagh Women's Gaol, Father Raymond Murray noted in his 1976 report that nobody in the community could understand why the British Army and RUC seemed to be immune from prison sentences for offences, for killing people and assaulting prisoners. Almost 50 years later, the same thing can still be said. Despite a wealth of ad-hoc committees of inquiry, inquests and civil actions, and the efforts of victims' groups, prison surgeons and priests, impunity appears to have been afforded to the vast majority of those committing offences that would qualify under Article 3 ECHR. Although thousands of complaints were lodged, very few prosecutions resulted and fewer still convictions were secured. The Panel found only one custodial sentence (of six months) resulting from a very serious assault committed by members of the British Army Parachute Regiment, where only one of the perpetrators was convicted.

COLLUSION

Collusion is largely accepted as referring to the responsibility of the State for involvement in or turning a 'blind eye' to the criminal acts otherwise attributed to non-state actors. It denotes, more specifically, the responsibility of the British Government and security forces – the police, the military, and MI5 – for wrongful actions by members of paramilitary organisations, including murders and other physical attacks, usually against unarmed civilians.

Lord John Stevens, who investigated the 1989 murder of solicitor Pat Finucane, and other killings by loyalists, defined collusion as a practice which "ranges from the wilful failure to keep records, the absence of accountability, the withholding of intelligence and evidence, through to the extreme of agents being involved in murder". Collusion has included: turning a blind eye to threats made against individuals, and failure to protect them from known threats by armed groups; direct involvement in the planning and execution of assassinations or other violent acts by armed groups; providing armed groups with weapons and intelligence used in unlawful acts; the failure to ensure that agents operated lawfully; the concealment of intelligence indicating informers had been involved in serious crimes; and failing to rigorously investigate non-state actor killings, including by obstructing investigations by fellow officers or other security force agencies, or overlooking critical and easily accessible forensic evidence.

While the Panel is unable to evaluate the exact scope of the collusion that occurred – that should be the role of an effective formal inquiry – it is convinced, based on the evidence already presented by state-sponsored bodies, that collusion was often a deep-seated feature of the practice of state agencies throughout the entire conflict. It cannot be relegated to the actions of a few rotten apples.

Successive state-appointed police ombudsmen have conducted a series of exhaustive inquiries into police investigations of dozens of murders and other serious crimes carried out during the conflict. The many statutory reports and official statements that followed these inquiries have determined that in many cases collusive behaviours by the police – such as the withholding of intelligence by Special Branch from investigating officers, the destruction of files, the protection of informers, and the failure to pursue investigations into suspects, vehicles and weapons – contributed to these crimes not being properly investigated, and therefore contributed to impunity. This was the case during virtually the entire period of the conflict and across Northern Ireland.

FINDINGS

The Panel assessed impunity in the context of three areas; state killings (Article 2 ECHR), torture and ill-treatment (Article 3 ECHR), and collusion.

STATE KILLINGS

The Panel found that the State failed to comply with its obligations under Article 2 ECHR to investigate killings fairly and effectively. Investigations during the conflict conducted prior to 1974 were subject to an agreement between the RUC and military, which replaced police investigations into military killings with inquiries conducted by the Royal Military Police (RMP). In these "presentational" or "tea and sandwiches" arrangements, interviews were informal and interviewees were not cautioned, which means that their statements have no legal evidential value. The Panel found that cases after 1974 and into the 1980s were generally characterised by omission or poor execution of key investigative steps where important lines of enquiry were not followed up.

Overall, the investigations failed the relatives' rights to truth, justice and reparation. Interviews with family members illustrate numerous failures on the part of the State, including disregard for legal standards meant to uphold the rights and dignity of victims and their families. State authorities hindered meaningful participation in investigations by withholding information and delaying processes. Families suffered further from the State's failure to accept responsibility, issue apologies, or provide adequate compensation.

Legacy investigations occurring after 1988 have failed to cover all state killings, and the right to truth, justice, and reparations have not been upheld for many families. Those more recent legacy investigations that are considered successful, including from the relatives' perspective, have been characterised by interviews and investigations carried out professionally, using modern day methods and technology. But these remain exceptions.

The Panel found legislation governing legacy investigations to be overly complex, hampering efforts by both the PSNI – including the Historical Enquiries Team – and the Police Ombudsman. Neither the Ombudsman, nor other bodies, can conduct investigations into RUC killings, subject to certain exemptions for new evidence. OPONI is not mandated to investigate the military. Regarding inquests initiated by families, as of late 2023 only six have been completed, sixteen have been partly heard, and thirteen are listed for hearing. Nineteen cases remain unassigned. Guarantees of non-recurrence, if they are forthcoming, have little meaning if past impunities are not acknowledged and addressed.

The Panel doubts that investigations that are Article 2 ECHR compliant will be delivered by the Legacy Act. In February 2024, the High Court in Belfast ruled that the conditional immunity in the Legacy Act is in breach of Articles 2 and 3 ECHR. The decision will be subject to appeal and may make its way to the Supreme Court. Even if the immunity provisions of the Act are removed, or the Act itself is repealed under a future government, severe delays are likely. PSNI chief Jon Boutcher stated that the victims had not been sufficiently heard in the debates on the legislation. Many ageing relatives may have to resign themselves to the fact that justice will not be delivered in their lifetime.

TORTURE AND ILL-TREATMENT

The Panel found that the State failed to comply with its obligations under Article 3 ECHR to effectively investigate complaints of torture and ill-treatment committed by members of the security forces. Even in the exceptional, high profile "Hooded Men" interstate case, where the European Court of Human Rights found the UK to be in breach of Article 3 with regard to the interrogation operation characterised by the combined use of five specific techniques, there was no criminal investigation that could have led to the identification and prosecution of perpetrators.

The Panel analysed the official complaints pipeline and systems in place throughout the conflict to deal with thousands of complaints and allegations of abuse and ill-treatment, mainly arising from interrogation sites. Typically, perfunctory investigations were launched by the Complaints and Discipline branch of the RUC, and some files sent to the DPP, but only a small percentage of cases were prosecuted and fewer still convictions secured. The Panel was able to identify only one custodial sentence handed out as a result of security force actions that would fall under Article 3. The lack of effective investigations detrimentally impacts victims' right to

justice and the proper functioning of the rule of law to hold perpetrators to account.

There was often a different pattern in civil cases: the same cases, based on the same facts, which faced obstruction in criminal law were often settled in favour of the complainant in civil cases. However, these cases were almost invariably settled with a denial of liability. In the absence of truth, justice, or meaningful commitment to non-repetition, civil compensation cannot be considered an effective remedy, or as evidence that the State effectively addressed impunity.

The surviving paper trails of evidence in many cases (including medical reports) are more than suggestive of torture and ill-treatment. In these instances, Crown Counsel and lawyers working on behalf of the State accepted that, on the balance of probabilities, a civil court would find in favour of the complainant. This is the key rationalisation running through the instructions to settle. Yet there have been no associated criminal, administrative or disciplinary sanctions designed to stop the abuses from recurring, or to root out offenders at source.

Guarantees of non-repetition and the introduction of procedures and processes that would lead to a reduction in interrogation violence came too late for many. Such reforms only came after years, often decades, of sustained campaigning by survivors, families, priests, politicians, solicitors, civil society organisations, and other groups. The Panel notes that while the implementation of Bennett reforms in 1980 did result in a reduction in the absolute number of complaints emerging from police holding centres, they came too late for those abused in the 1970s. And while the general nature of allegations changed after the Bennett reforms, a level of physical abuse, verbal abuse, threatening language and threats to solicitors continued.

Post-1998 legacy efforts have largely failed to address historic impunity for torture and ill-treatment, although a small number of cases have been addressed. These include the Derry 4 case, where two 17-year-old and two 18-year-old males were coerced into signing false confessions to the 1979 murder of a British soldier. They were acquitted in 1998 and sued the PSNI for having been wrongly charged. In addition, some individuals who were abused when they were incarcerated as minors (alongside adults) have been able to seek compensation through the Historical Institutional Abuse scheme.

After the transition of the RUC into the PSNI, a process of lustration, or vetting – where members of the "old guard" responsible for human rights violations are weeded out – appears never to have happened, and opportunities to break from past impunity with fair, independent and impartial investigations into historic violations were missed.

There has been no implementation of an overarching legacy mechanism capable of identifying patterns in the occurrence of torture, clusters of offenders, chain of command authorisations, impacts on families and communities, and the longitudinal impacts on survivors.

Dogged campaigning for many years by some individuals is no substitute for the State's international law obligations and political commitment to settle these matters. Apologies for abuse have been rare, although the Panel found one case where a government minister apologised to a man who had been subjected to Article 3 treatment (the case where a perpetrator, from the British Parachute Regiment, received a six-month custodial sentence). In addition, the PSNI (but not the UK Government) recently apologised on behalf of its predecessor organisation, the RUC, for its role in the "Hooded Men" operation. However, no acknowledgment or apology for Article 3 harms committed by members of the security forces against wider groups of victims (hundreds, if not thousands) has yet happened.

The Legacy Act 2023 will not address historic or contemporary impunity for Article 3 violations committed by the security forces in Northern Ireland, and will strengthen the climate of impunity by removing avenues of redress (limited as they were) that were open to some survivors, such as criminal investigations and civil litigation, and replacing them with a limited new legacy body for a time-limited period.

COLLUSION

The Panel found the State's duty to investigate allegations of collusion, via criminal processes and effective inquiries, remained largely unfulfilled during the conflict. Collusion was clearly regarded by the British State as a useful tactic, and any impetus to prosecute criminal acts arising from collusion was typically outweighed by considerations of gaining intelligence. It was also evident to the Panel that in the Republic of Ireland, cases dating from as early as the early 1970s were not properly investigated by the Irish Government during the conflict. It is important to note that, based on later reports by the Police Ombudsman, collusion has been identified across time periods, from the very early days of the conflict until the 1990s. It was also identified across geographical regions in Northern Ireland, in cities and rural areas. It also extended beyond the border into the south of Ireland. It was not, as claimed by some, the case of a few bad apples. Failing to investigate these issues could not likely have been a case of temporary, isolated, lapses. Given the scope, duration and nature of the collusive activities, it is hard to argue that political and law enforcement leadership had no suspicion of patterns of behaviours meriting investigation.

Police investigations of relevant violent incidents were obstructed by a lack of cooperation from Special Branch, including holding back intelligence, "losing" evidence and destroying documents. Information was routinely withheld by parts of the RUC (often Special Branch) from others investigating murders and other crimes (e.g. detectives in the Criminal Investigations Department). This obstruction often amounted to a cover-up of collusion.

Surviving paper trails suggest that there was enough evidence in many cases to bring charges against perpetrators involved in collusion at the time. An unknown number of lives would have been saved if correct processes had been followed during the conflict. But a reluctance by the State to even investigate, let alone prosecute, its own agents, meant that victims have not achieved the accountability to which they are entitled.

The lack of effective investigations seriously damaged victims' right to justice, truth and reparations. Subsequent, post-conflict attempts to discover the truth and hold perpetrators to account were invariably hampered by evidence being withheld and sometimes lost forever.

The Panel acknowledges that since 1998 there have certainly been several investigatory efforts in relation to collusion, including several public inquiries and reports by the Office of the Police Ombudsman for Northern Ireland (OPONI). These have revealed a wider picture of collusion than previously understood. In several cases, allegations of collusion made by victims, bereaved families and NGOs – which were denied and dismissed during the conflict – have, post-1998, been confirmed as accurate by formal investigations. At least for some of the victims this has resulted in some measure of satisfaction.

But the duty to effectively investigate, to prosecute and, where guilt is established, to punish remains unfulfilled. Where cases have been investigated by one of the state mechanisms, this has largely happened as a result of years, often decades, of pressure and campaigning by survivors and the families of victims.

While there have been some convictions of those involved in collusion, and some victims have received compensation and more details about what happened in their cases, many others remain in the dark about who perpetrated the crime and whether the British State had knowledge beforehand that an attack was planned, and if so, why it failed to prevent it.

There has been no overarching legacy mechanism developed that is capable of identifying patterns in collusion, or the impact on victims, survivors, and wider society, and no vetting of personnel to identify those involved in collusion. Though some of the mechanisms (such as inquiries and inquests) have the potential to work well, the inherent limitations of their mandates and powers have meant that even their combined efforts have been unable to provide a comprehensive account of the full extent and nature of collusion or identify all those involved and responsible. The piecemeal system of dealing with the past, which has characterised the UK and Irish governments' response to demands for truth and accountability, is simply unable to deliver the full truth in relation to collusion. Thus it ultimately reinforces impunity.

The British Government has also failed in terms of acknowledgment and apology. The Panel notes there have been some partial apologies in response to some individual findings of collusion, but there has been no broad acknowledgment at the government level in relation to collusion. Such acknowledgment, as well as apologies, are among the duties of governments to victims in the aftermath of conflicts and human rights violations. They are important because they can be seen as a form of symbolic reparation, and could assist in the recovery of victims, communities, and society at large. The fact that collusion has been denied for so long makes formal public acknowledgement and apology highly significant. It is particularly important where violations and abuses have not been adequately investigated, and where the facts have previously been hidden or denied.

In short, the investigatory mechanisms which operated though the conflict period did not – and could not – effectively address allegations of collusion, due to their limited mandates, resources and powers, and the lack of political will. Very few prosecutions were brought against state actors, and substantial questions remain about specific incidents, about the broad underlying degree and level of collusion, and about the responsibility of various state agencies, including what those in senior levels of government knew about allegations of collusion and what – if any – actions they took.

The Legacy Act 2023 offers immunity for crimes committed during the conflict, including murder, which arose from collusion. By removing current mechanisms which have brought some degree of justice and truth (notably police ombudsman inquiries), the Act promises to further fuel impunity for collusion. It will also prevent the possibility of learning the "big picture" of collusion, which is necessary to break the cycle of impunity.

EFFECTS OF IMPUNITY ON INDIVIDUALS AND COMMUNITIES

The Panel's investigation confirmed that the failure of the State to provide accountability, truth, reparations and guarantees of non-repetition, has had and continues to have negative consequences on victims, relatives, communities, and society at large. Over the course of a year, the Panel met with families of the victims of state killings. While acknowledging the possibility of differing experiences, the Panel found the testimonies representative of most families' encounters with state investigative processes. These accounts vividly illustrate numerous failures on the part of the State, including a disregard for legal standards meant to uphold the rights and dignity of victims and their families. State authorities have hindered meaningful participation in investigations by withholding information and delaying processes, causing ongoing distress.

Families have suffered further anguish due to the State's failure to accept responsibility, issue apologies, or provide adequate compensation, leading to lasting trauma and exacerbating grief for many relatives. As a relative of a victim told panel members: "I would like the soldiers to be held accountable, brought to court and admit [what they did]. I don't expect it to happen and I don't want to see them serving a hundred years of prison. I just want them to stand up and say 'yes, we made a mistake, we killed, it was an illegal thing we've done' ... I believe in justice, everybody should be held accountable for their crimes."

Torture and ill-treatment have a lasting effect on victims and their families. One survivor who spoke to the Panel stated: "[t]he electric shock broke my memory. I don't have a good memory even today. The white light completely took over the whole thing. There was an internal explosion in my head." Individuals have experienced psychological trauma and PTSD symptoms for many years after the original violation. Some told the Panel they were still trying to cope, decades later, with the abuse to which they were subjected. This trauma – individual and often collective, affecting family members and loved ones – has been compounded by impunity for the abuses. Knowing that the perpetrators have never been held accountable exacerbates the trauma for some survivors. That the perpetrators were never brought to justice also meant they were free to commit more abuse.

The need of bereaved families, affected communities, and society for truth is also forcefully pronounced when it comes to collusion, where coverups and denials of the full nature and circumstances of attacks have been a defining feature of the issue. Suspicions that the State itself was involved in the attacks or their coverup – while formally declaring them to be the actions of illegal non-state actors – has made the experience of people who lost their loved ones even worse. Many relatives have invested years and decades of their lives in efforts to

force the State to reveal the truth not only about the causes of the attacks that killed their loved ones but also the impunity enjoyed by those involved. For some, these efforts have become – or became in the case of those who have since died – almost a full-time, life-long occupation, the defining aspect of their adult lives. The need to organise, mobilise, litigate and otherwise struggle to get a measure of truth – while coping with the pain of losing a child, parent or partner – has been traumatising for many, and has created further suffering.

A woman who lost her father in a case of suspected collusion told the Panel: "Fifty years later we're still fighting. I suffer from depression, anxiety, diagnosed with PTSD. I promised mum: if anything happens to you, I'll keep fighting. Mum always wanted to know who set him up, who put my dad's name in the hat. He was a good man. Truth will help her get peace of mind. If she has peace of mind, I'll have. She never got to do all her plans, she thinks we were robbed, missed out. Time is not on her side, and I do hope she'll get some sort of peace of mind. We're not the only ones, there's more of us in the same boat."

For those who have secured some measure of truth recovery or accountability after years of campaigning, the experience of seeing their concerns adequately investigated and validated is often a positive outcome, making them feel heard and respected. Yet in many cases, the absence of proper investigations has often also contributed to the spread of misinformation and rumours in relation to those killed, further exacerbating the suffering of their families. In the absence of an official narrative, victims have often been stigmatised as involved in paramilitary violence. Acknowledgment of the truth could put an end to many cases of victim-blaming that families have had to deal with.

Impunity also creates negative consequences for the wider community. It has serious implications for public trust in the security forces, and the observance of the rule of law in Northern Ireland. Ongoing suspicions about collusion, unlawful killings and other abuses, and the State's deliberate failure to address them, has affected communities' trust and confidence in the authorities. The lasting damage to the State's reputation has had widespread effects on various aspects, including policing, and relations between communities. Without a full public inquiry – one that is considered reliable by affected communities – misinformation, rumours, and a lack of trust will continue.

IMPUNITY - WIDESPREAD, SYSTEMATIC AND SYSTEMIC

The Panel concludes that state impunity in the conflict in Northern Ireland is widespread, systematic and systemic. The use of the present tense "is", is deliberate because the Legacy Act represents a continuation of impunity, and because the State has demonstrated that it has the resources and competency to fulfil its Article 2 and 3 ECHR obligations in cases involving suspected police and military violations of human rights obligations.

The Panel describes state impunity as widespread, systematic and systemic because the evidence compiled and presented in this report shows that responsibility for serious human rights violations does not rest with the officers involved alone. In other words, the evidence does not point to "a few bad apples". Impunity in Northern Ireland is a product of institutional failure on behalf of the State. Democratic rule of law states have numerous mechanisms to ensure Article 2 and 3 compliance. They have, for example, domestic and international law, oversight and complaints mechanisms, standard operating procedures, rules of engagement, codes of conduct, training and education, and decision making hierarchies to ensure that cultures of impunity do not develop, and mandates to address violations when they occur.

Impunity in Northern Ireland can be described as widespread in that state killings, torture, inhuman and degrading treatment, and collusion involved a large number of victims. Impunity is systematic because the State failed in its responsibility to investigate cases of state killings, torture, inhuman and degrading treatment, and collusion, in a manner that was effective, official and transparent. The systematic nature of impunity is evident in the State's institutional failure to act upon complaints, adequately resource investigations and prosecutions, correct investigative failings, and provide oversight – parliamentary and otherwise – of state agencies such as the police, military and intelligence services. State impunity is also systemic because of evidence that state killings, torture, inhuman and degrading treatment, and collusion took place in multiple locations, over several decades, and display the failings of multiple state agencies in complying with their Article 2 and 3 ECHR

obligations.

However the State's impunity arises – whether by design and with intent, or through omissions, incompetence and neglect – the evidence found by the Panel indicates an extraordinary level of institutional failure that has produced patterns of widespread, systematic and systemic impunity.

RECOMMENDATIONS

The Panel recommends that:

1. THE UNITED KINGDOM

- repeals the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 in its entirety, including permanently reopening legacy inquests and civil proceedings; in an interim period before new institutions are brought into place, allows the broader existing 'Package of Measures' to continue to function, and discharges its commitment and ECHR obligations to hold a full independent public inquiry into the death of Pat Finucane.

2. THE UNITED KINGDOM AND IRELAND

- return to the existing bilateral Stormont House Agreement 2014 and its 2015 implementation treaty, and legislate to bring into effect the Historical Investigations Unit (HIU) and Independent Commission for Information Retrieval (ICIR) in a fully ECHR-compatible manner and in accordance with modern day investigative practices and standards; and in addition,
- as "Stormont House+", extend the remit of the HIU and ICIR beyond deaths to also deal with Article 3 ECHR violations, and for the Irish Government to also legislate to establish an HIU for its jurisdiction.

The United Kingdom and Ireland seek to establish, with the assistance of the United Nations and Council of Europe human rights mechanisms, an independent international commission to thematically examine patterns of human rights violations and impunity during the Northern Ireland conflict, including torture and collusion, with legislation to provide full powers of disclosure.

FOREWORD

Juan E. Méndez[1]

In the 1980s and 90s, the struggle against impunity for mass atrocities took center-stage in the new horizons of human rights protection. The experience of societies overcoming legacies of dictatorship quickly led to emulation and to learning from each other's practices, first in Latin America, as country after country recovered democracy at the end of military rule. Soon thereafter Eastern Europe began its own transition from Communist governments to democracy and brought about its own way of confronting the past. The end of apartheid in South Africa institutionalised a systematic reckoning through the inquiries of its Truth and Reconciliation Commission. These State practices eventually yielded principles of international human rights law that essentially established that some human rights violations – especially if they have been widespread or systematic – required governments to offer redress to victims and to society, consisting in the four pillars, now widely accepted, of Truth, Justice, Reparations and Measures of Non-Repetition.

Although as a matter of law those pillars are still very much in effect, appetite for justice after mass atrocity has dwindled in the early twenty first century. These are not favorable times for those of us who insist that States and societies have obligations towards the victims of abuse of this kind and scope, to their families and to the citizenry at large. After the transnational terrorist attack on New York and Washington in 2001, the United States and other Western powers have claimed for themselves the right to respond with torture, with arbitrary arrest and long-term detention without trial, and even with enforced disappearances, as long as they were implemented within the so-called Global War on Terror. In the meantime, instruments of justice like the International Criminal Court have been created that could be expected to bolster the possibilities of justice and to promote the compliance by sovereign States with their obligations to justice. However, there has been a noted reluctance to expand a more universal ratification of the Statute of Rome and to engage the International Criminal Court as an instrument of prevention of genocide, war crimes and crimes against humanity.

In addition, the end of the Cold War has not resulted in an era of peace and understanding. On the contrary, localised and regional wars have taken place non-stop since the early 1990s. And in our day and age, armed conflict has become more deadly and tragic and more intractable, to the point in which world leaders have been less inclined to resist aggression (as in the Russian invasion of Ukraine) and even more supportive of the use of force in self-defense without demanding that such force be exercised within the limits of the law of armed conflict (as in Israel's response to the Hamas attack of October 7, 2023). If there are attempts at peace-making in those and in other conflicts, the elements of transitional justice that once were considered viable confidence-building means are now less frequently invoked. Even pauses in the carnage to allow humanitarian relief seem unacceptable to world leaders. When it comes to long-term conflict resolution, peacemakers are more and more comfortable with allowing the aggressors and the war criminals to get away with murder, even if the peace that is obtained appears fragile and fundamentally unfair.

This gloomy view of the present of "transitional justice" does not mean that the standards in international human rights law are no longer in effect; there is a lot of impunity in the world for mass atrocities, but if anything the impulse behind efforts in favor of preserving memory remains strong. Victims, their families and their organisations have learned the lesson that the struggle of justice in all its forms is long and arduous, and that this pursuit is always worthwhile. In the histories of societies there are, of course, moments more favorable to the success of these efforts and moments when the odds seem stacked against them. But the idea of justice is so strong that it nurtures the resilience and the creativity of those who insist that the past requires from us a response that is lawful, ethical and promising of a better future.

That is a very good reason to celebrate the publication of this volume, written collectively by some of the most effective advocates and practitioners of transitional justice. The transition from conflict to peace in Northern Ireland has been the object of numerous and highly regarded publications. The twenty-fifth anniversary of the Good Friday Agreement is a good occasion to acknowledge its achievements and to reckon with its limitations. Among the achievements, certainly, a quarter century of peace – however uneasy and uncomfortable to many on all sides – must be recognised. It may well be that the power-sharing scheme that allowed for devolution

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of home rule to Northern Ireland did work in the sense that it has proven a disincentive for the armed groups to return to military operations. There have been multiple publications critiquing the agreements in that they seemed to "freeze" the underlying conflict without a proper reconciliation or a shared vision of a common future. If anything, the agreements have returned Northern Ireland to the way matters stood before the onset of armed struggle, leaving intact the unfair and discriminatory structures of "conflicted democracy."[2]

Nonetheless, the commitment to more just distribution of resources and services – explicitly stated in the Good Friday Agreement – has resulted in a measure of empowerment in favor of the ethnic and religious minority and contributed to some extent to reducing gender disparities. The demilitarisation of the conflict and disarmament ("decommissioning") of paramilitary groups on both sides has built a climate in which open democratic debate over policies has flourished. Importantly, Northern Ireland is now a place where genuine and unfettered scholarly inquiry is possible; scholars and researchers from Northern Ireland have made very significant contributions to the theory of transitional justice, very likely more so that in any other post-conflict society.

That powerful intellectual enterprise highlights the one large shortcoming of the Northern Ireland experience with transitional justice: the intolerable pervasiveness of impunity for the most severe crimes committed by all sides. It also explains the insistence of victimised persons and their families on the need to redress those wounds that remain open in the fabric of society. Researchers and historians have unearthed many secrets about some of the more tragic events; but they have done so with little action or support from the authorities, either in the shared Northern Ireland government or from the government of the United Kingdom. Indeed, some highly public judicial and quasi-judicial inquiries into some notorious murder cases have made it plain that they could not have been committed without the tolerance of State authorities. Yet their revelations have not resulted in appropriate or proportional judicial adjudication of individual responsibility for the crimes.

It is also possible that the power-sharing agreement is an important factor that explains the lack of action in the "justice" pillar of transitional justice as applied in Northern Ireland. All sides to the conflict inflicted severe crimes of violence against their perceived enemies; they now share power in the devolved authority to regional government, but they may also share an interest in letting bygones be bygones.[3]

Unlike peace agreements in other parts of the world, the Good Friday Agreement did not establish a comprehensive amnesty for all crimes committed by all sides in the conflict. It did provide for the early release of convicted prisoners and a maximum two year sentence if they were convicted after the Good Friday Agreement. It also offered partial amnesty to those persons who came forward with information about the fate and whereabouts of those who remained "disappeared" after kidnapping. Since a mechanism to deal with the past has not been agreed a large debt is still owed to bereaved families. There is still a large number of facts surrounding those crimes that are mired in secrecy, denialism and oblivion and that must be unearthed and properly investigated.

That is why the authors of this volume have made a very good choice on the matter of impunity within the transitional justice framework as the focus of their endeavors. This report is itself a contribution to memory and justice. The effort is not to destroy the peace that has been reached and maintained, but to complement it with truth-seeking and truth-telling and, to the extent possible, justice-making. A large part of the evidence may be lost by now, many perpetrators may be unavailable after all these years, and the passage of time may render it impossible to investigate, prosecute and punish with the highest standards of fair trial and due process of law. But the enormity of the crimes makes it imperative to create mechanisms to seek the truth, to offer reparations to the victims as needed, and to determine with transparency whether criminal prosecutions are still viable against identified perpetrators. Under those conditions, mechanisms of transitional justice, appropriately adjusted to the unique circumstances of Northern Ireland, have potential to constitute eventually the measures of non-repetition that can ensure that The Troubles and their tragic legacy are retained in Memory as the process ensures that they will not happen ever again. *January 2024*

2 Fionnuala Ní Aoláin and Colm Campbell, 'The Paradox of Transition in Conflicted Democracies' (2005) 27 Human Rights Quarterly 172 <https://muse.jhu.edu/article/178242/pdf>.

3 A powerful and well-documented history of these atrocities by all sides is in Patrick Radden Keefe, *Say Nothing: A True Story of Murder and Memory in Northern Ireland* (Anchor Books 2019).

INTRODUCTION

This report assesses the extent to which there has been state impunity[4] in relation to serious human rights violations during the 30-year Northern Ireland conflict. In particular, the report examines whether the UK Government has met its international legal obligations to take effective action to combat impunity. As elaborated later, the Independent Panel on State Impunity and the Northern Ireland Conflict (hereafter "the Panel") carried out its work in the context of an absence of effective official mechanisms for accountability and truth.

Combatting impunity is widely recognised in human rights law and practice as a binding legal obligation on states to take appropriate measures to ensure truth, justice, reparations, and guarantees of non-recurrence of abuses.[5] The 1998 Good Friday Agreement did not include an overarching transitional justice mechanism[6] nor concrete measures to address impunity. In the years since, the UK has been criticised for failing to meet its obligations under Article 2 of the European Convention on Human Rights (ECHR), which imposes on the state a duty to hold effective investigations into suspected killings, as well as for failing to meet other obligations to victims of human rights violations. It was also criticised by the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, who noted an "impunity gap" in Northern Ireland.[7] While more information about conflict-related human rights abuses has emerged since 1998, it has come from isolated ad-hoc inquiries, mechanisms with limited mandates and capacity, inquests and civil actions, and the efforts of civil society groups and victims. Much is still unknown or unacknowledged, and there has been little progress towards achieving overall accountability and the truth. The recently enacted Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 (hereafter "the Legacy Act") seems designed to curtail such efforts. The Act has been highly criticised by both international and domestic actors: for example, it was described by the Council of Europe and the UN special rapporteur as a flagrant breach of the UK's international obligations.[8] It has also been the subject of a rare consensus among Northern Ireland political parties, as all major parties – nationalist, unionist and others – are united in opposition to it. It has also been strongly opposed by the Irish government, all political parties in the Republic of Ireland and the opposition parties at Westminster. The Act is explored in detail in Chapter Two.

Given that much of the violence arising from the Northern Ireland conflict occurred in the 1970s, and it is now over twenty-five years since the 1998 Good Friday Agreement, time is running out to achieve accountability, justice and truth for all sides.

GOALS

This report has several goals. First, it aims to amplify the voices of victims and survivors, enabling them to share how state impunity has affected them. It also documents some of their experiences in challenging impunity. The report includes testimonies of victims and survivors of torture and violence, as well as those who lost their loved-ones through actions by state forces or through collusion between state forces and paramilitaries.

4 A full definition is provided in Chapter One, but 'impunity' generally means freedom from punishment, loss, harm or other negative consequences in relation to something that has been done that is wrong or illegal. In the international law of human rights, impunity is failure to bring perpetrators of human rights violations to justice and, as such, itself constitutes a denial of the victim's right to justice and reparation.

5 See United Nations Economic and Social Council, 'Updated set of principles for the protection and promotion of human rights through action to combat impunity' (8 February 2005) 61st Session E/CN.4/2005/102/Add.1

6 Transitional justice covers the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past conflict, repression, violations and abuses, in order to ensure accountability, serve justice and achieve reconciliation. See https://www.ohchr.org/en/transitional-justice

7 United Nations General Assembly, 'Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on his mission to the United Kingdom of Great Britain and Northern Ireland' (17 November 2016) 34th Session (2017) A/HRC/34/62/Add.1

8 'UK: Flawed Northern Ireland "Troubles" Bill Flagrantly Contravenes Rights Obligations, Say UN Experts' *Office of the United Nations High Commissioner for Human Rights* (December 2022) <https://www.ohchr.org/en/press-releases/2022/12/uk-flawed-northern-ireland-troubles-bill-flagrantly-contravenes-rights>.

Many of these witnesses have been publicly silenced, disbelieved or demonised, have been unable to afford a costly and risky struggle for accountability, or see little hope of finding justice. Many of them have not been heard publicly before or had their grievances acknowledged. The report seeks to remedy this by recording and allowing their voices to be heard. As much of the violence occurred fifty years ago, the opportunity to collect these views and experiences and present them publicly is rapidly disappearing, and it becomes ever more urgent to address their grievances in relation to the state impunity which has so negatively affected their lives and the well-being of their communities and society.

Second, the report aims to contribute to ongoing efforts to combat impunity in relation to the Northern Ireland conflict. The Panel hopes it will be a useful resource in advocacy efforts to change the course of the UK Government, and both strengthen current mechanisms and build new ones which can address the past more meaningfully and work more effectively for truth and justice. As mentioned above, there has been widespread condemnation of the Legacy Act, with implementation currently being challenged before the courts. Sir Keir Starmer, leader of the Labour Party which seems likely to form the next UK government, has undertaken to repeal the legislation. There are also ongoing litigation challenges against the Act before the UK domestic courts, and the Irish government has initiated an interstate case to the European Court of Human Rights. In this context, the Panel hopes the information and analysis contained in this report will assist those who continue to act and advocate against impunity.

A third goal is to provide an international perspective on the issues at stake. Panel members have contributed to this through their experience working on human rights and impunity-related issues in countries around the world, as well as their significant knowledge of relevant international standards. They also feel it is important to place the human rights violations and state impunity in Northern Ireland in a broader international and historic context. First, it has been documented that abuses carried out in Northern Ireland, such as torture, detention without trial, and the operation of pro-state "counter-gangs",[9] have been used earlier by British forces in other places such as Kenya and Malaysia. The lack of accountability for these policies and counter-insurgency techniques has likely contributed to their subsequent deployment in Northern Ireland. In turn, it appears that questionable policies and practices carried out during the Northern Ireland conflict were later "exported", directly or indirectly, to places such as Iraq or Afghanistan and through the "war on terror" – sometimes by the same personnel (who had worked, for example, for the RUC or the military) or while invoking a "successful" British model for fighting terrorism. It seems, therefore, that the absence of effective inquiries into policies used first in Kenya then later in Northern Ireland, has contributed to the ease in which they have spread globally.

The Panel also emphasises that the state impunity displayed by the British Government can have broader international repercussions. The UK is a member of the UN Security Council, a G7 member, and has generally been seen as a prime example of a democratic, law-abiding country. If it effectively sanctions impunity for human rights abuses, through the Legacy Act being allowed to go ahead, this decision is highly likely to be used by repressive regimes around the world to justify and legitimise their own policies of state impunity. Similarly, the apparent lack of respect for human rights demonstrated by the Legacy Act could contribute to a human rights backlash in established democracies and also give succour to authoritarian regimes around the world. It could also diminish the UK's authority and legitimacy when intervening for the purpose of human rights protection in other countries. In short, while the effects of state impunity on the people of Northern Ireland are critical, the stakes are even higher when considering the international consequences and reverberations for the United Kingdom.

9 The term 'counter-gangs' refers to the use of armed unlawful groups which support government efforts against insurgents. The term was used in the book "Gangs and Counter-Gangs" by army officer Frank Kitson, who served in Kenya and Malaysia before arriving in Northern Ireland and influencing policy there; see Frank Kitson, *Gangs and Counter-Gangs* (Barrie and Rockliff 1960). https://www.kalasnyikov.hu/dokumentumok/frank-kitson-gangs-countergangs.pdf

SCOPE

This report does not provide an exhaustive history of human rights issues during the Northern Ireland conflict, nor has the Panel carried out independent investigations into specific allegations or concluded whether any individual allegation is true. The Panel's mandate is to provide an authoritative record for domestic and international communities of the extent to which there is evidence of patterns of state impunity by the UK Government in relation to human rights violations. A major focus of the report is to assess whether there are credible claims that the UK Government has not met its binding obligations under articles 2 and 3 of the ECHR to conduct effective and fair investigations into allegations of abuses and to respect the rights of victims.

The report assesses three thematic areas which concern patterns of serious human rights violations, namely:

- direct killings by state agents (Chapter Three)
- torture and ill-treatment by state agents (Chapter Four)
- killings attributed to non-state actors where there are allegations of collusion with state actors (Chapter Five).

These issues were chosen because of their gravity, their effects on individuals, communities and society, and the clear legal obligations that they engage. Unjustified killings by state actors represent the extreme abuse of state power, and torture is a crime under international law and is not allowed under any circumstances – a non-derogable principle that states cannot suppress or rescind even in times of wars and emergencies. It is outside the scope of the report to address a host of other issues, such as injury, internments, unfair trials or abuse of policing powers.

In making an assessment of patterns of state impunity, the Panel considers whether the evidence holds that impunity across the thematic areas examined was relatively isolated or whether, in each area, it reached the threshold where it could be considered 'widespread', 'systemic', and/or 'systematic' – concepts explored later in the report. The Panel examines whether *prima facie* credible allegations were investigated in ways which could lead to the necessary levels of accountability, truth, and reparation – including investigations examined by formal inquiries, in court judgments and by state bodies such as the Police Ombudsman for Northern Ireland. The Panel does not have a position as to what the outcomes of any future investigations and inquiries should be, but rather takes the view that the UK Government remains legally obliged to conduct fair and effective investigations into conflict-related deaths and serious injuries.

It is important to clarify that the specific focus of this report is on state policies and actions that have led to claims of state impunity, not on *non-state* actors or actions. It is the State which is authorised and obligated to carry out investigations and inquiries, and where required, prosecutions and criminal punishment. Therefore, the premise of the report is to examine credible claims that the State has not fulfilled its obligations in relation to human rights abuses either carried out by its agents or occurred when state agents colluded with armed non-state actors. Evidence shows that the majority of killings during the conflict where at the hand of non-state actors, but apart from in the context of collusion, there are no credible claims that the State had a specific policy or practice of providing impunity for the paramilitary groups attacking their own citizens and security personnel. Quite the opposite. It is estimated that during the conflict around 30,000 individuals were imprisoned as members of non-state armed groups,[10] while only a handful of state actors[11] were imprisoned

10 P. Shirlow and K. McEvoy (2008) Beyond the Wire: Former Prisoners and Conflict Transformation in Northern Ireland. Pluto Press. Stormont executive estimates between 20,000 and 40,000; OFMDFM 'Report of the Review Panel, Employers' Guidance on Recruiting People with Conflict-Related Convictions', March 2012, 14.

11 For example, four British soldiers were convicted of murder during the conflict, one of whom subsequently had their conviction overturned. Private Ian Thaine was sentenced to life for murder in 1984 and released in 1987. Private Lee Clegg was sentenced to life for murder in 1993. He was released on license in 1993 and had his conviction overturned in 1995. Mark Wright and James Fischer from the Scots Guards were sentenced to life for murder in 1995 and released in 1998. See further: Kieron McEvoy and others, 'Prosecutions, Imprisonment and the Stormont House Agreement: A Critical Analysis of Proposals on Dealing with the Past in Northern Ireland' (Queen's University Belfast 2020) <https://caj.org.uk/wp-content/uploads/2020/04/Prosecutions-Imprisonment-the-SHA-LOW-RES.pdf>.
In addition, Ryder cites that 18 members of the locally recruited Ulster Defence Regiment were convicted of murder and 11 of manslaughter during the Troubles (1991): Chris Ryder, *The Ulster Defence Regiment* (Methuen 1991) 150. Many of these were dual members of the UDR and loyalist paramilitary groups.

during that period.[12] Therefore, this report concentrates on the 'impunity gap' in relation to state actions. Of note, the Panel believes any future overarching mechanism tasked with providing accountability, truth, compensation, and reparations to the highest degree possible, should also examine the actions of armed non-state actors, hold them to account and provide adequate reparations to their victims.

In general, states are held to account under their international human rights obligations. In the case of the United Kingdom, these are principally found in UN treaties and the European Convention on Human Rights. These international standards place a duty on states to ensure adequate investigation of suspected crimes and abuses committed by its own officials and agents. This is especially the case when the very agents who receive special powers to protect the public engage in crimes against the community they are meant to protect. As Sir Desmond de Silva noted in his report into the killing of solicitor Pat Finucane: "The State must be expected to operate to a higher standard than those operated by paramilitaries."[13] This recognises that armed non-state organisations are considered unlawful, and therefore cannot and are not expected to ratify the same international mechanisms.[14] Instead, armed non-state actors have been pursued under domestic law.

Later chapters show that, even with the clarity provided by international human rights law, the pursuit of accountability for wrongful actions by state agents has been largely unsuccessful, being constantly undermined by flawed investigations and ineffective remedies both during and after the conflict. The Panel notes that the Historical Enquiries Team, a unit established by the Police Service of Northern Ireland in 2005 to examine unsolved murders from the conflict, was shut down in 2014 at least partly because Her Majesty's Inspectorate of the Constabulary found that some cases involving deaths caused by state agents were 'being reviewed with less rigour in some areas' than non-state cases.[15] This issue is explored more in Chapter Three.

Although the report largely focuses on state killings, torture and collusion that occurred in Northern Ireland, it does include conflict-related events which took place in the Republic of Ireland and in England. Similarly, while the report concentrates on the responsibility of the UK Government, it also addresses failures by the Irish Government in relation to the treatment of victims of attacks carried out in its jurisdiction.

PROJECT TEAM

The International Expert Panel on State Impunity and the Northern Ireland Conflict was formally established in June 2022. The Panel was convened by the Norwegian Center for Human Rights at the University of Oslo at the request of the Committee on the Administration of Justice (CAJ) and the Pat Finucane Centre (PFC). See Appendix A for more.

12 In 1972 two men were found stabbed to death in a rural area of Co Fermanagh. The killings of Michael Naan and Andrew Murray in October 1972 led to the conviction of four members of the Argyll and Sutherland Highlanders. In 1981 Sgts. John Byrne and Stanley Hathaway were convicted of the murders and received life sentences, while Ian Chestnut (who had been discharged from the military by the time of the trial) pleaded guilty to one of the killings, received a four year sentence and Capt. Andrew Snowball admitted withholding information about the killings and received a one-year suspended sentence. It is accepted that the soldiers were all on duty when the men were killed but no attempt was made to suggest that the killings were a legimate use of lethal force.

13 Sir Desmond de Silva, 'The Report of the Patrick Finucane Review' (UK government 2012) <https://www.gov.uk/government/publications/the-report-of-the-patrick-finucane-review>, 1.109

14 It is relevant to note that in situations of armed conflict in some circumstances non-state armed groups are considered to be directly bound by International Humanitarian Law. It is contestable whether the situation in Northern Ireland passed the threshold required to be considered as an armed conflict, but in any case the British government has consistently and vehemently denied that it was engaged in a "war" in Northern Ireland.

15 '018/2013 - the Historical Enquiries Team's Approach to Reviewing Deaths during "the Troubles" Is Inconsistent, Has Serious Shortcomings and so Risks Public Confidence, HMIC Finds' *His Majesty's Inspectorate of Constabulary and Fire & Rescue Services*, (July 2013) <https://hmicfrs.justiceinspectorates.gov.uk/news/releases/0182013-hmic-inspection-of-the-historical-enquiries-team/> accessed 2 February 2024.

PANEL MEMBERS

- Dr Brian Dooley
- Dr Aoife Duffy
- Ms María José Guembe
- Mr Kjell Erik Eriksen
- Prof Ron Dudai

Due to changes in personal circumstances two original panel members, Yasmin Sooka and Ivar Husbay, had to stand down.

PANEL CONVENER

The convener was Mr Gisle Kvanvig, Director of multilateral cooperation in the international department at the Norwegian Center for Human Rights.

SUPPORT TO THE PANEL

Panel members were supported by several student teams, including:

- a postgraduate team from the Human Rights Clinic at the University of Essex
- two PhD students on placement at CAJ from Queen's University Belfast
- postgraduate students from the Norwegian Center for Human Rights at Oslo University
- a specific support project at the Human Rights Centre, University of Essex
- student researchers within Human Rights First, a non-profit organisation based in the United States.

METHODOLOGY

- The Panel based its research on a variety of sources.
- Delegations from the Panel conducted a total of seven site visits to Northern Ireland to gather primary evidence. The Panel was involved in four public events during these visits including two seminars for academics at Ulster University and Queen's University Belfast and two large community events in Belfast and Derry.
- The Panel gathered information and testimonies from victims/survivors, including from families whose loved ones were killed and individuals who had been subjected to torture. Over a year, panel members held meetings with over 40 families and individuals during visits to Belfast, Derry, Dublin, and Armagh.
- Panel members met with and considered evidence and information from lawyers and legal firms representing victims, NGOs working on relevant issues, and a range of other experts. In addition, panel members met with people who were involved in official mechanisms investigating past abuses, and with senior legacy representatives of both the British and Irish governments, including the office of the Northern Ireland Office and the Irish Department of Foreign Affairs.
- The Panel also met with the Police Ombudsman for Northern Ireland Marie Anderson, former Police Ombudsman Michael Maguire, the Chief Commissioner Designate of the ICRIR Sir Declan Morgan; and Jon Boucher, Officer in Command Operation Kenova (who was shortly after appointed the PSNI Chief Constable).
- The Panel's torture subgroup held meetings in relation to women detainees and loyalist prisoners.
- The Panel relied heavily on a range of documentary evidence including: official archives; official documents which are released by the British and Irish governments on a yearly basis; declassified British government memos and other documents; legal judgments; reports of public inquiries; and reports of the Office of the Police Ombudsman for Northern Ireland and the Historical Enquiries Team. While arguably the most sensitive documents have not been declassified (and probably never will be), significant information was found in the released material.
- Archival files identified by the Pat Finucane Centre were supplemented with other primary and secondary sources including statements taken by the Association of Legal Justice and more recent legacy reports.

The methodology included use of an optical character recognition tool developed by Human Rights First to help the Panel and its researchers search through hundreds of thousands of pages of documentary evidence to identify relevant cases and internal responses by the British Government to human rights violations during the appropriate period. Until this tool was available, all searches carried out, particularly by the Pat Finucane Centre (PFC) and Justice for the Forgotten (JFF), had involved a long and painstaking process undertaken mostly by staff members, volunteers and students. The latter two groups were given special training so they had sufficient understanding of the conflict to be able to identify what was sometimes just a small amount of significant information in a file possibly hundreds of pages long.

STRUCTURE

The report is structured as follows.

- Chapter 1 provides an overview of the concept of impunity, including legal definitions and standards, and the effects of impunity on truth, justice, reparations and guarantees of non-recurrence.
- Chapter 2 provides an overview of the Northern Ireland conflict and peace process, including a review of several public inquiries and actions taken by the State to address the past and their limitations, and analysis of the Legacy Act. It also discusses the role that various forms of obstruction have played in the failure to achieve truth, accountability and reparation.
- Chapters 3 addresses impunity in the context of state killings providing an assessment of state actions to combat impunity and the effects on victims.
- Chapter 4 addresses impunity in the context of torture providing an assessment of the extent there has been impunity for torture, inhuman and degrading treatment during the conflict.
- Chapter 5 addresses impunity in the context of collusion, setting out the parameters of this concept and the extent to which there was impunity for collusion during the conflict, also examining subsequent investigations into collusion.
- Chapter 6 synthesises the Panel's findings and provides conclusions and recommendations.

CHAPTER ONE STATE OBLIGATIONS TO PREVENT IMPUNITY FOR SERIOUS HUMAN RIGHTS VIOLATIONS

To frame the work of the Panel, it is necessary to set it in context. First, this chapter presents the main documents that encapsulate state obligations to prevent impunity and then defines the key concepts of serious human rights violations, impunity, victims of serious violations, and collusion. It also defines the concepts of systematic, widespread, and other terms. The chapter then examines in more detail the four main obligations of states and the corresponding rights for victims.

KEY DOCUMENTS

The United Nations documents relating to impunity are the

- *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity.*[16] This document (hereafter *"Updated Set of Principles"*) outlines 38 principles that recognise the duty of every state under international law to respect and to secure respect for human rights by implementing effective measures to combat impunity.

- *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.*[17] This document (hereafter *"Basic Principles and Guidelines"*) affirms "the importance of addressing the question of remedies and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law in a systematic and thorough way at the national and international levels".[18]

In the European context, the Committee of Ministers (the Council of Europe's decision-making body) adopted the guidelines entitled *Eradicating impunity for serious human rights violations.*[19] This document (hereafter *"European Guidelines"*) explains that those responsible for acts amounting to serious human rights violations must be held to account for their actions and that a lack of accountability encourages repetition of crimes, as perpetrators and others feel free to commit further offences without fear of punishment.

16 At the request of the Sub Commission on Prevention of Discrimination and Protection of Minorities of the United Nations, human rights expert Louis Joinet prepared a draft set of principles for the protection and promotion of human rights through action to combat impunity, which were adopted by the Sub-Commission in 1997 (United Nations E/CN.4/Sub.2/1997/20/Rev.) Subsequent developments in international law led to the update of the original set of principles, which were issued in 2004 by the Commission of Human Rights of the Economic and Social Council. The new version – *Updated Set of principles for the protection and promotion of human rights through action to combat impunity* – was presented in 2005 to the Commission and that same year approved by the United Nations General Assembly, which welcomed the new text and recommended them to States for implementation as part of their efforts against impunity (United Nations Economic and Social Council, 'Updated set of principles for the protection and promotion of human rights through action to combat impunity' (8 February 2005) 61st Session E/CN.4/2005/102/Add.1.

17 United Nations General Assembly Resolution 60/147 (16 December 2005) UN Doc A/RES/60/147

18 Ibid.

19 Adopted by the Committee of Ministers of Europe, 30 March 2011, 1110th meeting of the Ministers' Deputies. Directorate General of Human Rights and Rule of Law, 'Eradicating Impunity for Serious Human Rights Violations; Guidelines and Reference Texts' (Council of Europe 2011).

These documents do not create new norms but standardise the situation regarding impunity and victims' rights. Their binding force emanates from the sources of international law that support them, including current treaties, international custom, general principles of law, jurisprudence, and doctrine.

KEY DEFINITIONS

SERIOUS HUMAN RIGHTS VIOLATIONS

Serious violations are those committed within the context of an internal armed conflict, a dictatorship, or a widespread or systematic pattern of abuses that affect the most fundamental human rights, especially the right to life and the right to the physical and moral integrity of the person.[20]

The term 'serious violations of human rights' appears in UN instruments on combatting impunity. According to Cherif Bassioni, this term has been used in the context of the United Nations not to designate a special category of violations but to describe situations involving violations of human rights, referring to the manner in which the violations were committed or their severity. Some descriptive elements of these violations include massiveness i.e. the massive impact on affected individuals; the periodicity or timeframe in which they occurred; systematicity, i.e. the degree of planning by the perpetrators; and the social impact according to the nature of the violated rights, the vulnerability of the victims, and the impact of the violation on the affected person or community.

The United Nations instruments combatting impunity include serious violations of human rights as part of 'serious crimes under international law', involving so-called international crimes such as crimes against humanity or war crimes.[21] Falling into this category are genocide, murder, forced disappearance, torture and other cruel, inhuman, or degrading treatment or punishment, prolonged arbitrary detention, deportation or forced population transfer, systematic racial discrimination, slavery, and the slave trade.

According to the *European Guidelines*

> "'serious human rights violations' concern those acts in respect of which states have an obligation under the [European] Convention [of Human Rights], and in the light of the Court's case-law, to enact criminal law provisions. Such obligations arise in the context of the right to life (Article 2 of the Convention), the prohibition of torture and inhuman or degrading treatment or punishment (Article 3 of the Convention), the prohibition of forced labour and slavery (Article 4 of the Convention) and with regard to certain aspects of the right to liberty and security (Article 5, paragraph 1, of the Convention) and of the right to respect for private and family life (Article 8 of the Convention)."[22]

The Inter-American human rights system has repeatedly defined serious human rights violations and established standards regarding state obligations. [23]

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20 M Cherif Bassiouni, 'Searching for Peace and Achieving Justice: The Need for Accountability' (1996) 59 Law and Contemporary Problems 10.

21 *Mr. M. Cherif Bassiouni, submitted pursuant to Commission on Human Rights resolution* 1998/43, par. 85, E/CN.4/1999/65 8 February 1999. https://ap.ohchr.org/documents/alldocs.aspx?doc_id=1520, accessed January 5, 2024.

22 Eradicating Impunity for Serious Human Rights Violations; Guidelines and Reference (n 19). <https://rm.coe.int/1680695d6e#:~:text=States%20should%20remove%20from%20office,and%20institutionalise%20codes%20of%20conduct.>.

23 In the inter-American context, there exists normative acknowledgment that the forced disappearance of individuals, acts of torture, and gender-based violence and impose a duty on states to conduct thorough investigations and enforce punitive measures. This obligation is further underscored by the jurisprudence established by the Inter-American Court *(Case of Velásquez Rodríguez v. Honduras* (Merits) [1988] Serie C No.4; *Case of Barrios Altos v. Peru* (Merits) [2001] Serie C No. 75, par. 48. among many others). The Court has considered a violation to be serious when a specific treaty establishes the obligation to investigate, judge, and punish (vgr. Convention Against Forced Disappearance of Persons, the Convention Against Torture, and the Convention of Belem do Pará. The Court even dismissed the need to establish systematicity or the presence of armed conflict for these behaviours to be considered serious.

IMPUNITY

The *Updated Set of Principles* defines impunity as

> "the impossibility, de jure or de facto, of bringing the perpetrators of violations to account – whether in criminal, civil, administrative or disciplinary proceedings – since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims."[24]

Taking into account the legal consequences derived from violations that constitute serious crimes under international law, the *Updated Set of Principles* state that[25]

> "impunity arises from a failure by States to meet their obligations to investigate violations; to ensure the inalienable right to know the truth about violations; to take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished; to provide victims with effective remedies and to ensure that they receive reparation for the injuries suffered; and to take other necessary steps to prevent a recurrence of violations".[26]

The *European Guidelines* on eradicating impunity state that

> "impunity is caused or facilitated notably by the lack of diligent reaction of institutions or state agents to serious human rights violations. In these circumstances, faults might be observed within state institutions as well as at each stage of the judicial or administrative proceedings. States are to combat impunity as a matter of justice for the victims, as a deterrent with respect to future human rights violations and in order to uphold the rule of law and public trust in the justice system."[27]

VICTIMS OF SERIOUS HUMAN RIGHTS VIOLATIONS

According to the *Basic Principles and Guidelines*, victims are those persons who individually or collectively have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. The definition of victim also includes the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation (principle V.8). Moreover, a person must be considered a victim independently of whether the perpetrator of the violation is identified, prosecuted or punished.

COLLUSION

In reference to 'collusion' between state actors and paramilitary groups, an exact definition has proved elusive. Chapter Five discusses the debate in detail, with the Panel recognising the difficulty of producing a concise, easily understood definition.

In two 2022 reports the current Police Ombudsman for Northern Ireland, Marie Anderson also grappled with this problem. Instead of trying to create a single-sentence definition that would hopefully gain universal approval (arguably an impossibility), she drew on the definitions put forward by Lord John Stevens, Judge Peter Cory, Irish judge Peter Smithwick and others to identify the common features of collusion. She concluded that collusion:

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24 Updated set of principles for the protection and promotion of human rights through action to combat impunity (n 16).

25 Ibid, Definition B, "As used in these principles, the phrase 'serious crimes under international law' encompasses grave breaches of the Geneva Conventions of 12 August 1949 and of Additional Protocol I thereto of 1977 and other violations of international humanitarian law that are crimes under international law, genocide, crimes against humanity, and other violations of internationally protected human rights that are crimes under international law and/or which international law requires States to penalize, such as torture, enforced disappearance, extrajudicial execution, and slavery".

26 Ibid, principle 1: General obligations of States to take effective action to combat impunity.

27 Eradicating Impunity for Serious Human Rights Violations; Guidelines and Reference Texts (n 19) 7 Id. Note 4, point II.

i. is context and fact specific
ii. must be evidenced but is often difficult to establish
iii. can be a wilful act or omission
iv. can be active or passive - active collusion involves deliberate acts and decisions; passive (or tacit) collusion involves turning a blind eye, or letting things happen without interference
v. involves by its nature an improper or unethical motive
vi. if proved, can constitute criminality or improper conduct (amounting to a breach of the ethical code of the relevant profession)
vii. may constitute corrupt behaviour.[28]

The Panel feels that Anderson's list appears to fit the need for a definition that incorporates the many wide-ranging aspects of collusion and establishes a useful definition in itself.

OTHER DEFINITIONS

WIDESPREAD, SYSTEMATIC, SYSTEMIC

- Widespread: on a large scale and with a high number of victims.[29]
- Systematic: indicative of an official, organised pattern or practice.[30]
- Systemic: relating to structural issues across a whole system.[31]

RELATED TERMS

- *Institutional failure:* a failure of a state entity to carry out its functions.
- *Patterns of abuse, crime, violence:* the aggregate of multiple incidents that share common features and non-accidental repetition of similar conduct on a regular basis.
- *Inherent failures:* the failure of a system, institution, state to function properly because a central element of that system is flawed.
- *Co-ordinated abuse*: where state-sponsored abuse is part of a coordinated state policy with the backing of state institutions.

28 Police Ombudsman for Northern Ireland, 'Statutory Report Public Statement by the Police Ombudsman pursuant to Section 62 of the Police (Northern Ireland) Act 1988. Relating To: Investigation into Police Handling of Certain Loyalist Paramilitary Murders and Attempted Murders in the North West of Northern Ireland during the Period 1989 to 1993 '(Police Ombudsman for Northern Ireland 2022) 326.

29 UN definition in context of crimes against humanity: "large-scale violence in relation to the number of victims or its extension over a broad geographic area." United Nations, "*United Nations Office on Genocide Prevention and the Responsibility to Protect*" (United Nations) Accessed June 21, 2023. https://www.un.org/en/genocideprevention/crimes-against-humanity.shtml.

30 Dinah Shelton, Remedies in International Human Rights Law (Oxford University Press, USA 2000) 120.

31 Systemic is often used interchangeably with structural, with systemic encompassing structural elements. The concept is frequently employed in various UN contexts, such as the UN Security Council and the UN Human Rights Council, to address fundamental weaknesses or issues within national systems. For instance, systemic racism is identified as a pervasive problem contributing to inequalities in access to healthcare and exacerbating health disparities. In the European Court of Human Rights, systemic issues are characterised by a significant influx of applications concerning similar issues, which may necessitate pilot judgments. The Brighton Declaration underscores the responsibility of State Parties to address systemic issues and implement measures to resolve violations effectively. This entails developing domestic capacities and mechanisms to ensure the prompt execution of the Court's judgments.

STATE OBLIGATIONS

The international community has repeatedly shown concern about the failure of states to meet their legal obligations and about the recurrence of serious human rights violations, especially those carried out during armed conflicts or by authoritarian regimes. Based on the general obligations outlined in the main universal and regional human rights treaties and the right of victims to effective remedies for violations of their rights, mechanisms created by such treaties and political bodies of the United Nations have developed a consistent doctrine and jurisprudence regarding what constitutes impunity and the expected behaviour of states to prevent it.

The Panel examined the four main obligations of states, arising from the aforementioned documents, and the consequent rights recognised to victims.

1. THE DUTY TO INVESTIGATE AND INFORM / THE INALIENABLE RIGHT TO KNOW THE TRUTH

Victims have a right to the truth. This right has a collective and individual dimension. The first is understood as the inalienable right of societies to know the truth about events that have occurred in relation to the perpetration of serious and aberrant crimes and the circumstances and motives that led to them. The individual dimension refers to the right of victims to know what happened to their relatives, through exhaustive investigations by the State that account for the circumstances, the corresponding responsibilities and, where appropriate, the fate of the remains. The *Basic Principles and Guidelines* understand this right as part of the right to reparation.[32]

The *European Guidelines* do not specifically recognise the right to truth, but affirm that "[c]ombating impunity requires that there be an effective investigation in cases of serious human rights violations. This duty has an absolute character."[33] The Guidelines specify that in cases of suspicious death or enforced disappearances, states must, to the extent possible, provide information regarding the fate of the person concerned to his or her family.

The right to the truth was originally designed for the relatives of victims of enforced disappearances and was gradually expanded by treaty bodies to cover other serious human rights violations, such as extrajudicial executions and torture. This evolution was recognised by the United Nations Human Rights Committee, which currently demands that states ensure this right is applied broadly for victims of human rights violations or their relatives.[34] The Inter-American Court of Human Rights has also noted this evolution and currently acknowledges that "[T] he right to the truth is subsumed in the right of the victim or his next of kin to obtain clarification of the events that violated human rights and the corresponding responsibilities from the competent organs of the State, through the investigation and prosecution that are established in Articles 8 and 25 of the Convention."[35]

The European Court of Human Rights, in cases of forced disappearances, torture or extrajudicial executions, has highlighted that the notion of an effective remedy under Article 13 of the European Convention implies, in addition to the payment of compensation, an exhaustive investigation capable of leading to the identification and punishment of those responsible and includes effective access for family members to the investigation procedure.[36] In order to make the right to truth effective, part of the process must also involve states ensuring

32 United Nations General Assembly Res 60/147 (16 December 2005) UN Doc A/RES/60/147 IX. Reparation for harm suffered. Other international documents that recognise this right are United Nations Declaration on the Protection of all Persons from Enforced Disappearance (adopted on 18 December 1992, entered into force on 23 December 2010) A/RES/47/133; United Nations Economic and Social Council, 'Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions' (24 May 1989) 1st Session E/RES/1989/65, as well as United Nations General Assembly Resolution 55/89 (4 December 2000) UN DOC A/RES/55/89 and United Nations General Assembly Resolution 61/177 (23 December 2010) UN Doc A/RES/61/177, among others.

33 Eradicating Impunity for Serious Human Rights Violations; Guidelines and Reference Texts (n 19) Point V: The duty to investigate

34 United Nations Human Rights Committee, 'Consideration of reports submitted by states parties under Article 40 of the International Covenant on Civil and Political Rights (ICCPR): Concluding observations (Guatemala)' (3 April 1996) CPR/C/79/Add.63, par 25; United Nations Human Rights Committee, 'Consideration of reports submitted by states parties under Article 40 Of the ICCPR: Concluding observations (Brazil)' (1 December 2005), CCPR/C/BRA/CO/2 par 18.

35 *Barrios Altos* (n 29).

36 *Case of Mahmut Kaya v. Turkey* [2000] Judgment 22535/93 2.b.

the independent and effective functioning of the judiciary. While standards allow for non-judicial processes, these should be complementary and not replace the function of the courts.

What the *European Guidelines* and other documents make clear is that the investigation of serious human rights violations must not be a mere formality. It should be undertaken by the State as a legal duty in itself.[37] In order to make the right to truth effective, states must ensure the independent and effective functioning of the judiciary. While standards allow for non-judicial processes, these should be complementary and not replace the function of the courts.

INVESTIGATIVE REQUIREMENTS

According to European standards,[38] an effective investigation should respect the following essential requirements, which also apply at the prosecution stage.

- *Adequacy* – the investigation must be capable of leading to the identification and punishment of those responsible. The authorities must have taken the reasonable steps available to them to secure evidence concerning the incident.
- *Thoroughness* – the investigation should be comprehensive in scope and address the relevant background circumstances, including any racist or other discriminatory motivation. It should be capable of identifying any systematic failures that led to the violation. This requires the taking of all reasonable steps to secure relevant evidence such as identifying and interviewing the alleged victims, suspects and eyewitnesses; examination of the scene of the alleged violation for material evidence; and the gathering of forensic and medical evidence by competent specialists. The evidence should be assessed in a thorough, consistent and objective manner.
- *Impartiality and independence* – persons responsible for carrying out an investigation must be impartial and independent from those implicated in the events. This requires that any authorities implicated in the events can neither lead the preliminary investigation nor the taking of evidence; in particular, the investigators cannot be part of the same unit as the officials who are the subject of the investigation.
- *Promptness* – the investigation must be commenced with sufficient promptness to obtain the best possible amount and quality of evidence available. While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities is essential in preserving public confidence in the maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts. The investigation must be completed within a reasonable time and, in all cases, be conducted with all necessary diligence.
- *Accountability* – the investigation must allow a sufficient element of public scrutiny of the investigation or its results to secure accountability. The degree of scrutiny required may well vary from case to case. In all cases, however, the victim (or the victim's next-of-kin) must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests. Public scrutiny should not endanger the aims of the investigation and the fundamental rights of all parties.

SCIENTIFIC INVESTIGATIVE TECHNIQUES

Various UN resolutions encourage states to incorporate scientific investigative techniques to determine human rights violations, identify victims, and prevent impunity. For example, the recommendations of the Human Rights Council emphasise the use of forensic techniques in the investigation of serious violations of human rights.[39]

The *Updated Set of Principles* also mentions using specific investigative measures for cases of serious human rights violations. These include using the most advanced forensic techniques in investigating events. In relation to the preservation of records of violations, the obligation to implement technical measures to safeguard them

37 A more in-depth analysis of the duty to investigate serious human rights violations can be found in the jurisprudence of the Inter-American Court of Human Rights, which addressed this standard from its first contentious case, *Velásquez Rodríguez* (n 23).

38 Eradicating Impunity for Serious Human Rights Violations; Guidelines and Reference Texts (n 19).

39 United Nations Human Rights Council Res 10/26 (27 March 2009) A/HRC/RES/27/3;
United Nations Human Rights Council Res 15/5 (29 September 2010) A/HRC/RES/15/5.

and facilitate access is highlighted.[40] Additionally, there is an obligation to classify criminal penalties to prevent the theft, destruction, concealment, or falsification of records in order to ensure that the perpetrators of human rights violations do not go unpunished (principle 14). In terms of access, states must ensure consultation with interested parties, including victims, accused individuals, and investigators, about appropriate measures.

Related to this topic, the UN General Assembly Resolution on the right to truth

> "encourages States that have not yet done so to establish a national archival policy that ensures that all archives pertaining to human rights are preserved and protected and to enact legislation that declares that the documentary heritage of the nation is to be retained and preserved and that creates a framework for managing State records from their creation to their destruction or preservation…".[41]

In summary, the right to truth is based on the duty of the State to conduct effective investigations into serious human rights violations, as well as on the right of victims to an effective remedy, an effective investigation, and to be informed about the results of an official investigation into violations. The right to truth, along with the duty to preserve memory,[42] are recognised measures aimed at preventing the repetition of crimes.

2. THE OBLIGATION TO PROSECUTE AND PUNISH /THE RIGHT TO JUSTICE

The second pillar to prevent impunity consists of the obligation of states to prosecute and punish perpetrators of serious human rights violations, who must be tried through criminal courts, judged, and duly convicted. The obligations to investigate, judge, and sanction have been widely recognised by various bodies overseeing international human rights treaties. Through periodic reviews of situations in individual countries, for example, as well as through observations and/or general recommendations, United Nations committees have expressed themselves regarding impunity and its incompatibility with obligations under the treaties or other mechanisms derived from international law.

The Human Rights Committee, in its General Comment No. 31 of 2004, in addressing serious human rights violations such as torture, extrajudicial execution, and forced disappearance, states that

> "States Parties must ensure that those responsible are brought to justice. As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. These obligations arise notably in respect of those violations recognised as criminal under either domestic or international law, such as torture and similar cruel, inhuman and degrading treatment (article 7), summary and arbitrary killing (article 6) and enforced disappearance (articles 7 and 9 and, frequently, 6). Indeed, the problem of impunity for these violations, a matter of sustained concern by the Committee, may well be an important contributing element in the recurrence of the violations."[43]

Specifically, the Human Rights Committee has expressed its views regarding the obligations of the United Kingdom of Great Britain in relation to the conflict in Northern Ireland.

> "The State party should: (a) Ensure, as a matter of particular urgency, that independent, impartial, prompt and effective investigations, including those proposed under the Stormont House Agreement, are conducted to ensure a full, transparent and credible account of the circumstances surrounding events in Northern Ireland with a view to identifying, prosecuting and punishing perpetrators of human rights violations, in particular the right to life, and providing appropriate remedies for victims".[44]

40 Updated set of principles for the protection and promotion of human rights through action to combat impunity (n 16).

41 United Nations General Assembly Res 68/165 (18 December 2013) A/RES/68/165.

42 Updated set of principles for the protection and promotion of human rights through action to combat impunity (n 16).

43 United Nations Human Rights Committee (HRC), 'General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant' (26 May 2004), CCPR/C/21/Rev.1/Add.13 par 18.

44 United Nations Human Rights Committee, 'Concluding observations on the 7th periodic report of the United Kingdom of Great Britain and Northern Ireland' (17 August 2015), 114th Session, CCPR/C/GBR/CO/7.

The *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*, also establish the duty to prosecute and punish.

"Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or cooperate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offense was committed".[45]

PROHIBITION OF SPECIFIC MEASURES

The obligation to prosecute serious human rights violations entails the prohibition of implementing measures such as statutes of limitations, amnesties, the application of superior orders as a defense, the prohibition of double jeopardy concerning extradition requests, as well as laws on 'repentant' individuals.
Statutes of limitations are subject to multiple restrictions. On the one hand, they should not be applied to serious crimes under international law. On the other, they should not run during the time when it is not possible to access effective remedies to report a violation. Outside of these cases, the statute of limitations should never apply to civil or administrative actions initiated by victims to claim reparations.[46]

Amnesty laws, it is argued, cannot benefit perpetrators of serious crimes under international law unless the state has duly prosecuted, judged, and convicted them. Furthermore, amnesties must not affect the right of victims to know the truth and obtain redress.

The UN Human Rights Committee, in its General Comment No. 20 on Article 7 of the International Covenant on Civil and Political Rights, concluded that

> "The Committee has noted that some States have granted amnesty in respect of acts of torture. Amnesties are generally incompatible with the duty of States to investigate such acts; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future. States may not use measures such as amnesties that deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible. "[47]

Similarly, the Committee Against Torture has considered that amnesty laws and similar measures that allow the perpetrators to go unpunished are contrary to the spirit and letter of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. In its General Comment No. 2 of 2008, it states

> "The Committee considers that amnesties or other impediments which preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability."[48]

PROHIBITION ON INVOKING THE DUTY OF OBEDIENCE

The obligation to prosecute restricts the possibility of invoking the duty of obedience in the case of hierarchical subordination or, in the case of superiors, exempting themselves from responsibility for acts committed by subordinates when they knew or could have known about the commission of crimes.

This prohibition is established by the *Updated Set of Principles*[49] and the *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*, which establish

> "[t]he prohibition to invoke an order from a superior officer or a public authority as a justification for extra-legal, arbitrary or summary executions. Superiors, officers or other public officials may

45 Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (n 32).

46 Updated set of principles for the protection and promotion of human rights through action to combat impunity (n 16) principle 23.

47 United Nations Human Rights Committee, 'CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)' (10 March 1992) A/44/40.

48 United Nations Committee Against Torture (CAT), 'General Comment No. 2: Implementation of Article 2 by States Parties' (24 January 2009), CAT/C/GC/2, par 5.

49 Updated set of principles for the protection and promotion of human rights through action to combat impunity (n 16).

be held responsible for acts committed by officials under their authority if they had a reasonable opportunity to prevent such acts. In no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, arbitrary or summary executions".[50]

EXEMPTION FROM RESPONSIBILITY

The *Updated Set of Principles* acknowledge that individual circumstances may be taken into account for sentencing purposes but not to exempt from criminal responsibility. In addition, the status of being a head of state cannot be accepted either as a ground for exemption from responsibility or for reducing penalties.

KEEPING RESTRICTIONS TO A MINIMUM

As stated in the *Updated Set of Principles* and the *European Guidelines*,[51] states should support, by all possible means, the investigation of serious human rights violations and the prosecution of alleged perpetrators. Whilst there may be legitimate restrictions and limitations on investigations and prosecutions, these should be kept to the minimum necessary to achieve their aim.

ADOPTION OF APPROPRIATE MEASURES FOR VICTIMS

The *Updated Set of Principles* and *European Guidelines* establish that as part of the obligation to prosecute and punish and the corresponding right to justice, states must provide victims with equal and effective access to measures that help these aims. The right to justice emphasises that victims must be provided with legal assistance and advice that enables them to bring legal actions and be active participants in the processes. It also emphasises that during and after judicial, administrative, or other proceedings, victims should be treated with humanity and respect for their dignity and human rights. According to this principle, states should adopt appropriate measures to ensure: victims' safety from intimidation and retaliation; victims' physical and psychological well-being; and privacy for victims, their families, and witnesses. Victims who have suffered violence or trauma should also benefit from special consideration and care to avoid their re-traumatisation during legal and administrative procedures.

3. THE DUTY TO PROVIDE REPARATION THE RIGHT TO REPARATION

The *Updated Set of Principles* establishes both the duty of states to provide reparation to victims of serious violations of human rights which can be attributed to the State and the right of victims to seek redress against the perpetrators of those crimes. The various documents and guidelines recognise that states should take all appropriate measures to establish accessible and effective access to reparation – whether implemented through criminal, civil, administrative, or disciplinary means. These measures must ensure that victims of serious violations receive prompt and adequate reparation for the harm suffered and may include measures of rehabilitation, compensation, satisfaction, restitution and guarantees of non-repetition.[52] To ensure that reparation reaches all victims, it is crucial for states to publicise the mechanisms they use.

According to the *Basic Principles and Guidelines:*[53]

- *restitution* should restore the victim to the original situation before the violations of international human rights law or international humanitarian law occurred
- *compensation* should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, such as: physical or mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damage and costs required for legal or expert assistance, medicine

50 Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (n 32).

51 Updated set of principles for the protection and promotion of human rights through action to combat impunity (n 16) Principles 25 to 28; Eradicating Impunity for Serious Human Rights Violations; Guidelines and Reference Texts (n 19) Guideline XIV.

52 UN Doc A/RES/60/147 Principle IX.18; Eradicating Impunity for Serious Human Rights Violations; Guidelines and Reference Texts' (n 19) XVI.

53 UN Doc A/RES/60/147, Principle IX, paras 18-23.

and medical services; and psychological and social services
- *rehabilitation* should include medical and psychological care as well as legal and social services
- *satisfaction* should include, where applicable, the cessation of continuing violations; verification of the facts and full and public disclosure of the truth; search for the whereabouts of the disappeared; official declarations or a judicial decision restoring the dignity, reputation and rights of the victim and persons closely connected with the victim; public apologies, including acknowledgement of the facts and acceptance of responsibility; judicial and administrative sanctions against persons liable for violations; and commemorations and tributes to the victims.

United Nations bodies encourage the implementation of administrative programs that provide adequate redress for victims, whether individual or collective. They recognise that often such measures allow for the consideration of specific situations or violations, such as those affecting women, children, sexual minorities, and groups facing structural inequality. In any case, administrative programs should allow all victims to seek redress through judicial means.

4. THE OBLIGATION TO ADOPT MEASURES TO PREVENT RECURRENCE

Guaranteeing non-recurrence of grave crimes is imperative for ensuring that victims are not subjected to repeated violations of their rights.[54] States must prioritise mechanisms for preventing and monitoring social conflicts, coupled with effective resolution strategies. This necessitates institutional reforms to uphold the rule of law, foster a culture of human rights respect, and restore public trust in governmental bodies. The overarching goal is to address the structural roots of societal violence and systemic human rights abuses. Women and minority groups' inclusion is vital for the efficacy of such initiatives, ensuring comprehensive representation and responsiveness to diverse needs.[55]

Reforming or adopting laws in line with international standards is a fundamental step towards ensuring human rights protection. International human rights treaties mandate states to enact, review, or repeal laws to uphold individuals' rights and eliminate regulations enabling gross violations. Institutional reforms, coupled with enforcement of codes of conduct, are crucial for cultivating a culture of human rights respect. Adequate institutional responses foster public trust and reconciliation, preventing marginalisation and the resurgence of past conflicts. States must ensure accountability by suspending officials implicated in gross human rights violations during legal proceedings, adhering to due process and non-discriminatory principles. Vetting processes for public officials enhance transparency and integrity within governance systems, complementing broader justice and security sector reforms essential for preventing future violations and ensuring non-recurrence.[56]

54 Updated set of principles for the protection and promotion of human rights through action to combat impunity (n 19) IV.B.35.

55 Special Rapporteur on the promotion of truth, justice, reparation & guarantees of non-recurrence, A/HRC/54/24: International legal standards underpinning the pillars of transitional justice, 10 July 2023, A/HRC/54/24, VIII.A

56 Ibid VIII.B

CHAPTER TWO THE NI CONFLICT AND TRANSITION AN OVERVIEW

INTRODUCTION

This chapter briefly describes the Northern Ireland conflict, the main protagonists and key elements of the transition from conflict to peace, including the Good Friday Agreement and the 'package of measures'. It also provides an analysis of the recently enacted Northern Ireland Troubles (Legacy and Reconciliation) Act 2023. The chapter then uses several public inquiries and actions taken primarily by the British State, but also by the Irish State, to address the past to illustrate the limitations surrounding efforts to achieve truth and accountability. This includes discussing the role that various forms of state-related obstruction have played in the failure to achieve truth, accountability, and reparation.

BACKGROUND TO THE 1969-1998 NORTHERN IRELAND CONFLICT

The Northern Ireland conflict (often referred to as 'the Troubles')[57] which began in the late 1960s and lasted until the end of the 1990s entailed a level of violence not seen in Ireland since the early 1920s, when centuries of opposition to British rule resulted in war and ultimately independence for most of the country.[58]

The 1920 Government of Ireland Act institutionalised partition of the island of Ireland and established a six-county Northern Ireland in 1921 that remained under British rule. The 1921 Anglo-Irish Treaty between the British and Irish governments established the Irish Free State in 1922, a move contested in Ireland during a civil war from May 1922 to June 1923.[59]

Unlike the rest of the island, Northern Ireland had a majority-unionist population mostly drawn from the Protestant community who largely wanted to remain in the United Kingdom. This majority enabled the unionist community to dominate political, security, and economic structures within Northern Ireland. As a result, over the ensuing decades, nationalists in Northern Ireland (who favoured Northern Ireland reuniting with Ireland and were largely drawn from the Catholic community) faced large-scale discrimination, including gerrymandered political districts and other unfair housing allocations, denial of employment and social services, and gross underrepresentation in the Royal Ulster Constabulary, the then police force for Northern Ireland.

Inspired partly by the U.S. civil rights movement, some people in Northern Ireland began marching for equality in the late 1960s. They were met with a repressive crackdown ordered by Northern Ireland's political elite. The British Government supported the crackdown and sent troops to "temporarily" restore order in 1969. These soldiers remained for decades. The armed group the Irish Republican Army (IRA), viewing itself as the protector of the nationalist community, embarked on a campaign it described as an armed struggle and the British Government defined as terrorism.

57 The official term "Troubles" is not universally accepted. The Panel recognises there was an armed conflict in Northern Ireland and refers to the 'Northern Ireland conflict' in this report. In addition, the Panel does not use the term "war" as it was not a conflict to which the laws of war (International Humanitarian Law/The Geneva Conventions) applied.

58 Nick Maxwell, 'The Dead of the Irish Revolution' *History Ireland* (1 March 2021). <https://www.historyireland.com/the-dead-of-the-irish-revolution/> Eunan O'Halpin and Daithi Ó Corráin, *The Dead of the Irish Revolution* (Yale University Press 2020); John Dorney, 'What Was the Real Death Toll of the Irish Civil War?' *The Irish Times* (10 May 2022) <https://www.irishtimes.com/culture/heritage/what-was-the-real-death-toll-of-the-irish-civil-war-1.4858308>.

59 Ivan Gibbons, 'Partition: How and Why Ireland Was Divided' *The Irish Times* (31 March 2021) <https://www.irishtimes.com/culture/books/partition-how-and-why-ireland-was-divided-1.4523863>.

THE NORTHERN IRELAND CONFLICT/ MAIN PROTAGONISTS AND APPLICABLE LAW

During the 30-year Northern Ireland conflict, thousands of people were killed or injured by various opposing parties. The conflict involved

- (Irish) republican armed groups, the largest of which was the Irish Republican Army (IRA)
- (British) loyalist paramilitary groups, the largest of which were the Ulster Defence Association (UDA) and Ulster Volunteer Force (UVF)
- UK security forces: the British Army, the Royal Ulster Constabulary (RUC), and the security service (MI5).

The legal obligations that applied during the Northern Ireland conflict were not those of International Humanitarian Law (the laws of war, the Geneva conventions, etc.). Rather, the obligations of human rights law applied, including those of the European Convention on Human Rights (ECHR), overseen by the European Court of Human Rights (ECtHR) in Strasbourg. It was also the criminal law that applied to all actors in the Northern Ireland conflict, including state actors.

In addition, a complex legal system prevailed throughout, with emergency legislation and separate categories for conflict and non-conflict related crime, as well as separate non-jury courts and separate prisons. Counter-terrorism legislation banned listed armed groups, although the largest loyalist group, the UDA, was not so proscribed until 1992.[60]

During the Northern Ireland conflict, it is estimated that 3,720 people were killed, and 47,541 injured. An estimated 54% of deaths were of civilians, and 68% of those injured were civilians. Individuals under the age of 25 accounted for 1,533 of the deaths, with 257 being under the age of 18. The largest age group of those killed (25% or 898 people) were those between the ages of 18 and 23. Northern Ireland's population during these years was just over 1.5 million people.[61]

Explosions and shootings were the predominant causes of death, with almost 91 per cent of victims dying from these causes. Deaths caused by explosions were more characteristic of the 1970s, with shootings more evenly distributed across the entire period.[62]

FROM CONFLICT TO PEACE - THE TRANSITION

THE GOOD FRIDAY AGREEMENT

By the early 1990s, key leaders in the British, Irish, and American governments and leaders of paramilitary and political groups in Northern Ireland sought to end the conflict. The U.S. Government played a crucial role, chairing the all-party negotiations that led to the Good Friday Agreement (also known as the Belfast Agreement) signed on 10 April 1998. Paramilitary groups were not directly represented at the talks but the political parties included Sinn Féin (an Irish republican party, historically associated with the IRA), and smaller parties linked to loyalist paramilitary groups.

Under the Good Friday Agreement (GFA), Northern Ireland remained part of the United Kingdom, subject to the consent of its population, but its nationalist population gained substantially more political representation, and, crucially, all parties to the Agreement agreed to embed human rights in the country's new politics in a document underwritten by the British and Irish governments.

60 The Ulster Freedom Fighters – a fictitious cover name for the UDA – were proscribed earlier.

61 'Fact Sheet on the Conflict in and about Northern Ireland' (2007) <https://cain.ulster.ac.uk/victims/docs/group/htr/day_of_reflection/htr_0607c.pdf; Aaron O'Neill, 'Population of Northern Ireland 1821-2011' *Statista* (21 June 2022). <https://www.statista.com/statistics/1015418/population-northern-ireland-1821-2021/>.

62 Marie-Therese Fay, Mike Morrissey and Marie Smyth, *Northern Ireland's Troubles : The Human Costs* (Pluto Press 1999).

The GFA did not contain provision for a truth commission or other transitional justice mechanisms.[63] It did however require the UK to incorporate the European Convention on Human Rights (ECHR) into Northern Ireland law. This was undertaken (on a UK-wide basis) through the Human Rights Act 1998. Other conflict-resolution type elements of the GFA included provision for the early release of prisoners convicted of conflict-related offences, the scaling back of the British military presence, targets for paramilitary disarmament, along with police and justice reform. The GFA included provisions for a devolved, inclusive government (a power-sharing arrangement in the Northern Ireland Assembly at Stormont), provision too for polls on Irish reunification, on civil rights measures, and "parity of esteem" for the two main communities in Northern Ireland.

Achieving a consensus around the Good Friday Agreement was a difficult and an enormously challenging political process.

THE MCKERR CASES - ALSO KNOWN AS THE STRASBOURG CASES/

In light of concerns regarding failures to investigate deaths involving state actors in the 1980s and 1990s – either during security force operations or in circumstances giving rise to suspicion of collusion by security force personnel – a number of families and their representatives took a series of cases to the European Court of Human Rights (ECtHR) in Strasbourg. These cases became known as the *McKerr cases* or the 'cases concerning the actions of the security forces in Northern Ireland'. In the early 2000s, the Court found the UK had breached the procedural obligations of Article 2 of the ECHR by failing to investigate cases involving both direct killings by the security forces and security force collusion with loyalist paramilitary groups.[64] Issues relating to the failure to investigate cases is explored more in each thematic chapter (Chapters Three, Four, Five).

THE PACKAGE OF MEASURES

As a result of the McKerr cases the UK subsequently agreed with the Council of Europe to what was referred to as the 'Package of Measures.' These measures were put forward as a remedy for the existing 'General Measures' required by the ECtHR to ensure non-recurrence of the procedural violations it had found.

The measures included:

- public inquiries into legacy cases
- changes to allow the Police Ombudsman for Northern Ireland (an independent police complaints body established as part of the peace process) to investigate legacy killings involving complaints of police collusion
- coronial inquests into conflict-related deaths (a form of truth-trial to establish facts without determining civil or criminal liability), with changes to powers
- police-led investigations and reviews by the Police Service of Northern Ireland (PSNI) under, first, the Historical Enquiries Team (HET) and then the Legacy Investigation Branch (LIB)
- independent police investigations where an external UK police force was 'called in' to investigate conflict-related deaths or torture, the most prominent of which has been 'Operation Kenova'[65] into state agents within the IRA
- changes in prosecutorial decision-making. Owing to controversial decisions not to prosecute state actors, prosecutors now follow a written framework for decision-making and must give reasons for decisions not to prosecute.

There have been serious concerns about the work of the Package of Measures. The measures generally operated

63 'What Is Transitional Justice? A Backgrounder ' (2008)1<https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/26_02_2008_background_note.pdf>.

64 Further detail on the McKerr Group of cases can be found here: 'HUDOC-EXEC' (*Coe.int* 2021) <https://hudoc.exec.coe.int/eng#>.

65 Jon Boutcher, 'Operation Kenova Northern Ireland "Stakeknife" Legacy Investigation' (2024) <https://www.kenova.co.uk/Kenova%20Report%202024%20Digital%20version%20-%20FINAL.pdf>.
More information on Kenova is provided throughout this report. See in particular Chapter Four on Torture (under the subheading *Operation Kenova*) and Chapter Five on Collusion, under the subheading *The 2024 Operation Kenova report: Impunity for murder and torture by British agents.*

long after the events occurred, making effective accountability challenging. In addition, they have generally been limited to one event or one body, each of them isolated from a bigger picture. This fragmented approach has resulted in pieces of a wider pattern being scattered across various commissions, inquests and inquiries – available to some but not to others. Investigations which were carried out as part of the measures were often hampered by limited budgets, limited mandates, and hostility from former and current state officials. A succession of British governments has proved unwilling to undertake the investigations needed, and have only acted when forced to by court orders.

Significant litigation has resulted from UK authorities limiting and obstructing the work of the Package of Measures to prevent it from delivering ECHR-compliant investigations. Further detail on this obstruction is covered later in this chapter, including under the heading 'Obstructing the truth, fuelling impunity'.[66]

Recently, coroners' courts and other mechanisms have been somewhat more successful in delivering the truth.[67] In addition, families of victims and survivors have been able to make use of civil litigation as a remedy for legacy cases, whether to establish facts or seek reparations. However, the McKerr cases are still under the supervision of the Council of Europe Committee of Ministers because the UK Government has not fully complied with obligations to prevent non-recurrence that the earlier General Measures sought to address.

FURTHER KEY STEPS IN NORTHERN IRELAND'S TRANSITION

Although Northern Ireland's politics have remained vulnerable to sectarianism and conflict, the consensus forged in 1998 has broadly held. But the Good Friday Agreement failed to address many transitional justice issues related to accountability, and contained no provision for an overarching mechanism such as a Truth and Reconciliation Commission to comprehensively "deal with the past".[68] More, therefore, was needed.

THE 2014 STORMONT HOUSE AGREEMENT

Limitations associated with the Package of Measures, coupled with its disjointed and ad hoc nature,[69] led to a series of negotiations for a more comprehensive set of transitional justice mechanisms. Two proposals – the Consultative Group on the Past (2009) and the Haass-O'Sullivan proposed agreement (2013) – were completed but not taken forward.[70] This ultimately led to the British and Irish governments, and the main Northern Ireland parties, negotiating the 2014 Stormont House Agreement (SHA).

66 See also 'Committee on the Administration of Justice (CAJ) and Queen's University Belfast, 'The Apparatus of Impunity? Human Rights Violations and the Northern Ireland Conflict: A Narrative of Official Limitations on Post-Agreement Investigative Mechanisms' (2015) <https://caj.org.uk/wp-content/uploads/2017/03/No.-66-The-Apparatus-of-Impunity-Human-rights-violations-and-the-Northern-Ireland-conflict-Jan-2015.pdf> pp7-25.

67 Committee on the Administration of Justice, (CAJ)'The Road to the Northern Ireland Troubles (Reconciliation and Legacy) Act 2023 – a Narrative Compendium of CAJ Submissions' (Committee on the Administration of Justice 2023) <https://caj.org.uk/publications/reports/compendium-of-caj-legacy-bill-submissions/>.

68 A truth and reconciliation commission is an official body set up by states emerging from periods of internal conflict that is tasked with discovering and revealing past wrongdoing by a government and state actors, in the hope of resolving conflict left over from the past truth commissions are sometimes criticised for allowing crimes to go unpunished, and creating impunity for perpetrators of serious human rights abuse.

69 For example, the Police Ombudsman has significant powers to investigate the involvement of police officers in legacy human rights violations, but has no powers to investigate police informants or members of the military who worked jointly with them.

70 'Report of the Consultative Group on the Past' (The Consultative Group on the Past 2009) <https://cain.ulster.ac.uk/victims/docs/consultative_group/cgp_230109_report.pdf>; Northern Ireland Executive, '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' (31 December 2013).

The SHA set out six general principles:[71]

- promote reconciliation
- uphold the rule of law
- acknowledge and address the suffering of victims and survivors
- facilitate the pursuit of justice and information recovery
- be human rights compliant
- be balanced, proportionate, transparent, fair and equitable.

It was intended that the SHA would have two main mechanisms dealing with individual cases:

- *Historical Investigations Unit (HIU):* An independent investigative unit with full police powers to conduct ECHR-compliant investigations into unsolved conflict-related deaths, and to produce a family report in each case. This body would take over police and police ombudsman legacy cases into both state and non-state actors.
- *Independent Commission on Information Retrieval (ICIR):* An independent international body established by the UK and Irish governments, for victims and survivors to seek and privately receive information about conflict-related deaths of family members on the basis of protected statements that could not be used in civil or criminal proceedings.

The SHA also provided for an *Oral History Archive* and an *Implementation and Reconciliation Group* to oversee themes, archives and information recovery. In addition, the existing system of legacy inquests would continue as would civil litigation.

The SHA was described by the Council of Europe as a 'key turning point' in relation to the fulfilment of the UK's ECHR obligations.[72] However, whilst the UK and Ireland did complete an implementation treaty for the ICIR in 2015, the UK has ultimately not implemented the SHA, and the Package of Measures with its inherent limitations remains in place.

The UK first delayed implementation of the Stormont House Agreement by issuing a policy paper and draft legislation that would have provided for ministers to have a 'national security' veto over HIU and ICIR reports. A 2018 consultation on the SHA, however, demonstrated public support for the SHA and opposition to an amnesty (in the form of a statute of limitations). After negotiations in a fresh bilateral agreement with Ireland in 2020,[73] the UK recommitted to legislate for the SHA "within 100 days".

THE NORTHERN IRELAND TROUBLES / (LEGACY AND RECONCILIATION) - ACT 2023

Before the 100 days were complete, ministers announced their intention to unilaterally depart from the Stormont House Agreement and pursue an alternative approach. This was at a time when actions taken under the Package of Measures were finally beginning to deliver outcomes for families, including in state-involvement cases. Significantly, the announcement in the UK Parliament was made on the same day as legislation was introduced for an amnesty for British soldiers who had served in overseas conflicts. Thus, Ministers expressly linked the abandonment of the SHA to a commitment to provide amnesty protections for soldiers who had served in Northern Ireland.

71 The Northern Ireland Affairs Committee, 'Addressing the Legacy of Northern Ireland's Past: The Government's New Proposals (Interim Report)' (UK Parliament 2020). <https://publications.parliament.uk/pa/cm5801/cmselect/cmniaf/329/32902.htm>.

72 The commentary by the Committee at its March 2021 meeting is available at 'H46-38 McKerr Group v. the United Kingdom (Application No. 28883/95)' Coe.int (2024) <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a18992.

73 UK government, 'The New Decade New Approach (NDNA) Deal. ' (January 2020) <https://assets.publishing.service.gov.uk/media/5e178b56ed915d3b06f2b795/2020-01-08_a_new_decade__a_new_approach.pdf>.

The UK Government set out this new policy in a Parliamentary Command Paper in July 2021.[74] The paper advocated for an amnesty broader in scope than those introduced by other countries (e.g. by General Pinochet in Chile in 1978) and a new legacy body reliant only on voluntary testimony. These proposals evolved into a Legacy Bill which was introduced into the UK Parliament in May 2022 and pushed through the lower chamber (the House of Commons). The bill was delayed in the upper chamber (the House of Lords) but ultimately became law in September 2023.

The "Legacy Act" appears to be a means by which the British Government has increased its resistance to the Package of Measures, that is, to the continuation of legacy investigations into killings, or collusion in killings, committed by British security forces during the conflict. This resistance can be seen in the way the Act aims to:

- prevent new legacy inquests, and close many outstanding inquests
- debar indefinitely the initiation or continuation of any criminal investigations into conflict-related crimes
- introduce a type of amnesty, in the form of a 'conditional immunity scheme' with a conspicuously low eligibility threshold (an alleged perpetrator will not need to give any new information and only has to believe themselves that they are telling the truth)
- bar all conflict-related civil action from the date the Act was introduced into the UK Parliament, i.e. 17 May 2022 (there are currently over 500 such claims against the British military alone)
- impose a 1 May 2024 completion deadline for all court cases and ombudsmen investigations.[75]

The main impact of the Legacy Act is to bring the existing Package of Measures to an end entirely, including inquests and civil litigation into conflict-related claims. In its place, the Act has created the Independent Commission for Reconciliation and Information Retrieval (ICRIR) which is mandated to examine legacy cases, but has a much weaker investigative mandate than the judicial and police-led bodies that it replaces. Despite this, it has the power to grant conditional immunity to perpetrators of serious conflict-related offences.

The Legacy Act has been heavily criticised by, amongst others, the Council of Europe Commissioner for Human Rights, the UN Commissioner for Human Rights, all major political parties in Northern Ireland, the Oireachtas Committee on the Implementation of the GFA, Amnesty International and other international human rights NGOs, and the Northern Ireland Human Rights Commission. It is currently the subject of both domestic legal challenges and an inter-state case taken by Ireland to the European Court of Human Rights.[76] The foremost complaint is that

> "the Act breaches Article 2 (right to life) of the ECHR by its immunity provisions, where victims' families have an entitlement due to process [sic] that ensures perpetrators can be brought to justice. It is alleged that the Act is in breach of the GFA in that it will limit the ability of people in Northern Ireland to potentially challenge breaches of the ECHR. Furthermore, it is argued that the Act interferes with policing and justice issues which are devolved powers under the GFA, without seeking consent of the legislature to do so."[77]

In February 2024 the High Court in Belfast held that the immunity provisions and some of the limitations on civil cases were unlawful, citing both the ECHR and UK post-Brexit commitments to non-diminution in GFA protected-rights that were previously underpinned by EU law. The court stated however that in principle it could not find the ICRIR incapable of conducting ECHR-compatible investigations. At the time of writing an intention has been announced to appeal this ruling. Should the ICRIR continue, its independence and related ability to conduct effective investigations are likely to be challenged in individual cases.

74 Northern Ireland Office, 'Addressing the Legacy of Northern Ireland's Past' (UK government 2021) <https://assets.publishing.service.gov.uk/media/60eed6e18fa8f50c797792c1/CP_498_Addressing_the_Legacy_of_Northern_Ireland_s_Past.pdf>.

75 CAJ, 'The Road to the Northern Ireland Troubles (Reconciliation and Legacy) Act 2023' (n 67) 66.

76 For further detail on all these developments see: CAJ, 'The Road to the Northern Ireland Troubles (Reconciliation and Legacy) Act 2023' (n 67) 6.

77 Diane Duggan, 'Northern Ireland Troubles Legacy Act and the Irish Government Response' (*The Bar of Ireland, the Law Library* 10 January 2024) <https://www.lawlibrary.ie/viewpoints/troubles-legacy-act/>.

The "Legacy Act" sparked more than 20 legal challenges in Northern Ireland, mostly from victims' families, who said it contravenes the ECHR and the 1998 Good Friday Agreement that brought three decades of bloodshed to an end. In a 200-page judgment, Judge Adrian Colton stated

> "I am satisfied that immunity from prosecution provisions under Section 19 of the Act are in breach of the lead applicant's rights pursuant to Article 2 of the ECHR. I am also satisfied that they are in breach of Article 3 of the ECHR. … There is no evidence that the granting of immunity under the Act will in any way contribute to reconciliation in Northern Ireland. Indeed, the evidence is to the contrary."

The ruling can be challenged in Northern Ireland's Court of Appeal and should that fail, the UK Supreme Court. In their research program for this report, the Panel found that the Legacy Act appears likely to have a disastrous effect on victims and survivors, as well as on broader society. When interviewed, victims and survivors described various ways in which they have been retraumatised and revictimised by state intransigence and obstruction that has either prevented or at least slowed down their pursuit of truth and justice. The majority demanded to know the full facts about what had happened as well as some form of accountability for individuals and institutions involved in the events. At the same time, the Panel found those who said that under the current measures they have managed to achieve a measure of truth and accountability and described feeling at least some form of satisfaction as a result. Others described remaining hopeful regarding the possibility of reaching the truth through a resolute and comprehensive investigation, despite the passage of time. Achieving what victims and families hope for and need seems far less likely once the provisions of the Legacy Act are put into action.[78]

LIMITED TRUTH AND ACCOUNTABILITY THROUGH INQUIRIES, INVESTIGATIONS AND INQUESTS

PUBLIC INQUIRIES

A number of public inquiries into the Northern Ireland conflict have been conducted (various investigations and inquests are addressed elsewhere in this report). Delays in establishing inquiries have often been the fault of the State, which has lost evidence, taken excessive time to locate witnesses, and fought in the courts for timelines to be moved back. In many cases, the State has pushed the onus of truth recovery and dealing with the past onto families and organisations, rather than onto itself. Even when the truth has in some cases finally been established, the process has been slow in bringing perpetrators to justice.

Examples include the Saville Inquiry into the attacks and killings of unarmed protestors in Derry on Bloody Sunday in 1972, when 14 people lost their lives and another 13 were injured. The inquiry was ordered by the British Government in 1992, and finally reported in 2012. Court cases brought by families against a British soldier are still in the courts.[79]

Another notable example concerns the six inquiries by Justice Peter Cory. Following the Weston Park negotiations in 2001,[80] the British and Irish governments appointed former Canadian Supreme Court judge, Peter Cory, to conduct an independent inquiry to investigate allegations of state collusion with paramilitary organisations in relation to the deaths of Pat Finucane, Rosemary Nelson, Robert Hamill, Billy Wright, Chief Superintendent Harry Breen and Superintendent Bob Buchanan, and Lord Justice Sir Maurice Gibson and his wife Cecily, Lady Gibson.

78 See Chapter Three, Part One: The Victim Perspective for more.

79 'Bloody Sunday Inquiry Website - Questions and Answers' (web.archive.org13 March 2011) <https://web.archive.org/web/20110313135215/http://www.bloody-sunday-inquiry.org/questions-and-answers/index.html> accessed 1 February 2024.

80 A summit held at Weston Park on the Shropshire/Staffordshire border, England, to sustain the momentum of the peace process. It was attended by British prime minister Tony Blair and Irish premier Bertie Ahern, the Northern Ireland Secretary of State at the time John Reid, the leader of the Ulster Unionist Party David Trimble, and Sinn Féin president Gerry Adams.

In 2003 Cory delivered his reports on the Finucane, Nelson, Hamill, and Wright cases to the British Government, and on the Breen, Buchanan, and Gibson cases to the Irish Government. In all but the Gibson case, Cory found there was sufficient evidence that "if accepted, could be found to constitute collusion" and recommended that public inquiries be established.[81]

The Irish Government published Cory's report immediately and established a state inquiry – The Smithwick Tribunal – into the deaths of Chief Superintendent Breen and Superintendent Buchanan in line with Cory's recommendations. The Irish Government also established a series of inquiries by Justice Henry Barron into the Dublin and Monaghan bombings of 1974 and other attacks in that jurisdiction during the 1970s.[82]

Cory's reports on the killings of Finucane, Hamill, Nelson, and Wright were made public by the British Government in April 2004, and the Government announced that public inquiries would be established.[83]

Former Metropolitan Police Commissioner Sir John Stevens was commissioned to investigate allegations of widespread collusion between the RUC Special Branch, British army officers, and loyalist paramilitaries in a series of three inquiries which ran between 1989 and 2003. He concluded there was proof of the use of agents in assassinations and of withholding evidence.

One of the killings that Stevens investigated was that of Pat Finucane.[84] The British Government in 2011 appointed Sir Desmond de Silva QC, to conduct an independent review of the case and to produce a full public account of any state involvement in the murder – though not the full independent public inquiry that had been promised to the Finucane family, and that they are still waiting for.[85] More on the de Silva inquiry can be found in the discussion below of how obstruction has been a common feature of public inquiries into the NI conflict (under 'delaying disclosure and withholding information').

INVESTIGATIONS BY THE POLICE OMBUDSMAN

In addition to the public inquiries, complaints of historic police misconduct during the Northern Ireland conflict have been investigated by the Office of the Police Ombudsman for Northern Ireland (OPONI). The Institution was created in 2000 as a recommendation of police reforms produced by the British Government-appointed Patten Commission, and has investigated and reported on police handling of cases during the conflict, including cases involving collusion.[86] Under its remit, the Ombudsman reviews its own powers every five years and makes recommendations to strengthen its work. Several ombudsmen have recommended that they be given the power to compel former RUC officers and others to co-operate with them, but these reforms have been blocked by unionist parties, thus constraining the work of the ombudsman's office.[87]

CORONERS' INQUESTS

A number of coroners' inquests have also been undertaken into deaths during the conflict, and some are

81 Cory Collusion Inquiry Reports - available at: https://cain.ulster.ac.uk/issues/collusion/

82 Oireachtas Joint Committee on Justice, Equality, Defence and Women's Rights, 'Interim Report on the Report of the Independent Commission of Inquiry into the Dublin and Monaghan Bombings' (Houses of the Oireachtas 2003) <http://archive.oireachtas.ie/2003/REPORT_20031231_0.html>.

83 Cory Collusion Inquiry Reports - available at: https://cain.ulster.ac.uk/issues/collusion/

84 'Stevens Report Confirms Collusion with Loyalists' *The Irish Times* (17 April 2003) <https://www.irishtimes.com/news/stevens-report-confirms-collusion-with-loyalists-1.472566> accessed 1 February 2024.

85 de Silva Report, (n 13), 'The Report of the Patrick Finucane Review' (UK government 2012) <https://www.gov.uk/government/publications/the-report-of-the-patrick-finucane-review>.

86 'The Police Ombudsman for Northern Ireland-Historical Investigations - Police Ombudsman for Northern Ireland' (www.policeombudsman.org) <https://www.policeombudsman.org/About-Us/Historical-Investigations> accessed 1 February 2024. Desmond Rea and Robin Masefield, *A New Beginning to Policing in Northern Ireland – the Report of the Independent Commission on Policing for Northern Ireland* (Liverpool University Press 2015) 29–44 <https://academic.oup.com/liverpool-scholarship-online/book/43648/chapter-abstract/365056346?redirectedFrom=fulltext> accessed 1 February 2024.

87 See Committee on the Administration of Justice , 'Submission to Five Year Review of the Police Ombudsman' (2022) <https://caj.org.uk/wp-content/uploads/2022/03/Submission-to-Five-Year-Review-OPONI.pdf>.

currently underway. It has been reported that at least sixteen inquests into deaths that occurred during the conflict will not be completed by the 1 May 2024 deadline set out in the Legacy Act, and that there are 26 other inquests that may also fall outside the deadline. No new inquests will be allowed. It has been reported that Under the Act, any ongoing inquests by May 1st cannot be completed and a coroner 'must not progress the conduct of the inquest' and must instead close the investigation. The Act provides for one exception to this rule, that being inquests where 'the only part of the inquest that remains to be carried out is the coroner or any jury making or giving the final determination, verdict or findings'.[88]

CRIMINAL INVESTIGATIONS

Criminal investigations into legacy offences have also been carried out. In 2005, the Chief Constable of the Police Service of Northern Ireland established the Historical Enquiries Team (HET) as a special unit of the PSNI. The HET began work in 2006 to investigate unsolved conflict-related deaths. It was supposed to disclose the maximum information possible, subject to limitations such as where the life of another person might be put at risk because of the disclosure.[89] Some families of the bereaved engaged with the mechanism and found benefits from its work. Others did not and were critical of its approach, and the unit was regarded by many as having an inherent pro-State bias.

The HET was shut down in 2014 following a highly critical report of its work produced by Her Majesty's Inspectorate of Constabulary, which found that the HET's investigations of cases involving deaths caused by state agents were being carried out with insufficient rigour. HMIC also concluded that investigations did not meet human rights standards, particularly with respect to independence, and that there were significant problems with processes and working practices. Since the closure of the HET, the PSNI's Legacy Investigations Branch (LIB) has been responsible for criminal investigations of conflict-related offences.

In recent years, some criminal cases have been brought by the LIB against former paramilitaries and against British soldiers in relation to killings during the conflict. In 2022, for example, former British soldier David Holden was found guilty of the manslaughter of Aidan McAnespie in Tyrone. Holden shot McAnespie at a checkpoint in 1988, and was the first former soldier to be convicted of a historical offence in Northern Ireland since the 1998 Good Friday Agreement. Holden was given a three-year suspended sentence.[90] Currently, trial proceedings are progressing against another former soldier, known as Soldier F for legal reasons, accused of two murders on Bloody Sunday.[91]

The passage of time since the onset of the Northern Ireland conflict has meant that some defendants have died during the criminal justice proceedings against them. For example, former British soldier Dennis Hutchings died in 2021 while on trial in Belfast for the attempted murder of 27-year-old John Pat Cunningham in 1974. Cunningham had a learning difficulty and was fatally shot in the back running from an army patrol in Tyrone.[92] In addition, an unnamed former British soldier (Soldier B) facing prosecution for killing 15-year-old Daniel Hegarty

88 Aimee Woodmass, 'At Least 16 Northern Ireland Troubles Inquests to Fall Short of Legacy Act Deadline' (*www.jurist.org* (25 February 2024) <https://www.jurist.org/news/2024/02/at-least-16-northern-ireland-troubles-inquests-to-fall-short-of-legacy-act-deadline/> accessed 11 April 2024.

89 House of Commons Select Committee on Defence, 'Investigations into Fatalities in Northern Ireland Involving British Military Personnel' (UK Parliament 2017). <https://publications.parliament.uk/pa/cm201617/cmselect/cmdfence/1064/106404.htm>.

90 James Robinson, 'Former British Soldier David Holden Who Killed Catholic Aidan McAnespie in Northern Ireland Escapes Jail Sentence' (Sky News2 February 2023) <https://news.sky.com/story/british-soldier-david-holden-who-killed-catholic-aidan-mcanespie-in-northern-ireland-escapes-jail-sentence-12800831>.

91 David Wilson, 'Bloody Sunday: Soldier F "Has No Reliable Recollection" of Shootings' *BBC News* (25 August 2023) <https://www.bbc.com/news/uk-northern-ireland-66614633>; In March 2024 another soldier was sentenced to six months in prison, not for the original incident - a suspected SAS ambush - but for contempt of court for refusing to appear at the inquest. He remained free pending an appeal. See Connla Young, 'Coagh Inquest: Ex-SAS Man Sentenced to Six Months for Refusing to Appear at IRA Men's Inquest' *The Irish News* (2 March 2024) <https://www.irishnews.com/news/northern-ireland/coagh-inquest-ex-sas-man-sentenced-to-six-months-for-refusing-to-appear-at-ira-mens-inquest-5VHPMNABT5CPDMZZRM5QULLEQM/> accessed 11 April 2024.

92 David Blevins, 'Dennis Hutchings: Former Soldier on Trial over Fatal Shooting in Northern Ireland Dies after Contracting COVID' (Sky News18 October 2021) <https://news.sky.com/story/dennis-hutchings-former-soldier-on-trial-over-fatal-shooting-has-died-after-contracting-covid-12437849> accessed 1 February 2024..

in 1972 died in 2023.[93]

Overall, while some families and survivors have managed to find a degree of truth and accountability, examples are rare. For many families, there have been decades of struggle campaigning for justice. One of these, the family of 14-year-old Annette McGavigan, have been searching for answers since she was killed in September 1971. The schoolgirl was holding an ice cream when she was shot dead in Derry. No one has ever been convicted in relation to her death and, under the Legacy Act, it is unclear how any investigation will progress. Her family have therefore been failed in their quest for answers and accountability not just by Prime Minister Ted Heath's government of the day, but by all 20 subsequent British governments and 11 prime ministers.[94]

Some families in the Republic of Ireland also continue to struggle for accountability. For example, the families of bus driver George Bradshaw and bus conductor Tommy Duffy – killed by a bomb in central Dublin in December 1972 – were failed by the government of Taoiseach Jack Lynch at the time, and by 20 Irish governments and ten Taoisigh since who have not provided adequate answers to what happened.[95]

OBSTRUCTING THE TRUTH, FUELLING IMPUNITY

Some failures of accountability during the conflict are the result of negligence or incompetence, others of deliberate obstruction. Obstruction and non-cooperation occurred in different forms. For example, declassified documents uncovered by the Pat Finucane Centre in 2013 show that UK authorities withheld evidence from two inquiries and the European Court of Human Rights in relation to the 1978 *Ireland v UK* case into the torture of detainees at the interrogation centre at Ballykelly Army base.[96] This obstruction did not cease with the 1998 Good Friday Agreement. Coroners, judges, police ombudsmen, and others have complained about the lack of co-operation from British authorities with post-1998 investigations into human rights violations. These obstructions have significantly contributed to impunity and have been employed by current and former members of the armed forces, police and intelligence communities in the last 25 years to prevent truth recovery and accountability.

As this section details, types of obstruction and non-cooperation have included:

- refusing to engage with inquiries into conflict-related crimes
- providing inaccurate or false information
- only engaging after long delays (often blamed on 'resource pressures')[97]
- refusing or delaying disclosure and withholding evidence
- destroying evidence
- discrediting investigations and vilifying those representing families.

93 'Enda McClafferty, Daniel Hegarty, 'Veteran Accused of Teenager's Death Dies' *BBC News* (26 September 2023) <https://www.bbc.co.uk/news/uk-northern-ireland-63290028> accessed 1 February 2024.

94 Gerry Bradley, 'Annette McGavigan: Ex-Soldier Questioned over Shooting' *BBC News* (22 September 2023) <https://www.bbc.com/news/uk-northern-ireland-66880501> accessed 1 February 2024.British governments and prime ministers since 1971: 1970-1974 Ted Heath; 1974-1974 Harold Wilson; 1974-1976 Wilson; 1976-1979 Jim Callaghan; 1979-1983 Margaret Thatcher; 1983-1987 Thatcher; 1987-1990 Thatcher; 1990-1992 John Major; 1992-1997 Major; 1997-2001 Tony Blair; 2001-2005 Blair; 2005-2007 Blair; 2007-2010 Gordon Brown; 2010-2015 David Cameron; 2015-2016 Cameron; 2016-2017 Theresa May; 2017-2019 May; 2019-2019 Boris Johnson; 2019-2022 Johnson; 2022-2022 Liz Truss; 2022-present Rishi Sunak.

95 'News - Updates from JFF' (www.dublinmonaghanbombings.org) <http://www.dublinmonaghanbombings.org/home/news2.html> accessed 1 February 2024.; Irish governments and taoisigh: 1969-1973 Jack Lynch; 1973-1977 Liam Cosgrave; 1977-1979 Lynch; 1979-1981 Charles Haughey; 1981-1982 Garret FitzGerald; 1982-1982 Haughey; 1982-1987 FitzGerald; 1987-1989 Haughey; 1989-1992 Haughey; 1992-1993 Albert Reynolds; 1993-1994 Reynolds; 1994-1997 John Bruton; 1997-2002 Bertie Ahern; 2002-2007 Ahern; 2007-2008 Ahern; 2008-2011 Brian Cowen; 2011-2016 Enda Kenny; 2016-2017 Kenny; 2017-2020 Leo Varadkar; 2020-2022 Micheál Martin; 2022-present Varadkar.

96 CAJ, 'The Apparatus of Impunity?' (n 66) 8.

97 'The Troubles: Inquests Judge Challenges MoD over "Resource Pressures" Claims' *BBC News* (28 January 2016) <https://www.bbc.co.uk/news/uk-northern-ireland-35433778> accessed 1 February 2024.

1. REFUSING TO ENGAGE WITH INQUIRIES

There have been numerous and persistent examples of retired police officers and former soldiers refusing to cooperate with investigative processes. In her 2007 report into the murder of Raymond McCord Jr in 1997, Police Ombudsman Nuala O'Loan said she

> "sought the cooperation of a number of retired RUC/PSNI senior officers. Officers who were being treated as witnesses were asked to provide an explanation of Special Branch and CID internal practices during this period. Investigators offered to meet retired officers at venues with which they would be comfortable and at times which would suit them. They were advised of the areas of questioning and provided with significant disclosure of information, at their request. The majority of them failed even to reply. This was despite the fact that witness details would be anonymised in any public statement."[98]

"The Police Ombudsman was particularly concerned that retired senior officers, who had had significant responsibilities within Special Branch and who undoubtedly could have assisted this enquiry, refused to do so. Among those who refused were two retired Assistant Chief Constables, seven Detective Chief Superintendents and two Detective Superintendents."[99]

In other instances, former British soldiers advised others not to cooperate with inquests. For example, Justice Keegan noted that during her 2021 coroner's inquest into the killing of ten people in Ballymurphy in 1971 "I was … made aware of material circulated by some veterans suggesting that military witnesses should not cooperate and [should] put the coroner's letters in the bin.'"[100]

A 2022 coroner's inquest into the 1971 killing of Kathleen Thompson in Derry made a similar finding. Whilst Coroner Judge Sandra Crawford found that a soldier was responsible for Thompson's death, she noted social media posts advising former British soldiers not to co-operate.[101]

2. PROVIDING INACCURATE OR FALSE INFORMATION

Where former state officials have engaged with investigative processes, they have not always done so in a truthful manner. In her 2007 Police Ombudsman report, Baroness O'Loan noted that among those interviewed were:

> "some serving officers [who] gave evasive, contradictory, and on occasion farcical answers to questions. On occasion, those answers indicated either a significant failure to understand the law, or contempt for the law. On other occasions, the investigation demonstrated conclusively that what an officer had told the Police Ombudsman's investigators was completely untrue. … Most of these senior officers have not given any explanation of their roles, and have not made themselves accountable. They have portrayed themselves as victims rather than public servants, as though the public desire for an explanation of what happened during the period under investigation was unjustified. Their refusal to co-operate is indicative of disregard for the members of families of murder victims from both sides of the community."[102]

Coronial judges have also complained of soldiers providing inaccurate testimony to inquests. In 2022, for example, former British soldiers provided testimony to Coroner Joe McCrisken for the investigation into the 1972 killing of Thomas Mills in Belfast. McCrisken ruled that the killing by a British soldier from the 1st Battalion

98 Police Ombudsman for Northern Ireland (OPONI) 'Statement by the Police Ombudsman for Northern Ireland on Her Investigation into the Circumstances Surrounding the Death of Raymond McCord Junior and Related Matters ' (Police Ombudsman for Northern Ireland 2007) 5. <https://www.policeombudsman.org/PONI/files/9a/9a366c60-1d8d-41b9-8684-12d33560e8f9.pdf>.)

99 Ibid, 5.

100 Inquest into Deaths at Ballymurphy 9th – 11th August 1971 (Judicial Communications Office) 27.

101 Inquest into the death of Kathleen Thompson (Judicial Communications Office) 115.

102 OPONI 'The Death of Raymond McCord Junior and Related Matters' (n 98) 8.5-8.6.

King's Regiment was "not justified," and noted that testimony from two former soldiers was "inaccurate at best and falsified at worst."[103]

3. ONLY ENGAGING AFTER LONG DELAYS

Obstruction by UK government bodies has also occurred when the inquest process has been drawn out as long as possible before cooperation eventually happens. This has been recognised by Northern Irish courts in several judgments. In May 2014, for example, a judgment in the Belfast high court granted compensation for the protracted delays in inquests to the families of six men who were killed either by police, troops or loyalist paramilitaries.[104] More recently, at a coroner's inquest hearing in September 2023 into the 1997 killing of Sean Brown by loyalist paramilitaries, Justice Patrick Kinney complained at the length of time the PSNI was taking in some of the proceedings.[105]

Delays resulting from obstruction of the inquest process have long been recognised as problematic with respect to the UK's human rights obligations and for the families who have been waiting decades for truth and accountability. However, the Legacy Act 2023 has seen these delays become even more problematic, as inquests are racing to complete before the 1 May 2024 deadline created by that law.

An exasperated Justice Kinney reportedly noted that

> "The fact that it is the way historically it has been dealt with does not make it satisfactory or acceptable, and particularly in the context that we all are aware of where legislation which is anticipated will be on the statute books in the very near future, has a significant impact. If we do not have this inquest completed before that deadline, it will not be completed."[106]

Kinney described the lack of progress as a "lamentable position". Eventually the coroner abandoned the inquest because he could not discharge his duties to the family because of documents being withheld on grounds of 'national security'. The court heard that a number of suspects in the case were 'state agents'. The coroner called for a public inquiry in the case. In the latest twist the Government has launched legal action against the coroner who is a senior judge.[107]

4. REFUSING OR DELAYING DISCLOSURE AND WITHHOLDING INFORMATION

Obstruction by state officials has also taken the form of refusing to disclose documents or delaying their disclosure as required for investigative purposes. For example, in 2014, the Police Ombudsman had to initiate judicial review proceedings against the Chief Constable when the PSNI refused to disclose documents sought for his investigations.[108]

The withholding of information by state officials has also hampered police investigations. As an example from 1989, the UK Government appointed the former head of the Metropolitan Police, Sir John Stevens, to

103 Inquest into the death of Thomas Mills (Judicial Communications Office).

104 Henry McDonald, 'Six Men's Families Compensated for Delayed Troubles Killings Inquests' *The Guardian* (20 May 2014) <https://www.theguardian.com/uk-news/2014/may/20/northern-ireland-six-mens-families-compensated-delayed-troubles-killings-inquests> accessed 1 February 2024. See also: CAJ, 'The Road to the Northern Ireland Troubles (Reconciliation and Legacy) Act 2023 (n 67).

105 Jonathan McCambridge, 'Police Accused of "Determined Effort" to Stop Completion of Seán Brown Inquest' *The Irish Times* (15 September 2023) <https://www.irishtimes.com/ireland/2023/09/15/police-accused-of-determined-effort-to-stop-completion-of-sean-brown-inquest/> accessed 1 February 2024.

106 Ibid.

107 Ibid. see also https://www.irishtimes.com/crime-law/courts/2024/04/11/uk-government-mounts-legal-challenge-over-inquest-into-murder-of-gaa-official-sean-brown/

108 The PSNI climbed down from its position in light of the proceedings: 'PSNI Releases Intelligence Files to Ombudsman after Dispute' *BBC News* (2 September 2014) <https://www.bbc.co.uk/news/uk-northern-ireland-29034151> accessed 1 February 2024.

investigate collusion between state forces and loyalist paramilitaries in several killings, including the murder of Pat Finucane. Lord Stevens encountered a concerted campaign to obstruct his three police investigations (conducted 1989-2003). Stevens concluded that the obstruction was 'cultural' in nature and 'widespread' within parts of the Army and RUC.[109]

A subsequent investigation by Justice Peter Cory attributed the withholding of pertinent information from the Stevens Inquiry to collaboration at the most senior levels of the RUC and military.[110]

Similarly in his 2012 report of his review of the Finucane case, Sir Desmond de Silva noted that "Both the Army and the RUC [Special Branch] consciously failed to provide Sir John Stevens with important material relevant to his criminal investigation". In addition, de Silva noted that Stevens' offices in the RUC station where his inquiry was based were set on fire in 1990 in what his team described as an arson attack.[111] He concluded that

> "I do not accept the Army's position that, in failing to provide information to the Stevens I Investigation, it was acting in accordance with instructions issued by the RUC Chief Constable to the General Officer Commanding in Northern Ireland that the Army was to deny Stevens access to any intelligence information. The Army, in my view, clearly had its own agenda in seeking to protect its agent, Brian Nelson. This protection even extended to advising Nelson on how to resist police interrogation in the event that he was arrested by the Stevens team.[112]
>
> "In my view, the fact that senior Army officers deliberately lied to criminal investigators by informing them that they did not run agents in Northern Ireland was an attempt to deflect the Stevens Investigation from learning of the existence of Brian Nelson. Indeed, the very existence of the FRU [Force Research Unit] was hidden from Sir John Stevens until he decided to arrest Brian Nelson. The evening before his impending arrest, Nelson fled to the mainland. When a new date was decided upon to effect his arrest, an unexplained fire broke out at the Stevens team's headquarters.[113]
>
> "It is, however, also clear that the RUC SB too were responsible for seriously obstructing the investigation. They withheld significant quantities of information, including Army and Security Service material that was in their possession. There is also evidence to suggest that the RUC SB sought to direct the Stevens investigation towards examining security force 'leaks' from the UDR and concealed information indicating that a similarly large number of leaks had emanated from RUC sources. …This extensive obstruction resulted in an extraordinary situation in which important evidence in a major criminal investigation remained concealed in an Army office for nearly four months."[114]

109 CAJ, 'The Apparatus of Impunity?' (n 66) 10.

110 Cory reviewed documents, including the minutes of meetings attended by senior officials including the head of the Army. These state that the RUC Chief Constable decided Stevens would have "no access to intelligence documents or information, nor the units supplying them." Judge Peter Cory, 'Cory Collusion Inquiry Report Patrick Finucane' (The Stationery Office 2004) 1.269 https://cain.ulster.ac.uk/issues/collusion/cory/cory03finucane.pdf.

111 'Stevens Inquiry Headquarters Fire "Was Deliberate"' *Belfast Telegraph* (19 June 2002) <https://www.belfasttelegraph.co.uk/news/stevens-inquiry-headquarters-fire-was-deliberate/28132444.html> accessed 1 February 2024.

112 Sir Desmond de Silva, 'The Report of the Patrick Finucane Review' (UK government 2012) <https://www.gov.uk/government/publications/the-report-of-the-patrick-finucane-review>.para 101.

113 Ibid.

114 de Silva Report, (n 13), para 104

DUBLIN AND MONAGHAN BOMBINGS

The 2003 and 2004 reports of the public inquiries established by the Irish Government into the 1974 Dublin and Monaghan bombings also revealed a lack of co-operation from both the British and Irish authorities.[115]

> "The Inquiry has encountered the following difficulties which should be borne in mind when the rest of this report is being considered: […] In some cases, information has been refused. Where this has occurred, the Inquiry has not speculated as to what that information might have been. In certain cases, the Inquiry has entertained a suspicion that it was being withheld because of a belief on the part of the person or body concerned that it might be detrimental to their interests."[116]

The Inquiry also noted that

> "Correspondence with the Northern Ireland Office undoubtedly produced some useful information; but its value was reduced by the reluctance to make original documents available and the refusal to supply other information on security grounds. While the Inquiry fully understands the position taken by the British Government on these matters, it must be said that the scope of this report is limited as a result."[117]

The Inquiry noted that while it received "full co-operation from the [Irish] Army"[…] the Department [of Justice] has provided a number of files relating to other bombings within the State, but has failed to produce any files relating to the Dublin bombings in May 1974. There is no explanation for their absence."[118]

BARRON INQUIRIES

In the 2005 report by Justice Henry Barron into the Dublin bombing of 1972 and 1973, the Inquiry notes that it had full co-operation from the Irish Army and the Gardai, but in regards to access to materials by NGO Justice for the Forgotten, Mr Ó Dúlacháin made the following observations.

> "We are also concerned that a veil of secrecy still prevails in relation to State files. Various files have become available in the National Archives under the 30-year disclosure rule but recent inquiries conducted by Justice for the Forgotten have revealed an extensive range of Department of Justice files that have not been disclosed."[119]

The 2005 report noted too that

> "The British Government and Northern Ireland authorities provided the Sub-Committee with no meaningful co-operation. No information has been forthcoming from the British and Northern Irish authorities despite repeated requests by the Inquiry."[120]

Other Barron reports mention the same lack of cooperation. In the 2006 Barron inquiry into the 1976 murder of Seamus Ludlow the report noted that

> "In previous reports the Sub-Committee has expressed its concern about the lack of co-operation provided by the United Kingdom authorities. Regrettably, it received no co-operation in respect of these hearings either."[121]

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115 Oireachtas Joint Committee on Justice, Equality, Defence and Women's Rights, 'Interim Report on the Report of the Independent Commission of Inquiry into the Dublin and Monaghan Bombings' (n 82). See also, Oireachtas Joint Committee on Justice, Equality, Defence and Women's Rights, 'Final Report on the Report of the Independent Commission of Inquiry into the Dublin and Monaghan Bombings' (Houses of the Oireachtas 2004)

116 Oireachtas Joint Committee on Justice, Equality, Defence and Women's Rights, 'Interim Report on the Report of the Independent Commission of Inquiry into the Dublin and Monaghan Bombings' (n 82) Overview, Difficulties.)

117 Ibid, Appendix of Barron Report

118 Ibid.128

119 Final Report on the Report of the Independent Commission of Inquiry into the Dublin Bombings of 1972 and 1973, p.39

120 Ibid, 40

121 Oireachtas Joint Committee on Justice, Equality, Defence & Women's Rights , 'Final Report on the Report of the Independent Commission of Inquiry into the Murder of Seamus Ludlow ' (n 115) par 47.

Similarly, the 2006 Barron report into the 1975 bombing of Kay's Tavern in Dundalk noted that

> "all of the Barron reports have been frustrated by the absence of any real co-operation from the British security forces. Obviously, this denial of co-operation impacted adversely on Judge Barron's ability to establish the truth."[122]

Irish politicians also spoke out about the lack of cooperation. For example, Taoiseach Bertie Ahern noted at the time of the publication of the Barron reports that

> "The willingness of the British authorities to co-operate with the various inquiries has been tested and in many cases found wanting,"

Even more strongly, Enda Kenny, leader of the opposition said

> "For many years, I have highlighted the persistent refusal of the British government to co-operate properly with the Barron inquiry. This lack of co-operation is confirmed by these reports by Mr. Justice Barron…. I also understand that former members of the [UK] security forces were given not just an instruction but a written instruction not to respond to the inquiry. I find it quite incredible that the British government would so blatantly and brazenly ignore a formal commission of inquiry established by this State."[123]

OPERATION KENOVA

Recent collusion investigations have encountered similar obstruction. In 2016, Jon Boutcher Chief Constable of the Bedfordshire Police was commissioned by the PSNI to investigate the activities of the British spy known as Stakeknife, who for many years operated as an agent while a senior member of the IRA.

Boutcher's interim report on Operation Kenova was published in March 2024. He complained about a lack of co-operation from some of the current security forces during his investigation, and noted that previous inquiries had encountered similar problems.

> "I have encountered a number of challenges while leading Kenova. Some, such as difficulty in accessing information and attempts to undermine me and the investigation, were expected (and were predicted by those who led previous such inquiries), others such as the length of time for prosecution decisions to be made by PPSNI, I did not expect.… It is frustrating that many of the same issues confronted by my predecessors have been experienced by me and my team."[124]
>
> He noted too, "There are still those within the security forces who remain resistant to what they perceive as inquiries, such as Kenova, rewriting the history of the Northern Ireland conflict. Lord Stevens, Judge Cory and others faced similar problems."[125]

Although Kenova presented substantial new evidence in a series of murders and other serious crimes to the PPS, the prosecution service has announced there will be no prosecutions arising from the investigation.

5. DESTROYING EVIDENCE

There have been occasions where government bodies have admitted to destroying evidence relating to conflict-related killings, including weapons and documents. In 2000, for example, officials at the Saville Inquiry into the Bloody Sunday killings of 1972 expressed "grave concern" when the British Ministry of Defence admitted that it had destroyed two army rifles believed to have been used that day, despite assurances that the weapons

122 Ibid, par 66.

123 Dáil Debates, 30 January 2008, Vol. 645 No.1.

124 Kenova report,(n 55)

125 Ibid, 42.

would be preserved.[126]

Another example concerns correspondence from the PSNI to a law firm, which references a 1998 "destruction order". The order was to destroy all notes made between 1985 and 1993 from interviews with suspects detained at Gough Barracks (Armagh) – with "no exceptions". The PSNI's letter is signed off by stating:

> "We are unable to assist any further apart from saying that our records from October 1998 state all the documents held at the asbestos-contaminated store in Gough have been shredded or buried at a named dump."[127]

Other investigations have also had to contend with the issue of material being burned[128] or otherwise "missing".[129] For example, the 2006 Barron report, commissioned by the Irish Government into the 1975 bombing of Kay's Tavern in Dundalk, noted that

> "information provided to his inquiry from the Department of Foreign Affairs could not be located on any of the Garda or Department of Justice, Equality and Law Reform files. The information in question was to the effect that four members of the RUC in the Portadown area were members of the UVF and that one of them was actively engaged in the murder investigation of the so-called murder triangle. Mr. Aylward stated that an exhaustive search in his department did not lead to any trace of the document."[130]

6. DISCREDITING INVESTIGATIONS AND VILIFYING THOSE REPRESENTING FAMILIES

Investigations into the actions of former British soldiers have been openly questioned at senior government levels. Theresa Villiers, British MP and then Secretary of State for Northern Ireland, contended in February 2016 that a "pernicious counter narrative" on the history of the conflict was afoot, "that seeks to displace responsibility from the people who perpetrated acts of terrorism and place the State at the heart of nearly every atrocity and murder…".[131]

Attempts to undermine the credibility of justice mechanisms that are addressing legacy cases involving the State have also been accompanied by efforts to vilify lawyers representing victims in these cases. For example, human rights lawyers in Northern Ireland representing bereaved families have been under regular attack from the press and public officials since at least the 1989 murder of Pat Finucane. History tells us that such attacks against lawyers can lead to violence, which, in turn, inhibits the pursuit of justice and undermines the rule of law.[132]

In recent years, as the following examples illustrate, senior government members and officials have continued to promote a narrative that attacks human rights lawyers in Northern Ireland.

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126 Richard Norton-Taylor, 'Bloody Sunday Rifles Destroyed' *The Guardian* (19 February 2000) <https://www.theguardian.com/uk/2000/feb/19/bloodysunday.northernireland> accessed 1 February 2024.

127 See 'Police records destroyed in Armagh' UTV News Online, 12 September 2011; Drew Harris to KRW Law, 'Correspondence to KRW Law Dated 19 August 2011, from ACC Drew Harris, PSNI'; (19 August 2011).; Lesley-Anne McKeown, 'Roseann Mallon Murder: Top Special Branch Officer Burned Notebooks after Pensioner Murdered by Loyalists', *Belfast Telegraph* (21 November 2013).

128 Lesley-Anne McKeown, 'Roseann Mallon Murder' (n 127).

129 CAJ, 'The Apparatus of Impunity?' (n 66) 17.

130 Oireachtas Joint Committee on Justice, Equality, Defence and Women's Rights, 'Final Report on the Report of the Independent Commission of Inquiry into the Bombing of Kay's Tavern, Dundalk ' (Houses of the Oireachtas 2006) <http://www.dublinmonaghanbombings.org/home/docs/KaysFinal.pdf>.

131 Mark Devenport, 'Theresa Villiers Warns of UK Security Fears over NI Troubles Cases Disclosure' *BBC News* (11 February 2016) <https://www.bbc.com/news/uk-northern-ireland-35545296> accessed 1 February 2024.

132 Human Rights First, 'A Troubling Turn the Vilification of Human Rights Lawyers in Northern Ireland' (Human Rights First 2017) <https://humanrightsfirst.org/wp-content/uploads/2019/02/A-Troubling-Turn.pdf>.

- In an October 2016 speech, Prime Minister Theresa May promised to "never again… let those activist, left-wing human rights lawyers harangue and harass the bravest of the brave – the men and women of Britain's Armed Forces."[133]

- In 2018, soon after his appointment as the head of the UK military, General Sir Nick Carter, Chief of the Defence Staff, stated in reference to legacy investigations in Northern Ireland, that "vexatious claims" about soldiers "will not happen on my watch. Absolutely not." Carter seemed to think that as head of the military it was somehow within his remit to end independent judicial proceedings: "I would absolutely stamp on any of that sort of activity," he said.[134]

- In the British parliament in 2018, MP Karen Bradley, then Secretary of State for Northern Ireland, suggested that "the coronial inquests … those inquests that are going on at the moment are part of the problem."[135]

These attacks at senior government levels have fed into public debate. A few months after Theresa May's attack on "human rights lawyers", British tabloids *The Sun* and the *Daily Mail* smeared those representing bereaved families, describing them as "Tank Chasing Lawyers"[136] and publishing photographs of the lawyers and details of their homes.[137] There have also been threats and social media attacks on those who advocate for bereaved families and survivors.[138] These attempts to vilify those acting on behalf of victims and their representatives have been intended to deter those pursuing accountability.

CONCLUSION

Almost 30 years after the Good Friday Agreement brought an end to the large-scale violence of the conflict, this chapter has demonstrated that Northern Ireland is still trying to address the unlawful killings and injuries that were committed in the 30 years before that, including crimes committed either directly or indirectly by state authorities and agents.

Whilst successive UK and Irish governments have set up inquiries and other piecemeal measures to investigate state involvement in legacy cases, factors such as obstruction have clearly made it difficult if not impossible for these investigations to discover the truth or to achieve meaningful accountability in most instances. The examples given represent a level of obstruction that is not only widespread, but also systematic and systemic, with the result that perpetrators of violations have been provided with impunity and victims have been denied their right to truth, justice and reparation.

While some mechanisms have delivered a degree of accountability for a small number of victims and families, the impunity for state security forces during the conflict largely continues and appears likely to be assisted by the implementation of the Legacy Act.

133 Samuel Osborne, 'Theresa May Speech: Tory Conference Erupts in Applause as PM Attacks "Activist Left Wing Human Rights Lawyers"' Independent (5 October 2016) <https://www.independent.co.uk/news/uk/politics/theresa-may-tory-conference-speech-applause-attacks-activist-left-wing-human-rights-lawyers-a7346216.html>.

134 Ewen MacAskill, 'Army Chief Defends British Soldiers over Northern Ireland' *The Guardian* (2 August 2018) <https://www.theguardian.com/uk-news/2018/aug/03/army-chief-defends-british-soldiers-over-northern-ireland> accessed 1 February 2024.d

135 'Karen Bradley Faces Calls to Resign over Troubles Comments' *www.bbc.com* (6 March 2019) <https://www.bbc.com/news/uk-northern-ireland-47471469> accessed 1 February 2024.

136 A derogatory term also used to describe human rights lawyers who supposedly persecute soldiers with dishonest claims concerning their activities in overseas conflicts.

137 Matt Wilkinson and Ben Lazarus, 'Law Firms Will Make Millions in "Witch-Hunt" Probe into the Troubles' The Sun (10 December 2016) <https://www.thesun.co.uk/news/2368744/northern-irish-law-firms-who-scored-12m-in-legal-aid-will-make-millions-more-in-witch-hunt-probe-into-killings-by-brit-troops-during-the-troubles/> accessed 1 February 2024./

138 Human Rights First, 'The Vilification of Human Rights Lawyers NI' (n 132).

CHAPTER THREE IMPUNITY FOR STATE KILLINGS?

INTRODUCTION

This chapter examines cases pertaining to people killed by agents of the State (the police or military) during the conflict in Northern Ireland. There are three parts to the chapter.

- Part One details perspectives from relatives or representatives of people killed.
- Part Two examines state conduct in relation to the conflict.
- Part Three assesses to what extent state killings were investigated in accordance with Article 2 of the ECHR and the investigative standard of the time.

Article 2 obligates the State to initiate fair and effective investigations that are independent and open to public scrutiny, and that allow the relatives of the victims to participate in the various investigative, administrative and judicial processes to safeguard their legitimate interests. One key point to consider is that standards and practices change over time. What amounted to standard practice in the 1960s and 70s would not pass scrutiny today. A relevant example is the advent of family liaison officers, which were introduced in the UK as late as 1999 following the public inquiry into the investigation of the murder of Stephen Lawrence.[139] Other significant developments relate to forensics, police interviewing and investigative methods that were implemented from the mid-eighties onward, particularly after the introduction of the Police and Criminal Evidence Act 1984. Accordingly, the Panel believes that whatever reasons existed for state authorities failing to conduct fair and effective investigations during the conflict in Northern Ireland, these matters can be rectified today in a manner compliant with Article 2 of the ECHR.

PART ONE - THE VICTIM PERSPECTIVE

This section gives the perspective of the relatives of people whose killings are attributed to members of the armed forces or the police. The analysis carried out is based on information provided by the relatives in meetings held with panel members during visits to the cities of Derry and Belfast, as well as on documentation provided by the non-governmental organisations representing them. In this analysis, the Panel considers state obligations arising from Article 2 of the ECHR, and the applicable international standards regarding the rights of victims of serious human rights violations. Article 2 of the ECHR not only protects individuals from being arbitrarily deprived of life by the State but also imposes on the State the duty to investigate responsibility for that death.

According to the European Court of Human Rights (ECtHR), any investigation must meet certain requirements to be in accordance with Article 2.

- It must be initiated and pursued by the State and not depend on the initiative of the victims.
- It must be carried out independently.
- It must be effective and swift, aimed at identifying those responsible for the death for prosecution.
- It must be open to public scrutiny.
- It must allow the participation of the relatives of the victim to safeguard their legitimate interest.

139 Sir William Macpherson of Cluny , 'The Stephen Lawrence Inquiry' (UK Government 1999) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/277111/4262.pdf>.

In relation to victims' rights, the *Basic Principles and Guidelines*[140] state as follows.

- Victims must be treated with humanity and respect for their dignity and human rights.
- Appropriate measures must be taken to ensure victims' safety, physical and psychological well-being, and privacy, as well as that of their families.
- The State must ensure that victims receive special consideration and attention in order to ensure that legal and administrative proceedings aimed at delivering justice are conducted.
- Victims should be granted reparations that do not cause further trauma.

TESTIMONIES FROM RELATIVES OF PEOPLE KILLED BY STATE AGENTS

What follows is a qualitative exploration of the above rights and standards as experienced by the families of the people killed. The identified issues are listed according to major themes, some of which have sub-themes.

1. Demand for accountability
2. Need for the truth
3. Deficiencies in investigations
4. Deficiencies in administrative and judicial processes
5. Victim-blaming and tarnishing of victims' names
6. Revictimisation and a failure to restore the dignity of the relatives of the victims
7. Need for authorities to take responsibility
8. Recognition that obtaining the truth may yet be possible

1. DEMAND FOR ACCOUNTABILITY

From the testimonies heard, there is general agreement that there must be some form of accountability from individuals and institutions involved in events relating to individuals killed by agents of the state.

> *"What I realistically hope is that he actually is charged. Charged doesn't mean you are guilty, charged means that you are charged, you are accused of the wrongful killing of my uncle. And that he is named and shamed."* (Billy & Marjorie McGreanery, victim Billy McGreanery)

> *"I hope justice will be delivered. I don't say that the soldiers should go to jail but we need answers. I am not giving up, my family is not giving up. We will always keep fighting."* (Martin McGavigan, victim Annette McGavigan)

> *"There was no kind of liability, there was no admission of guilt, there was no accountability. (...) I would like very much to see the individual that shot my brother stand up in a court of law and it'd be challenged. (...) I do believe he will be in court [but] I don't think he will serve time in jail".* (Emmet McConomy, victim Stephen McConomy)

> *"I would like to see a soldier prosecuted for the death of my father, and I would really love to see it but I know it is not going to happen."* (Jennifer Duffy, victim Harry Duffy)

> *"I don't expect anybody to go to jail, I don't expect anything."* (Anne Caldwell & Máirtín Ó Maolmhuaidh, victim Tobias Molloy)

> *"I think that they'll never have to answer the questions and tell the truth or hold the inquest."* (Patricia McVeigh, victim Patrick McVeigh)

> *"I would like the soldiers who did it to be brought to a court and that they accept responsibility for their actions."* (Gerry Magee, victim Patrick Magee)

> *"I would like the soldiers to be held accountable, brought to court and admit. I don't expect it to happen and I don't want to see them serving a hundred years of prison. I just want them to stand*

140 United Nations General Assembly Resolution 60/147 (16 December 2005) UN Doc A/RES/60/147.

up and say 'yes, we made a mistake, we killed, it was an illegal thing we've done' (...) I believe in justice, everybody should be held accountable for their crimes." (Patrick John Prince, victim Liam James Prince)

"Soldiers involved in the killing were promoted and given medals; the accused ran a wealthy private security business." (Charlie Agnew, victim John Pat Cunningham)

"...afterwards they were reinstalled in the army and were promoted." (Kelly McBride, victim Peter McBride)

"*My father has said that all he was wanting was the truth, we weren't looking for the pound of flesh. We would like him getting something but it is not the end of the world. He was found guilty and that's what matters*". (Sean McAnespie, victim Aidan McAnespie)

2. NEED FOR THE TRUTH

Testimonies of the relatives of conflict victims revealed a strong and enduring need to know the truth about what happened to their loved ones. This need to uncover previously unknown information from state authorities was just as strong as the need to obtain official recognition, recompense and accountability.

"My single project in life is to have truth about the death of my brother." (Gerard McAlinden, victim Martin McAlinden)

"*As a family and a head of the family and representative of the family I know exactly when my son died, where he died. I says, 'But what I am disputing, is how he died, because there are so many contradictions in that court case (...) We are never going to achieve justice. The truth about how my son died would never ever come out because the people who knew exactly how my son died and the circumstances in which he died would never tell the truth.*" (Michael English, victim Gary English)

"*The notion of the prosecution is less of a motivation than to put a light on what happened: a State designed a trap to kill two young people needlessly and I would like that to be brought to a wider knowledge.*" (Gerard McAlinden, victim Martin McAlinden)

"*I want the truth, some form of justice*". (Gerry Magee, victim Patrick Magee)

"*We engaged with the HET but in my opinion it was a waste of time because they didn't get the answers that we were expecting because they were not allowed to question the soldiers or whoever.*" (Patrick John Prince, victim Liam James Prince)

"*I don't think he will serve time in jail. But I think the truth needs to be told. (...) Families have the right to pursue by legal means the truth that they need. (...) The truth is hard. The British Government, the MoD, the RUC have the responsibility of providing families with answers.*" (Emmet McConomy, victim Stephen McConomy)

"*I feel that as long as I am alive I will keep asking the question. I want the truth.*" (Anne Caldwell & Máirtín Ó Maolmhuaidh, victim Tobias Molloy)

"*I would like to see the truth come out.*" (Jennifer Duffy, victim Harry Duffy)

"*I want the truth, some form of justice.*" (Gerry Magee, victim Patrick Magee)

"*My mother was always interested in finding the truth about my daddy.*" (Roberta Quinn, victim Christopher Quinn)

"*The Ballymurphy families received a report where it was established that their relatives were innocent and [received] compensation. At least they got answers, and I am glad of that. But why aren't we getting the same answers?"* (Patricia McVeigh, victim Patrick McVeigh)

"*There was no justification for her killing and it's hugely important for us and for the wider community that the truth should be established, even though real justice remains elusive."* (Minty Thompson, victim Kathleen Thompson)

3. DEFICIENCIES IN INVESTIGATIONS

From the perspective of the relatives, multiple deficiencies in the investigations carried out by various state authorities can be identified.

- ***Failure to guarantee minimum legal standards in the conducted investigations***

"*Investigations are no longer valid because the soldiers weren't under caution.*" (Billy & Marjorie McGreanery, victim Billy McGreanery)

"*I am absolutely dissatisfied with the RUC investigation. (…) they did not undertake any type of systematic scene of crime inspection. Even I can imagine by the standards of that time, they left the scene an hour and a half later. I do not accept that that was a serious investigation.*" (Gerard McAlinden, victim Martin McAlinden)

"*The RUC, as an institution, was responsible for an absolutely negligent piece of work. The interviews with the soldiers were a travesty.*" (Gerard McAlinden, victim Martin McAlinden)

"John Pat Cunningham in 1974 he was denied protection, he was denied justice, he was denied investigation". (Charlie Agnew, victim John Pat Cunningham)

"It wasn't investigated by the RUC. It was investigated by the army's SIB, their military police, and they took statements from 10 or 11 or 12 soldiers who all gave more or less identical statements." (Gerry Magee, victim Patrick Magee)

"*They interviewed one soldier who said he did the shooting. (…) So I asked the guy from the HET if he had been interviewed under caution and he said 'no'.*" (Gerry Magee, victim Patrick Magee)

"*The local police carried out an investigation but the military who were involved had already been interviewed by their own people. A sergeant, a very good person, told my father that the soldiers had already been prepared by their own legal team and everybody stuck to the story that he had started the shooting.*" (Patrick John Prince, victim Liam James Prince)

"*The investigation that was made at the time by the RUC was very scant. There was only a number of pictures taken at the crime scene and their excuse for that was that the situation was very volatile."* (Aine McCann, victim Joe McCann)

"*They interviewed a number of people but those people were never called to give evidence at the inquest and yet there were discrepancies in some of the things that people were saying*". (Gerard McAlinden, victim Martin McAlinden)

"*The soldiers involved were not asked any questions.*" (Anne Caldwell & Máirtín Ó Maolmhuaidh, victim Tobias Molloy)

"In the inquest, there were no witnesses called." (Jennifer Duffy, victim Harry Duffy)

"*In the investigation there's only one statement ever taken from one witness.*" (Martin McGavigan, victim Annette McGavigan)

• ***Failure to ensure the participation of the relatives or their representatives in the investigation process***

This failure included not allowing families to propose investigative measures or disregarding the ones they requested.

"*They have blocked families at every stage and opportunity, through courts, through withholding information*". (Emmet McConomy, victim Stephen McConomy)

"*In the late 90's and 2000's we started going to the Public Records Office of Northern Ireland PRONI and started asking for records and we got hardly anything back. A manila folder with very little information and we knew this wasn't right, that they had a lot more records and what we were asking about the names of the Special Branch officers who were involved and we have never got them even to this day. Because they have destroyed every scrap of information.*" (Aine McCann, victim Joe McCann)

"*The family's representative…was at the Court and she wasn't even allowed to see what was going on. It was like a dark court, like a closed court.*" (Martin McGavigan, victim Annette McGavigan)

"*If there was an inquest it was held in Lifford (County Donegal), not in the north of Ireland*". (Anne & Mairtín Ó Maolmhuaidh, victim Tobias Molloy)

"*We, the family, were never given legal representation.*" (Natasha Butler, victim Patrick Butler)

Failure to provide relatives with timely and adequate access to official information regarding the progress of the investigations, thereby forcing relatives to take the initiative

"*This has been a long and painful journey for us, we should not have had to fight for justice.*" (Minty Thompson victim Kathleen Thompson)

"*It is only from the Pat Finucane Centre that we have access to information at all.*" (Anne Caldwell & Máirtín Ó Maolmhuaidh, victim Tobias Molloy)

"*HET called me but never gave us a report.*" (Patricia McVeigh, victim Patrick McVeigh)

4. DEFICIENCIES IN ADMINISTRATIVE AND JUDICIAL PROCESSES

A recurring theme relates to problems with processes across the board, not just failures in investigative processes. These include the protracted delay of inquests into killings by state actors, seen by many as detrimental and deliberate.

• ***Continuous delays in administrative and judicial processes***

"*Because the first inquest was a fraud, we were granted a new inquest in 2014 but after 8 years still we don't have an inquest because of the constant delays and blockages (...) What is not working is the British Government who is working on denial and delay*". (Natasha Butler, victim Patrick Butler)

"*Everything is long and takes years. The passage of time, he is now 74 years of age, it took fifty years for the soldier to be officially interviewed under caution.*" (Billy & Marjorie McGreanery, victim Billy McGreanery)

"*Little attention was paid to the case for more than 30 years (...) I am very conscious that age a nd the passing of years is a factor that works against that optimism.*" (Gerard McAlinden, victim Martin McAlinden)

"*From 1994 our main interest was to achieve a new inquest.*" (Natasha Butler, victim Patrick Butler)

"Almost 50 years of justice denied for the victim." (Charlie Agnew, victim John Pat Cunningham)

• The use of anonymity to protect witnesses and suspects

The families also condemned the practice of providing anonymity to those who were interrogated during early investigations into killings, as well as the anonymity given to those interviewed in more recent years. This is considered a violation of the families' right to know the truth of what happened, to know intersections between different cases according to the identity of the perpetrators and, ultimately, to have an idea of the dynamics of repressive practices.

"*I don't think we discovered anything. The Army witnesses were not the soldiers that were in the field at that time. They brought four people A, B, C and D. They gave them letters of the alphabet. But these were people who had nothing to answer and they literally read the statements and there was no challenge."* (Gerard McAlinden, victim Martin McAlinden)

"*For us it was very important that the soldiers were brought to a court and face charges of murder or wrongful killing of Billy, whatever terminology they want to use, under his name, because this guy still retains his anonymity after such a long time"*. (Billy & Marjorie McGreanery, victim Billy McGreanery)

5. VICTIM-BLAMING AND TARNISHING OF VICTIMS' NAMES

Another common theme is that the names of the victims have been tarnished through deliberate misinformation or distortion of information, with the aim of justifying the use of violence by state actors. The relatives protest that this blaming and continuous demonisation of the victims, and the never-ending fight to clear their loved ones' names, has intensified their suffering and deepened their pain. Today, they continue to demand the restoration of the public image of their loved ones as a means of reparation.

"*At Danny's inquest soldier A and soldier B both said our Danny had a gun (...) It took the jury five minutes to return with their verdict that our Danny was an innocent child murdered at his front door by a soldier in the British Army.*" (Tina Barrett, victim Danny Barrett)

"*I wanted answers. I wanted answers to protect my mum, my aunts. I wanted answers to portray John Patrick's innocence. Some misleading articles in newspapers refer to him as an IRA suspect, as a gunrunner. Nothing could be further from the truth… I wanted justice."* (Charlie Agnew, victim John Pat Cunningham)

"*What I would like to see coming out of Billy's story is to contradict all the misinformation which was put out about him at the time of his killing. All the local press were quite happy to jump on the bandwagon and accept what the army put out as their version of events, that Billy was a sniper, a bomber, a gunman … And it is imperative that Billy's story be told.*" (Elizabeth and Oliver Morris, victim Billy McKavanagh)

"The Army said that he was shooting, that's why they opened fire on his car. And make that statement to the local press and also in the statements in the police department. That my brother opened fire and that's why they shot him. There was nothing found in the car, nothing on him. They found no residues in his hands, in his clothes, nor in the car." (Patrick John Prince, victim

Liam James Prince)

"*They took away his good name.*" (Billy & Marjorie McGreanery, victim Billy McGreanery)

"*All she wanted at the time was to prove that her child was innocent*". (Emmet McConomy, victim Stephen McConomy)

"*Because it's bad enough that they killed him, but then to lie and try to cover it up. I don't understand why they need to do that. And I know we are not the only family that have suffered in this way.*" (Anne Caldwell & Máirtín Ó Maolmhuaidh, victim Tobias Molloy)

"*The first time that it was admitted publicly that my brother was innocent, unarmed, not involved, was at the high court compensation appeal in 1977.*" (Gerry Magee, victim Patrick Magee)

"*In that case the result was that the Army and the NIO admitted that Patrick was innocent but they would only admit he was innocent if my father's legal representative would accept that there had been shooting from the school (...) His main concern was to clear Patrick's name. And that is what he achieved (...) (however) Patrick's name hasn't been cleared because at the time all the newspapers, here and in England, with the exception of the Irish News, carried reports that two terrorists, two gunmen had been shot by the army and that wasn't retracted. And after the case it was reported only in the Irish Times. It wasn't widely reported that they accepted that they were innocent.*" (Gerry Magee, victim Patrick Magee)

"*My mother had to go to court and try to fight for daddy's innocence*". (Roberta Quinn, victim Christopher Quinn)

"*The Ballymurphy families received a report where it was established that their relatives were innocent (...) Why aren't we getting the same answers for our father.*" (Patricia McVeigh, Patrick McVeigh)

"*They dirty his name saying he was an IRA man. The version was in the media.*" (Kelly McBride, victim Peter McBride)

"*My grandfather was labelled as a gunman. My grandfather was innocent, he was unarmed, he had no political involvement. We want to clear my grandfather's name.*" (Natasha Butler, victim Patrick Butler)

"*You can't keep blaming the victim, which is what they do.*" (Aine McCann, victim Joe McCann)

"*We've encountered lots of obstacles. We have the obstacle of the British state trying to demonise our family. They still have continually tried to demonise my father.*" (Aine McCann, victim Joe McCann)

6. REVICTIMISATION AND EFFECTS OF TRAUMA

The effects of trauma and suffering were clearly still being felt, as was the families' pain at having to endure these without state assistance. Some families revealed situations where they felt revictimised and described obstacles that prevented them from grieving their losses with peace of mind.

- ***Impact of trauma on the physical and mental health of surviving family members***

"*My heartbroken mammy spent most of her days in bed (...) My mammy also had to go into hospital for psychiatric treatment.*" (Tina Barrett, victim Danny Barrett)

"I remember my daddy had to go into hospital for some time and it was a difficult stage for me, for us all. I cried sore every night for him. He was my security blanket and I missed him beyond words. (...) His admittance to hospital was all in relation to Danny's murder that he had witnessed, and they needed my daddy to break – to cry." (Tina Barrett, victim Danny Barrett)

"*My father just didn't want to talk about it. My father went back to England, he left Northern Ireland and died as a very sad man.*" (Patrick John Prince, victim Liam James Prince)
"There was no therapy." (Emmet McConomy, victim Stephen McConomy)

"When my sister died, that was when my father gave up his heart. He was dead in five years (...) My father couldn't handle it. He just gave up, basically." (Patrick John Prince, victim Liam James Prince)

"*I stayed narrowed, but started drinking, that made me feel actually worse, maybe depressed, had silly thoughts. You don't forget. It's a trauma on the family."* (Patrick John Prince, victim Liam James Prince)

"That wasn't easy – to watch your mother tormented by constant grief and constant disbelief about what happened. For years she would have set the extra plate at the table, and we were looking at her knowing he wasn't coming back. She always hoped that one day she would wake up from this nightmare but she never did. But it wasn't a nightmare, unfortunately, it was reality." (Emmet McConomy, victim Stephen McConomy)

"We struggled daily, 12-year-old Conn was always in his bedroom. Danny and he had shared a room. Conn didn't speak about Danny to anyone, and it remains the very same to this day." (Tina Barrett, victim Danny Barrett)

"My father never recovered from my brother's killing. He was 63 when he died and he looked like 83. He never spoke about it at the time." (Gerry Magee, victim Patrick Magee)

"We didn't talk about it. We're a very private family to be honest, and me talking here, you know I had to sort of bring myself with my daughter's help because I don't really like talking about it, to be quite honest. It's pretty painful." (Patrick John Prince, victim Liam James Prince)

"By this stage I was an addict to nicotine. Hard to believe a child as young as myself was a genuine smoker. I couldn't count the amount of sleepless nights. The nightmares were just part of life now. The doctor had me on Diazepam for daytime and Temazepam for bedtime to try and help." (Tina Barrett, victim Danny Barrett)

"I can't sleep at night since then." (Roberta Quinn, victim Christopher Quinn)

"One of them even today suffers badly with PTSD from that happening 50 years ago. Terrible nightmares, he's been hospitalised." (Patricia McVeigh, victim Patrick McVeigh)

- ***Revictimisation and a failure to restore the dignity of the relatives of the victims***

"The regiment that shot Stephen actually, a couple of months later, raided my mum's house when we were children. It was only a couple of months after Stephen's death. They made up with some spurious allegation about stolen goods – now, mum was a single parent who had just buried her eldest son. There was nothing stolen in our house apart from her heart and our childhood. We grew up with the trauma of that. Mum was never the same. She died when she was 55. She was 28 when Stephen was murdered and she was tormented, all her life, by what happened to Stephen." (Emmet McConomy, victim Stephen McConomy)

"Now I want John Pat to be remembered, not as a statistic, not as the village idiot, not as the guy shot in the back who could have been an IRA man which is impossible, but as John Pat the

person. For people to remember John Pat for what he was and people to remember Denis Hutchings for what he did." (Charlie Agnew, victim John Pat Cunningham)

"The soldier was treated as a celebrity during the trial – publicly backed by politicians gathered outside the court with veterans. Relatives had to sneak into court, harassed by veterans." (Charlie Agnew, victim John Pat Cunningham)

"During the trial they felt like the soldiers were the victims and not the family." (Kelly McBride, victim Peter McBride)

"It makes me feel, like not worthy of the truth." (Jennifer Duffy, victim Harry Duffy)

"My family moved away from Belfast. I am a refugee in my own country. I didn't want to leave Belfast, I had to leave my family behind… my community. I didn't get to finish school up here… I had to try to fit-in in a different community. You never fit into that community no matter how long you are in that community. And you are always spoken to like you are an outsider, because you are an outsider. No matter how long you are there, you always feel displaced because you are displaced. My mother herself has never ever got over it." (Aine McCann, victim Joe McCann)

"A decision made that they weren't gunman and that their death certificate would state that, that he was unlawfully killed, would help us to maybe move on a bit with the rest of our lives." (Patricia McVeigh, victim Patrick McVeigh)

- ***Inability of families to complete the grieving process***

"We are still grieving." (Martin McGavigan, victim Annette McGavigan)

"I want to end in my generation this grief and trauma." (Natasha Butler, victim Patrick Butler)

7. NEED FOR AUTHORITIES TO TAKE RESPONSIBILITY

The Panel heard numerous accounts at the family and individual level outlining the consequences of the killing of their loved ones and the subsequent attitude of the authorities. As well as the State making few attempts to apologise or acknowledge responsibility for actions or inactions, there was also a clear lack of fair and transparent rehabilitation measures that could have helped families overcome and move forward with their lives. Some families reported that they received some form of financial compensation after the events, but did not receive information about the reason, origin, or criteria for determining the amount of money. They felt the decisions did not consider the circumstances of individual cases and noted the unfair and arbitrary nature of the allocation criteria, the lack of transparency in assessing damages, and the unfairness of not informing families how compensation was determined.

- ***Failure to issue an apology or acknowledge responsibility***

Testimonies from families and representatives tell of their need to not only receive a public apology from the relevant state authorities but also an official acknowledgment of responsibility for the violation of the victims' rights under Articles 2 and 3 ECHR.

"The HET was announced with a lot of publicity. We received an invitation from them direct to us. They told us that our brother's case was one cited to be reviewed. We were quite optimistic in a way because we thought this is the first time we have had any official recognition that there is anything of an issue here to be dealt with." (Gerard McAlinden, victim Martin McAlinden)

"My mother died in 1992. Her sense of loss was compounded by a sense of alienation and the refusal of the State to acknowledge that it had any responsibility." (Gerard McAlinden, victim

Martin McAlinden)

"*They need to tell that they did it and that it was completely unjustified (...) My mother said 'we didn't receive an apology'*". (Gerry Magee, victim Patrick Magee)

"*My mother expected a recognition and an apology for her and her children, but unfortunately it never came. I expect an apology from the soldier responsible. For her and every single member of the family.*" (Roberta Quinn, victim Christopher Quinn)

"*We want the official record corrected and we also want a full public apology by the British Government.*" (Natasha Butler, victim Patrick Butler)

"*And yes, whilst an apology was received seven or eight years later, it never mentioned 'apology'. It was a regret. (...) We got the so-called apology and we have to accept it as an apology so I don't think there is anything else that we could get for Billy.*" (Elizabeth and Oliver Morris, victim Billy McKavanagh)

"*What my parents expected was that somebody put their hands up and said 'yes, we made a mistake, we shot him, we were panicking, or whatever'.*" (Patrick John Prince, victim Liam James Prince)

"*You can't keep blaming the victim, which is what they do. We won't let them go until they admit what they have done, turn round and admit what was done. They can't undo it but they need to turn around and say 'I'm sorry'.*" (Aine McCann, victim Joe McCann)

- ***Failure to meet the rehabilitation needs of victims' families and provide fair and adequate compensation***

"*She really raised the children on her own. She cleaned floors, she cleaned offices.*" (Roberta Quinn, victim Christopher Quinn)

"*She was a single mother.*" (Emmet McConomy, victim Stephen McConomy)

"*I think that needs to be repaired.*" (Emmet McConomy, victim Stephen McConomy)

"*The people of the district paid for my father's funeral, they made collections. [of money].*" (Roberta Quinn, victim Christopher Quinn)

"*The dynamic of the family changed. Everybody seemed to go their own way. Some of my brothers didn't want to talk about it. My mother, who was a very religious person, never got over it. My sister died nine months after, she was a Down Syndrome child, and my brother who was killed, done a lot for his sister, he took her everywhere in his wee car, they were inseparable.*" (Patrick John Prince, victim Liam James Prince)

"*We, the family, were never given legal representation".* (Natasha Butler, victim Patrick Butler)

- ***Failure to provide information about allocation of compensation***

"*I was awarded the highest compensation amongst everyone. Conn was excluded. Conn was not present when Danny was murdered. He was seen to be "unaffected" by his older brother's murder whom he shared his bedroom with. They went to the same schools and were inseparable. Danny was his big and only brother.* (Tina Barrett, victim Danny Barrett)

"*Value of life was £750 as paid in compensation, as if a child not an adult.*" (Charlie Agnew, victim John Pat Cunningham)

"*All we knew was my mother received £550. (...) That was blood money.*" (Roberta Quinn, victim Christopher Quinn)

"I wouldn't have even accepted the compensation money." (Gerry Magee, victim Patrick Magee)

"*Some years later they realised that there were three children under age, that we were entitled to compensation and the compensation was £84 and 7 pence."* (Minty Thompson, victim Kathleen Thompson)

8. A RECOGNITION THAT OBTAINING THE TRUTH MAY YET BE POSSIBLE

Amongst the harrowing testimonies of the relatives, an optimistic view also emerged regarding the possibility of obtaining the truth through a comprehensive and meticulous investigation, despite the passage of time.

"*I think that the stories that are coming through at the present time and the success of people who have been able to campaign for a proper inquest, that gives us certain hope that we still have a prospect of finding some kind of justice."* (Gerard McAlinden, victim Martin McAlinden)

"Now we have lots of witnesses and lots of statements." (Martin McGavigan, victim Annette McGavigan)

CONCLUDING REMARKS

Part One has described the experiences and views of families of victims killed by the State during the NI conflict. Although the Panel accepts there may be families who have different experiences from those described here, evidence to that effect has not been forthcoming. Neither has any been found in public sources. Accordingly, the panel members accept that what they have heard is representative of most families' experiences with conflict-related investigative, administrative and judicial processes.

What the testimonies vividly demonstrate are multiple failures on the part of the State, including not abiding by minimum legal standards that are designed to respect and protect the rights and dignity of the victims and their relatives. Other failures include not ensuring that relatives or their representatives are able to participate meaningfully in the investigation process – by state authorities withholding access to official information, keeping relevant identities anonymous, and delaying administrative and judicial processes.

Families have been particularly distressed by the common tactic of blaming the victims for their own deaths in order to justify the use of violence against them. Ongoing misery has also been caused by the State's failure to issue an apology to most victims' families or to acknowledge responsibility for the deaths. Where there has been state involvement in a killing, there has been a clear failure to meet the rehabilitation needs of victims' families. Where involvement has been proved, fair and adequate compensation has not been provided, let alone any other type of reparation such as restoring a victim's good name.

These failures have caused trauma and revictimisation, and have had a lasting effect on the physical and mental health of surviving relatives. Many family members have died waiting for the truth – some almost literally 'dying of a broken heart', not just because of the death itself but having their grief compounded for decades by failures, intransigence and indifference on the part of state authorities.

For a small number of participants in this research, it seems that a degree of healing and closure has already begun, and some have optimism that the full truth may yet come out. For most though, there has been no healing or closure, just learning to live with loss and grief – seen by many as a life-long process. Many participants felt that the only way to deal with the past and 'move on' is to keep fighting – in whatever way possible. Having their stories heard by the Panel was seen as one such way.

The Panel is immensely grateful to all the relatives who took the time to give their perspectives. It was clearly a difficult process for people to revisit traumatic events and reflect on their feelings and perceptions about what had happened to their loved ones, both at the time and in subsequent years. The Panel acknowledges their grief and respect their deep and unending desire for a fair, open-minded and thorough consideration of all relevant matters and facts relating to the deaths of their loved ones.

The relatives' experiences have been kept in mind as the Panel now shifts attention to state conduct, and later, the fairness and effectiveness of the investigations conducted.

PART TWO - STATE CONDUCT

During the Northern Ireland conflict, security forces – including the RUC and the British Army – were directly responsible for approximately ten percent of all deaths.[141] This section of the report explores state conduct as follows.

- Phases in the State's use of force
- Direct state killings 1969-1998
- The 'tea and sandwiches' approach
- Prosecutorial decisions in state killings
- Killings related to 'special forces'
- Police shootings
- Deaths caused by plastic bullets
- Inquests and legal cases taken by families and results
- Legacy Investigations into killings by the State

1. PHASES IN THE STATE'S USE OF FORCE

Fionnuala Ní Aoláin has identified three phases in the use of force during the conflict: militarisation (1969-1974), normalisation (1975-1980), and active counter-insurgency (1981-1994).[142]

The militarisation phase began with the deployment of the British Army to Northern Ireland in 1969. During this period, the army took on a "quasi-policing function", with the RUC "acting in tactical support of the army on the ground."[143] From 1969 to 1975, security forces killed at least 200 people.[144] The military's primacy is reflected in the breakdown of state killings in this period: based on Ní Aoláin's research, the Army killed at least 170 people, ninety percent of all victims.[145]

The normalisation phase was characterised by lower overall rates of violence (both state and paramilitary), the increased power and militarisation of the RUC, and the activation of Army special forces. In particular, this phase saw the deployment of the Special Air Service (SAS), a British Army special forces unit. During the normalisation period, state forces directly killed at least 67 people. Forty-four of those victims were killed by the military, and at least fourteen were killed by Army special forces.[146]

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141 Kieran McEvoy, Daniel Holder, Louise Mallinder, Anna Bryson, Brian Gormally and Gemma McKeown, *Prosecutions, Imprisonment and the Stormont House Agreement: A Critical Analysis of Proposals on Dealing with the Past in Northern Ireland* (QUB Human Rights Centre, Belfast 2020) available at <https://www.dealingwiththepastni.com/project-outputs/project-reports/prosecutions-imprisonment-and-the-stormont-house-agreement-a-critical-analysis-of-proposals-on-dealing-with-the-past-in-northern-ireland>.

142 Fionnuala Ní Aoláin, *The Politics of Force: Conflict Management and State Violence in Northern Ireland* (Blackstaff Press, Belfast 2000), Transitional Justice Institute Research Paper No. 12-05, available at SSRN: https://ssrn.com/abstract=2143132 or http://dx.doi.org/10.2139/ssrn.2143132, 16-17.

143 Ibid 16.

144 Pat Finucane Centre, 'State Killings Spreadsheet' (Pat Finucane Centre 14 November 2022).

145 Ní Aoláin, (2000) (n 142) 23.

146 Ibid, 54.

The active counter-insurgency phase saw the continued involvement of Army special forces, the creation of RUC special forces units, and, most prominently, the increased use of "set-piece operations," or ambushes. In these "set-piece operations," special forces targeted suspected members of paramilitary organisations – largely the Provisional IRA – and operated on a shoot-to-kill basis.[147]

2. DIRECT STATE KILLINGS 1969-1998

The Pat Finucane Centre (PFC) has created a spreadsheet containing the details of all known direct killings carried out by security forces. This research shows that state actors killed at least 374 people between 1969 to 1998. Several patterns emerge from the data.[148]

First, the majority of persons killed by the security forces were civilians (202 victims, or 54%). Another 142 victims (38%) were members of republican armed groups: the Irish Republican Army (IRA), the Irish National Liberation Army (INLA), or the Irish People's Liberation Organisation (IPLO). Sixteen victims (4%) were members of loyalist paramilitary groups: the Ulster Volunteer Force (UVF) or Ulster Defence Association (UDA), 16 were members of the security forces (4%).[149]

Second, more than seventy percent of victims were undisputedly unarmed (262 victims). There is disagreement over whether a further twenty-three victims (6%) were unarmed when they were killed. Fewer than a quarter of victims of direct state killings are confirmed as being armed (86 victims, or 23%).[150]

Finally, the majority of victims of security force violence were Catholic (321 persons, or 86%), while 42 victims (11%) were Protestant. The religion of eleven victims is unknown.[151] Research has also shown that state forces were responsible for the direct killing of at least 49 children – 26% of the 190 children killed during the conflict. No British soldier or RUC member has been convicted of the murder of a child.[152]

Research also shows that during the conflict, only four soldiers were convicted of killings committed on duty between 1969 and 1998.[153] No prosecutions of state actors were brought between 1969 and 1974, when at least 200 people were killed by security forces.[154]

Although approximately a third of the cases investigated by the Legacy Investigation Branch (LIB) within the PSNI have been cases of state killings, the vast majority of direct state killings remain unprosecuted.[155]

Recent inquests have shown that a number of state killings were disproportionate and unjustified.[156] For example, an inquest into the Ballymurphy massacre, where the British army killed ten civilians in 1971, found that nine

147 Ibid, 71.

148 These patterns are consistent with those identified by Fionnuala Ní Aoláin in her book *The Politics of Force*: (2000) (n 142). The PFC has, however, identified more killings than Professor Ní Aoláin, likely as a result of investigations conducted since 2000. The PFC's spreadsheet also includes killings carried out between 1994 and 1998, which Professor Ní Aoláin was not able to include in her work. This section uses data from the Pat Finucane Centre whenever possible, but draws on Ní Aoláin's analysis and research to contextualise the PFC's findings.

149 Pat Finucane Centre, 'State Killings Spreadsheet' (n 144).

150 Ibid.

151 Ibid.

152 Joe Duffy and Freya McClements, *Children of the Troubles* (Hachette Books Ireland 2019).

153 There were a few additional prosecutions of soldiers who killed civilians while off-duty. Pat Finucane Centre, 'State Killings Spreadsheet'(n 144).

154 Ní Aoláin (2000) (n 142) 23.

155 Pat Finucane Centre, 'State Killings Spreadsheet' (n 144).

156 Inquests do not determine whether a killing was unlawful, but they do apply the same legal standards as would be used in a civil proceeding to determine whether a killing was justified.

of the ten killings were unjustified.[157] Inquests have also held that the British Army killings of Stephen Geddis (aged 10), Thomas Mills, Pat McElhone, Kathleen Thompson, and Leo Norney (aged 17) were all unjustified.[158] As the Panel's work was nearing completion, an inquest was continuing in Belfast into a series of killings of five civilians in Belfast in 1972. This incident, known as the Springhill Massacre, includes the killings of three teenagers and the local Catholic priest. The inquest is to determine how they were killed; and, if this was by British soldiers, as the families believe, whether it involved the "legitimate and justified use of force" or the "illegitimate and indiscriminate use of force".[159]

Following decades of what relatives of people killed by state agents have experienced as inadequate investigations, the 'package of measures' (see Chapter Two) has begun to deliver a measure of truth for the families.[160] While some people have characterised legacy investigations as a "witch-hunt" against state forces, there is widespread acceptance by criminal justice and legal professionals that "[t]he reason for the higher number of state-related cases requiring an effective investigation is … that they were not properly investigated in the first place."[161]

3. THE 'TEA AND SANDWICHES' APPROACH

From 1970 to 1973, the RUC and the military entered into an agreement which replaced police investigations into military killings with 'presentational' inquiries conducted by the Royal Military Police (RMP). These inquiries have been described as 'tea and sandwiches' investigations, after one RMP investigator told the Bloody Sunday Inquiry that interviews were "not a very formal procedure … We usually discussed the incident over sandwiches and tea."[162] This system shielded soldiers from accountability for state violence and is arguably the reason why not a single state actor was prosecuted between 1969 and 1974.[163] As one RMP officer noted in 1973

"With both RMP and RUC sympathetic to the soldier, who after all was doing an incredibly difficult job, he was highly unlikely to make a statement incriminating himself, for the RMP investigator was out for information for managerial, not criminal purposes, and, using their powers of discretion, it was equally unlikely that the RUC would prefer charges against soldiers except in the most extreme of circumstances."[164]

RUC FORCE ORDER 148-70

The 'tea and sandwiches' arrangement was implemented through RUC Force Order 148/70, and has been criticised in a series of legacy investigations (most prominently the Bloody Sunday Inquiry). Under the Force Order, the RUC agreed not to interview military witnesses or suspects. Instead, soldiers were interviewed by the Royal Military Police (RMP), a branch of the British Army. As the HET noted in one legacy report, "These arrangements meant that, in practice, soldiers were not interviewed by civilian police officers at all."[165]

> 'Tea and sandwiches' inquiries did not constitute true investigations. On paper, the RUC would interview civilian witnesses and investigate the killing. They would then pass the file to the Royal

157 Summary of findings in the matter of a series of deaths that occurred in August 1971 at Ballymurphy, West Belfast – 11 May 2021.

158 CAJ, 'The Road to the Northern Ireland Troubles (Reconciliation and Legacy) Act 2023' (n 67) 57.

159 Lyndsey Telford, 'Springhill: Inquest into 1972 West Belfast Shootings Opens' *BBC News* (20 February 2023) <https://www.bbc.co.uk/news/uk-northern-ireland-64706274> accessed 11 April 2024.

160 CAJ, 'The Road to the Northern Ireland Troubles (Reconciliation and Legacy) Act 2023' (n 67) 47.

161 Kieran McEvoy et al (n 141) 10.

162 https://www.patfinucanecentre.org/state-violence/family-denied-access-murder-file

163 CAJ, 'The Road to the Northern Ireland Troubles (Reconciliation and Legacy) Act 2023 (n 67) 13.

164 Lord Saville of Newdigate, 'Report of the Bloody Sunday Inquiry' (House of Commons 2010) 194.10.

165 'HET Review Summary Report into the death of William Francis McGreanery (May 27, 2010), available at https://www.patfinucanecentre.org/state-violence/het-review-summary-report-death-william-francis-mcgreanery, 27.

> Military Police (RMP), who were responsible for interviewing the soldiers involved.[166] In practice, however, rather than waiting for the RUC to investigate the killing, the RMP would interview soldiers as quickly as possible, using the informal 'tea and sandwiches' approach.[167] RMP interviewers were "given little information in advance of conducting an interview",[168] and were therefore unable to assess whether the soldiers' statements aligned with the facts on the ground.

Describing the testimony of one RMP investigator, a Coroner wrote: "It was put to him that whilst the protocol was in place it meant that soldiers were never fully challenged on their account of an incident because statements were being taken at the earliest possible opportunity. In relation to these incidents he said he couldn't remember if the soldiers were challenged in any way".[169]

After interviewing the soldiers involved, RMP investigators conducted virtually no follow up, including making no attempt to compare civilian and military statements or compare evidence from the scene and elsewhere, with the claims made by soldiers about the circumstances of the incident.[170] Instead, investigators typed up the soldiers' statements and send them on to RMP Headquarters in Lisburn.[171] If an inquest was held, or the RUC requested copies of the soldiers' statements, the RMP would provide anonymised copies of the statements, with the names of all soldiers redacted.[172] In the Ballymurphy Massacre inquest, the Coroner was unable to locate the cipher revealing the names of soldiers who were spoken to by the RMP.[173] The Ministry of Defence suggested that "it was the practice of the RMP at the relevant time to destroy the information".[174]

The broader issue of the apparent destruction of information including the names of soldiers involved in lethal force cases has severely hindered and delayed investigations. The HET, the LIB and coroners' inquests have all faced considerable difficulties identifying soldiers directly implicated in lethal force incidents, and many stakeholders involved in such processes are sceptical of the assertion that names have not been retained. How, for instance, could the MoD become aware that there is a pattern in respect of individual firearm use if the service record for individual soldiers does not include such detail?

CONDEMNATION OF RUC FORCE ORDER 148-70

The 'tea and sandwiches' process ended in September 1973, after the newly appointed Director of Public Prosecutions (DPP) for Northern Ireland, Sir Basil Shaw, described it as "far from satisfactory".[175] In notes released by the Bloody Sunday inquiry, one former senior army official wrote: "the honeymoon period was over".[176]

In reviewing cases investigated under RUC Force Order 148/70, the judiciary has repeatedly stated that investigations using that process were neither adequate nor fair.[177] For example, the Lord Chief Justice of Northern Ireland condemned the Force Order shortly after it was repealed in 1973, writing: "we deprecate this curtailment of the function of the police and hope that the practice will not be revived".[178]

166 In the matter of an Inquest into the death of Marian Brown, [2018] NI Coroner 3, 50.

167 Ibid, 49-50.

168 Report of the Bloody Sunday Inquiry' (n 164) 173.79.

169 In the matter of an Inquest into the death of James Oliver Bradley, [2019] NI Coroner 15, 90.

170 In the matter of an Inquest into the death of Marian Brown [2018] NI Coroner 3, 169.

171 Ibid, 49.

172 Report of the Bloody Sunday Inquiry (n 164).

173 In the matter of a series of deaths that occurred in August 1971 at Ballymurphy, West Belfast, [2021] NI Coroner 6, 36.

174 Ibid, 43.

175 Report of the Bloody Sunday Inquiry (n 164) 173.130.

176 Ibid.

177 In the Matter of an Application by Mary Louise Thompson for Judicial Review, [2003] NIQB 80, 2; In the matter of an Inquest into the death of James Oliver Bradley, [2019] NI Coroner 15, 178.

178 *Case of R v. Foxford*, [1974] NI 181 at 200.

In a similar vein, the inquest report on the killing of Kathleen Thompson stated that RMP interviews did not satisfy "the duty imposed upon police at the time to properly investigate" killings. "In my view," Mr Justice Kerr wrote, "it was not open to [the RUC] to delegate that critical responsibility to another agency such as the Royal Military Police."[179]

Investigating the killing of Marian Brown in 1972 by a British soldier, Mr. Justice McFarland wrote that "For obvious reasons Force Order 148/90 was a clear impediment to the proper investigation of this killing."[180] Some victims feel that the impunity created by the Order, even though the RMP's 'tea and sandwiches' interviewing practices ostensibly ended in 1973, contributed to ongoing state violence during the conflict. For example, families of the victims of Bloody Sunday told the Inquiry that the Order "meant that 'the soldier was operating in an environment designed to assist him in protecting himself from the threat of criminal sanction', and that this contributed significantly 'to a culture within which soldiers could shoot, and kill, with impunity', because they knew that their use of lethal force would not be subject to scrutiny."[181]

The 'tea and sandwiches' inquiries have had long-term repercussions. Because statements to the RMP were neither voluntary nor given under caution, they are inadmissible in criminal proceedings. In 2021, Mr. Justice O'Hara condemned Force Order 148/70, writing:

> "The problem with investigating the killing of Mr McCann does not date back to 2010, it dates back to 1972. In large part that was because of the agreement between the RUC and Army which lasted until 1973 and which precluded the police from questioning soldiers. Many judges before me have condemned that practice. I join them in doing so."[182]

4. PROSECUTORIAL DECISIONS IN STATE KILLINGS

During the conflict, prosecutorial decisions suffered from two major limitations. First, the Attorney General, an official of the British Government from 1972 onwards, controlled the Director of Public Prosecutions (DPP)'s prosecutorial decision making. Second, the DPP did not have to provide reasons for decisions not to prosecute in cases of state violence.

CONTROL BY ATTORNEY GENERAL

Although the decision to prosecute was made by the DPP, in effect it was controlled by the Attorney General. Until 1972, the Attorney General was a minister in the unionist Stormont government. Following the institution of direct rule in 1972, an official of the British Government was appointed Attorney General for Northern Ireland. Throughout the conflict, the DPP operated under the superintendence of the Attorney General, meaning that the Attorney General had the power to direct the DPP to prosecute (or not to prosecute) any case.[183] This oversight role was amended under the Justice (Northern Ireland) Act 2002.

Declassified documents show that in practice, the Attorney General reviewed all DPP prosecutorial decisions concerning soldiers during the conflict and implemented a policy of de facto impunity.[184] Reporting on a meeting with the Attorney General, Lt General Frank King wrote:

> "He assured me in the plainest terms that not only he himself but also the DPP and senior members of his staff, having been army officers themselves . . . were by no means unsympathetic or lacking in understanding in their approach to soldier prosecutions in Northern Ireland. Rather

179 In the Matter of an Application by Mary Louise Thompson for Judicial Review, [2003] NIQB 80, 2.

180 In the matter of an Inquest into the death of Marian Brown, [2018] NI Coroner 3, 172.

181 Report of the Bloody Sunday Inquiry (n 164) 194.15.

182 *Case of R v Soldiers A & C* [2021] NICC 3, 42.

183 CAJ, 'The Apparatus of Impunity?' (n 67) 116.

184 Ibid, 115.

> the reverse, since directions not to prosecute had been given in more than a few cases where the evidence, to say the least, had been borderline."[185]

The Attorney General also promised to consult with the army on the "public interest" before pursuing any prosecution of a soldier.[186] The case of William McGreanery, who was killed by a soldier in Derry in 1971, illustrates the Attorney General's influence. A 2010 HET report shows that after investigating McGreanery's death, the RUC recommended that Soldier A be charged with murder. An RUC Superintendent wrote that

> "the whole weight of evidence contained in this file indicates clearly that McGreanery was not attacking anybody, that he was not armed at the time, that the soldier was clearly mistaken in his observations, and that his actions in deliberately shooting McGreanery were clearly wrong."[187]

185 Ibid.

186 Ibid.

187 'HET Review Summary Report into the death of William Francis McGreanery (May 27, 2010), available at https://www.patfinucanecentre.org/state-violence/het-review-summary-report-death-william-francis-mcgreanery, 31-32.

The DPP's office requested the Attorney General's input into the case. Rejecting the RUC's findings, the Attorney General determined that there was not a prima facie case for either murder or manslaughter. The HET criticised this determination, writing that McGreanery "posed no threat to the soldiers", and that the Attorney General did not have a sufficient basis on which to make an informed decision not to prosecute.[188]

FAILURE BY DPP TO PROVIDE REASONS FOR DECISIONS NOT TO PROSECUTE

The failure of the DPP to explain a prosecutorial decision, particularly where the evidence seemed to support criminal liability, has been criticised by the European Court of Human Rights as being inconsistent with the Article 2 ECHR duty to investigate.[189] The Court has held that failure to explain a non-prosecution decision is inconsistent with Article 2 where it not only undermines public confidence, but "denies the family of the victim access to information about a matter of crucial importance to them[,] and prevents any legal challenge of the decision."

In *Case of Kelly and others v. United Kingdom*, for example, the Court wrote:

> "In this case, nine men were shot and killed, of whom one was unconnected with the IRA and two others at least were unarmed. It is a situation which, to borrow the words of the domestic courts, cries out for an explanation. The applicants however were not informed of why the shootings were regarded as not disclosing a criminal offence or as not meriting a prosecution of the soldiers concerned. There was no reasoned decision available to reassure a concerned public that the rule of law had been respected. This cannot be regarded as compatible with the requirements of Article 2, unless that information was forthcoming in some other way. This however is not the case."[190]

Since the Justice (Northern Ireland) Act 2002,[191] prosecutorial decisions have been made by the Director of Public Prosecutions (DPP) without oversight from the Attorney General. The decision must be made based on the statutory Code for Prosecutors, which is also issued by the DPP.[192]

5. KILLINGS RELATED TO 'SPECIAL FORCES'

Throughout the Northern Ireland conflict, units collectively known as 'special forces' played a significant role. Three specialist military and police forces were particularly prominent: the Special Air Service (SAS), the Military Reaction Force (MRF), and RUC support units. By 1983, these specialist units were the primary actors in state violence.[193] Killings by army and police special forces have – according to the European Court of Human Rights, human rights organisations, and investigators – been inadequately investigated.

188 Ibid, 49.

189 *Case of Kelly & Ors v. UK* [2001] ECHR 328; *Case of Jordan v UK* [2001] ECHR 327; *Case of Shanaghan v. UK* [2001] ECHR 330; *Case of Finucane v. UK* [2003] ECHR 328.

190 *Kelly & Ors v. UK* (n 189) 118.

191 Brady's (Margaret) Application [2018] NICA 20, 36, 42.

192 CAJ, 'The Road to the Northern Ireland Troubles (Reconciliation and Legacy) Act 2023' (n 67) 24.

193 Ní Aoláin, (2000) (n 142) 70.

SPECIAL AIR SERVICE

The Special Air Service (SAS) is a British special forces unit known for their expertise in covert operations and counterterrorism. The SAS was officially deployed to Northern Ireland in 1976,[194] but individual SAS soldiers had been involved in the conflict since 1969.[195] The SAS operated with a high level of secrecy, carrying out several targeted killings of suspected IRA members. These killings regularly took the form of 'set-piece operations', or ambushes.[196]

The 1987 Loughgall killings are illustrative of the SAS's tactics. In that case, the SAS killed nine men, at least three of whom were unarmed, and one of whom was a civilian.[197] The Ministry of Defence's Operation Banner Report describes Loughgall as one of a number of "operations . . . planned to catch terrorists undertaking serious and violent offences".[198] The report indicates that the Military saw these planned attacks as effective parts of its campaign against the IRA.

A graph from the MOD report attributes a reduction in bombings and shootings in May and June 1987 to the Loughgall killings:

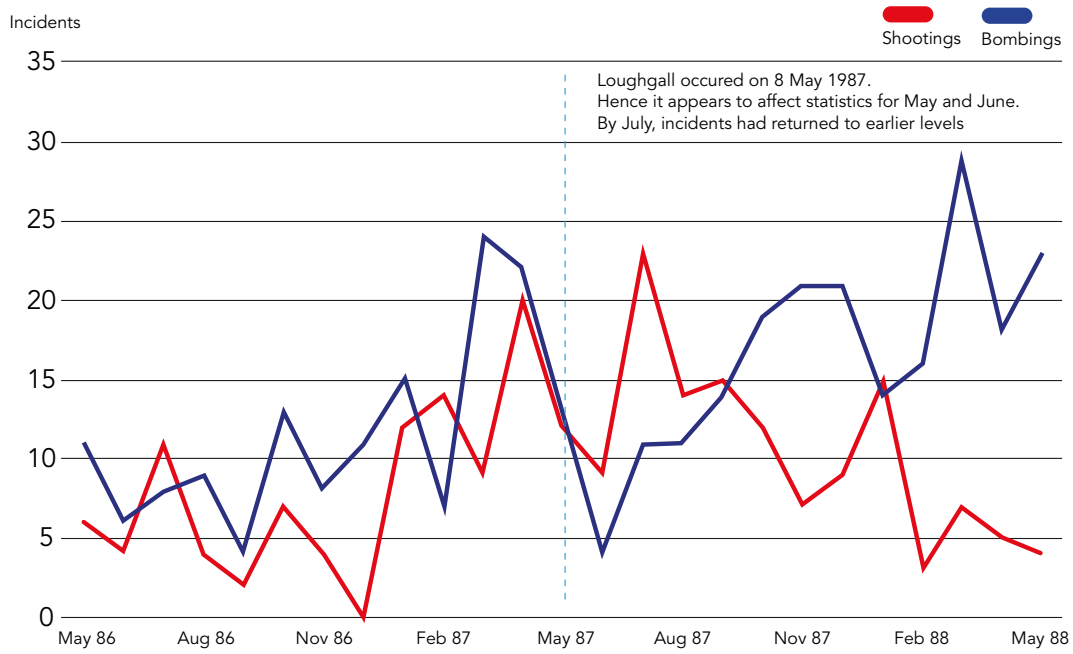

Figure 8-4: PIRA Attacks before and after Loughgall

Figure 1: Ministry of Defence graph showing Provisional IRA attacks from May 1986 to May 1988[199]

The MOD report laments that the "shock of Loughgall . . . was not exploited" by the military and lasted only two months.[200] It does not mention, however, the death of a civilian in the Loughgall killings, or the fact that at least three of the men killed were unarmed.

194 Ministry of Defence, *Operation Banner: An analysis of military operations in Northern Ireland* (MOD, 2006), 235.

195 Ní Aoláin, (2000) (n 142) 57-58.

196 Ibid, 71-73.

197 *Kelly & Ors v. UK* (n 189) 99.

198 *Ministry of Defence, Operation Banner* (n194) 243.

199 Ibid, Figure 8-4.

200 Ibid, 838.

In 2001, the European Court of Human Rights held that the investigation into the Loughgall killings had failed to comply with the requirements of Article 2 of the ECHR.[201] In 2015, the Advocate General determined that new inquests into the killings should be held.[202] But in October 2023, the Coroner warned that there would not be enough time to complete the inquest before the cut-off date (1 May 2024) established in the Legacy Act.[203] He ruled that work on the inquest should continue because legal challenges to the Legacy Act mean that there is "no guarantee that date will remain cast in stone".[204]

Another SAS case dealt with by the European Court of Human Rights was *McCann and Others v. United Kingdom*. In that case, the Court held that SAS soldiers violated the Article 2 rights of three IRA members killed in a set-piece attack in Gibraltar. The Court held that it was "not persuaded that the killing of the three terrorists constituted the use of force which was no more than absolutely necessary . . . within the meaning of Article 2 of the Convention."[205]

MILITARY REACTION FORCE - MRF/

The Military Reaction Force (MRF) was a covert unit composed of approximately forty[206] soldiers from across the British military. It existed for a short period of time – between fourteen[207] and eighteen[208] months – from 1971 to 1973.[209] MRF forces operated in plainclothes and unmarked cars and were told that they "officially [did] not exist on paper".[210]

In 2013, seven former MRF members participated in a BBC Panorama documentary about the work of this unit. The documentary reveals a pattern of human rights violations and extra-judicial killings carried out by the unit. The former MRF soldiers told the BBC that the force had two goals: surveillance and targeted assassinations of IRA members. One soldier stated that the MRF believed the Yellow Card, which established the rules of engagement for British forces in Northern Ireland[211], did not apply to the MRF. Another soldier told the BBC: "We were not there to act like an army unit. We were there to act like a terror group."[212]

Following the BBC Panorama documentary, the Director of Public Prosecutions asked the PSNI "to initiate an investigation into the activities of [the MRF]".[213] The DPP wrote:

> "Former members of this unit appear to have claimed on camera that they considered themselves to have been authorised to operate outside the law of Northern Ireland. This raises the clear possibility, if not probability, that serious criminal offences were committed."[214]

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201 *Kelly & Ors v. UK* (n 189) 139.

202 *Loughall attack: New inquests into deaths of civilian and IRA men, BBC* (Sept. 23, 2015), https://www.bbc.co.uk/news/uk-northern-ireland-34337903.

203 *Loughgall attack: 'Not enough time' for inquest ahead of legacy deadline, BBC* (Oct. 27, 2023), https://www.bbc.co.uk/news/uk-northern-ireland-67243153.

204 Ibid.

205 *Case of McCann & Ors v. UK* [1995] ECHR, 213.

206 Her Majesty's Court of Appeal in Northern Ireland, 'In the matter of an application by Mrs Margaret McQuillan for Judicial Review [2019] NICA 13, 96.

207 Ibid, 112.

208 *Military Reaction Force: Breakthrough in PSNI investigation*, *BBC* (Dec. 2, 2015), available at https://www.bbc.co.uk/news/uk-northern-ireland-34980462.

209 High Court of Justice in Northern Ireland, 'In the matter of an application by Colin Stuart for Judicial Review' [2022] NIQB 45, 12.

210 BBC, 'Panorama: Britain's Secret Terrorist Force' (21 November 2013) < https://www.dailymotion.com/video/x2re8m0>.

211 For members of the British Armed forces who served in Northern Ireland, the Yellow Card was a card issued prior to deployment on which the rules for opening fire were printed.

212 BBC, 'Panorama: Britain's Secret Terrorist Force' (21 November 2013) < https://www.dailymotion.com/video/x2re8m0>.

213 High Court of Justice in Northern Ireland, 'In the matter of an application by Colin Stuart for Judicial Review' [2022] NIQB 45, ¶ 5.

214 Ibid.

The initial PSNI 'investigation' consisted of little more than detectives being tasked to 'study the contents' (i.e. watch) the Panorama programme. Detectives did not approach the programme makers or interview the soldiers themselves.[215] After six months, the PSNI announced that, in effect, there was no case to answer as "none of the men featured have admitted to any criminal act or to having been involved in any of the incidents portrayed in this programme."[216] This decision sparked an outcry from human rights groups. Amnesty International NI Director Patrick Corrigan stated that the PSNI's "assertion that 'no crime has been committed' will seem completely incredible to anyone who watched the Panorama programme."[217]

Following this outcry, the PSNI announced in June 2014 that it would re-investigate MRF killings.[218] As noted by the High Court of Justice in Northern Ireland in May 2023, the PSNI's Legacy Investigations Branch concluded that investigation in 2020 and sent the file to the Public Prosecution Service."[219] In February 2024 the PPS announced that a decision had been made to prosecute four former members of the MRF in connection with several shooting incidents in May and June 1972 in West Belfast.[220] Four former soldiers, soldiers B, C, D and F, are to be prosecuted for a number of attempted murders, while soldier F faces the additional charge of the murder of Patrick Mc Veigh on May 13 1972.[221]

In 2014, the NI Attorney General had ordered new inquests into the killings of Daniel Rooney and Patrick McVeigh, both civilians, by the MRF.[222] These two inquests, which are presently in years four and five of the legacy inquest programme, are yet to be assigned a coroner and face being shut down by the Legacy Act.[223] However, the decision by the PPS to prosecute soldier F in relation to the killing of Patrick McVeigh would result in the proposed inquest being replaced by the criminal trial.

There is no definitive list of shootings carried out by the MRF. The BBC Panorama investigation into the unit drew on witness testimony to identify ten unarmed civilians who were likely to have been shot by the MRF.[224] The PSNI investigation included nine shooting incidents, which led to seventeen injuries and two deaths.[225] Paper Trail, a legacy archive research group, used uncovered British military logs to argue that the MRF was likely responsible for all nine of the shooting incidents identified by the PSNI.[226]

215 Amnesty International Panorama Northern Ireland 'death squads' - Amnesty reveals police failure to investigate Press Release, 13 May 2014.

216 PSNI decision on MRF shootings 'travesty of justice' – Pat Finucane Centre Press Release 13 May 2014.

217 Amnesty International Panorama Northern Ireland 'death squads' (n 215).

218 Amnesty Press Release 'Northern Ireland: Police u-turn over 1970s 'death squads' revelations in Panorama programme welcomed 11 June 2014.

219 In the matter of an application by Patrick McAreavey for leave to apply for Judicial Review [2023] NIKB 61, 17.

220 Iain Overton, 'Prosecution Announced for Former British Soldier in 1972 Belfast Murder Case' (AOAV8 February 2024) <https://aoav.org.uk/2024/prosecution-announced-for-former-british-soldier-in-1972-belfast-murder-case/> accessed 28 March 2024. See also Julian O'Neill, 'The Troubles: Former Soldier Charged with Murder over 1972 Shooting' *BBC News* (8 February 2024) <https://www.bbc.co.uk/news/uk-northern-ireland-68238984> accessed 11 April 2024.

221 Letter from PPS to legal representative for Patricia Mc Veigh, 8th February 2024 On File

222 Henry McDonald, *New inquests ordered into Northern Ireland killings linked to military unit, The Guardian* (September 2014), https://www.theguardian.com/uk-news/2014/sep/25/northern-ireland-inquests-secret-military-unit.

223 Statement of Mr Justice Humphreys, Presiding Coroner, Re Outstanding Legacy Inquests (Nov. 17, 2023), https://www.judiciaryni.uk/sites/judiciary/files/media-files/Legacy%20Inquest%20Statement%20-%20Presiding%20Coroner%20Mr%20Justice%20Humphreys%20-%2017%20Nov%2023.pdf, 6.

224 *Undercover soldiers 'killed unarmed civilians in Belfast', BBC* (Nov. 21, 2013), available at https://www.bbc.co.uk/news/uk-24987465.

225 *Military Reaction Force: Breakthrough in PSNI investigation, BBC* (Dec. 2, 2015), available at https://www.bbc.co.uk/news/uk-northern-ireland-34980462.

226 Ciarán MacAirt, 'Shooters: Britain's Military Reaction Force and Operation Everson', *Paper Trail* (2020) < https://papertrail.pro/wp-content/uploads/Shooters-Britains-Military-Reaction-Force-by-Paper-Trail.pdf >.

RUC SPECIALIST UNITS

In the 1980s, the RUC developed specialist units which have also been subject to allegations of extrajudicial killings and inadequate investigations. These units, which were part of the RUC Special Branch, comprised the Divisional Mobile Support Units (DMSUs), which specialised in crowd control, the Headquarters Mobile Support Units (HMSUs), which provided support to police in rural areas, and the Special Support Units (SSUs), trained by the SAS[227] to be "the 'quick-reaction' force of the RUC."[228]

A series of RUC killings in 1982 led to allegations that specialist RUC units were operating on a shoot-to-kill basis. In 1984, John Stalker, the Deputy Chief Constable of Manchester, was appointed to head an inquiry into the killings and subsequent investigations. Stalker's inquiry focused on the actions of the SSUs, HMSUs, and DMSUs.[229] Specifically, Stalker investigated three incidents:

- the killings of Eugene Toman, Sean Burns, and Gervaise McKerr by HMSU officers on 11 November 1982
- the killing of Michael Justin Tighe and shooting of Martin McCauley by HMSU officers on 24 November 1982
- the killings of Seamus Grew and Roddy Carroll on 12 December 1982 at Mullacreavie Park, Armagh City.

According to Stalker, who later published a book detailing this period, his investigation was hindered by deliberate obstruction, lack of cooperation from the RUC and British government officials, and concerted efforts to undermine his work. Nevertheless, Stalker identified repeated extrajudicial uses of force, and RUC cover-ups. Stalker found, for example, that Toman, Burns and McKerr were all unarmed when they were killed, and that the car the three men were travelling in had been shot over 100 times. Stalker wrote that the investigation of the killings was a "catalogue of ineptitude." He noted that, in acquitting the RUC officers involved in the killings of Toman, Burns, and McKerr, the judge praised them for bringing the deceased men to the "final court of justice".[230] This suggested to Stalker, not only that a 'shoot-to-kill' policy existed in the RUC specialist forces but that it was judicially endorsed.

Shortly before his investigation concluded, Stalker was removed from his position and accused of fraud. Although he was later fully exonerated, his investigation was never completed. The timing of his removal and the allegations against him led to widespread suspicion of a high-level conspiracy to prevent Stalker from uncovering uncomfortable truths about the conduct of the security forces during the conflict.[231]

6. POLICE SHOOTINGS

At least 49 persons were shot dead by police officers of the Royal Ulster Constabulary (RUC) during the Northern Ireland conflict.[232] Following the reforms of the peace process the RUC was superseded in 2001 by the Police Service of Northern Ireland (PSNI).

INVESTIGATIONS INTO POLICE SHOOTINGS DURING THE CONFLICT

The European Court of Human Rights, in the case of *Jordan v the UK*, dealt with the shooting dead of Patrick Pearse Jordan in 1992 by an RUC officer. At the time, police shootings were investigated by the RUC themselves under the supervision of an Independent Commission for Police Complaints (the ICPC) which had been set up further to legislation in 1987.[233] The court ruled that even with ICPC oversight, the police officers investigating

227 Ní Aoláin (2000) (n 142) 65-66.

228 Committee on the Administration of Justice , 'The Stalker Affair: More Questions than Answers ' (The Committee on the Administration of Justice 1988) <https://caj.org.uk/wp-content/uploads/2017/03/No.-10-The-Stalker-Affair-More-questions-than-answers-1988.pdf>.

229 Ibid, 9.

230 John Stalker, *Stalker: Ireland, shoot to kill and the affair* (Penguin, UK 1988).

231 '1986: Police Chief Cleared of Misconduct' *news.bbc.co.uk* (22 August 1986) <http://news.bbc.co.uk/onthisday/hi/dates/stories/august/22/newsid_2535000/2535029.stm>

232 Vincent Kearney, 'RUC Troubles Killings "Caught in Legal Limbo"' *BBC News* (24 November 2011) <https://www.bbc.co.uk/news/uk-northern-ireland-15876312> accessed 15 February 2024.

233 *Jordan v. UK* (n 189) par 75-79.

the incident lacked independence from those implicated in it, stating

> "…the investigation into the killing by a RUC police officer was headed and carried out by other RUC officers, who issued the investigation report on the file. The Government have pointed out that, as required by law, this investigation was supervised by the ICPC, an independent police monitoring authority. A member of the ICPC was present during the interviews of Sergeant A, for example. Their approval was required of the officer leading the investigation. There was nonetheless a hierarchical link between the officers in the investigation and the officers subject to investigation, all of whom were under the responsibility of the RUC Chief Constable."[234]

The court also found other failings. Among these, there was a lack of public scrutiny and information for the victim's family regarding the reasons for the decision not to prosecute a police officer, and the inquest did not allow a verdict or findings that could play an effective role in securing a prosecution. Consequently, according to the court, there had been a breach of Article 2.[235]

The European Court ruling in *McKerr v the UK* also relates to police shootings.[236] In this instance from 1982, the RUC mobile support unit fired at least 109 shots into a car killing Gervaise McKerr, Eugen Toman and Sean Burns. All three were unarmed. The RUC investigated the shootings and sent their investigation file to the Director of Public Prosecutions who directed further enquiries. RUC officers were subsequently charged but acquitted by the judge who made what were seen as controversial remarks. The shootings were subsequently investigated by the Stalker-Sampson inquiry which raised significant concerns regarding the official account and investigation. Ultimately the European Court held there had been a violation of procedural duties under Article 2 ECHR, with the Court stating that the "lack of independence of the RUC investigation, and the lack of transparency regarding the subsequent inquiry into the alleged police obstruction in that investigation" lay at the "heart of the problems."[237]

A Police Ombudsman report into the fatal RUC shootings in 1969 of a nine-year-old child, Patrick Rooney, along with Hugh McCabe aged 20, Samuel McLarnon aged 27, and Michael Lynch aged 28, concluded that there was "no effective police investigation into these deaths at the time." [238] The report confirmed that the RUC had driven through Catholic areas in armoured vehicles firing into high rise residential flats using a heavy duty machine gun (GPMG) firing 50 calibre ammunition that penetrated walls.

LEGACY INVESTIGATIONS INTO POLICE SHOOTINGS

Whilst the above assessment indicates deficiencies in investigations during the conflict, the picture with legacy investigations becomes more complex. The Package of Measures involved changes to the remit of inquests and the remit of the newly established Police Ombudsman role – which had replaced the ICPC and allowed the Ombudsman to deal with complaints into historic cases.

The NI Department of Justice has set out that the RUC (Complaints etc) Regulations 2001 extended the functions of the Police Ombudsman to cover retrospective cases, and also notes that

> "The Police Ombudsman has exclusive jurisdiction for cases where a death has resulted from the conduct of a police officer which precludes the involvement of the PSNI, including HET in such investigations. In reviewing all deaths arising from the 'Troubles' in Northern Ireland, HET must refer any matter [to the Ombudsman] in which the conduct of a police officer may have resulted in

234 Ibid, par 120.

235 Ibid, par 142 & 145.

236 *Case of McKerr v. the United Kingdom* [2001] ECHR Application no. 28883/95

237 Ibid, par 11, 18-20, 21-34, 158.

238 Police Ombudsman for Northern Ireland, (OPONI) 'Statutory Report Public Statement by the Police Ombudsman in Accordance with Section 62 of the Police (Northern Ireland) Act 1988. Relating to a Referral from the Chief Constable of the PSNI Concerning: The Circumstances of the Deaths of Patrick Rooney, Hugh Mccabe, Samuel Mclarnon and Michael Lynch in Belfast on 15 August 1969' (Police Ombudsman for Northern Ireland 2021) <https://www.policeombudsman.org/PONI/files/f6/f69a9c74-d1fd-47e9-9eaf-a32335a10faf.pdf>.

the death of another person…"[239]

In short only the Police Ombudsman can investigate RUC shootings. The PSNI are precluded from doing so and hence the PSNI Historical Enquiries Team (HET) consequently referred all cases of RUC shootings to the Ombudsman. However, in 2011 the Police Ombudsman announced that, based on legal advice, it could not re-investigate these cases, as they were precluded by the domestic legislation from re-investigating any case which police themselves had previously investigated, *unless there was new evidence*.[240] This left what the BBC reported as a 'legal limbo'.[241]

Although it was not a RUC shooting, this provision was invoked in the Police Ombudsman's 2022 Operation Greenwich report which covered collusion in the loyalist killing of Patrick Shanaghan, previously the subject of the *Shanaghan v UK* ECtHR case. The Court had found a violation of the procedural obligations of Article 2 ECHR on the grounds that the RUC investigation with the ICPC had not constituted an independent, effective investigation.[242] The Operation Greenwich report examined RUC collusion in multiple loyalist murders, including that of Mr Shanaghan, but was unable to investigate the family's complaints that prior to Patrick's murder there were beatings in custody and death threats against Patrick from RUC officers on the grounds that the complaints had previously been investigated by the RUC themselves and there was no new evidence.[243]
There have been Ombudsman recommendations for some time to remedy this gap in powers as part of the periodic review of powers. The Department of Justice has however not taken forward legislative amendments to remedy this gap due to political opposition to doing so.[244] The Panel notes, therefore, that neither the Ombudsman, nor other bodies, can conduct investigations into RUC killings, subject to certain exemptions for new evidence.[245]

7. DEATHS CAUSED BY PLASTIC BULLETS

A gun firing rubber, and later plastic, bullets was introduced specifically for British Army use in Northern Ireland in 1973. It was designed to deter rioting by hurting people but not killing them. The rubber bullet was replaced by plastic in the early 1970s. The RUC began using plastic bullets (officially called 'baton rounds') in 1978.
During the conflict, 17 people are known to have been killed by plastic bullets (including three killed by rubber bullets). All were shot by police officers or British soldiers and all were unarmed. Eight were children, the youngest being ten years old.[246] No perpetrators have ever been convicted for causing a death by rubber or plastic bullets; only one was charged in a criminal case and that person was acquitted. In several cases security forces settled with a family without admitting liability. Although inquests have exonerated some victims as innocent, families continue to push for greater accountability.

239 Department of Justice 'Future Operation of the Office of the Police Ombudsman for Northern Ireland: A consultation paper' 2012, paragraph 2.11.

240 The Ombudsman cited The RUC (Complaints etc.) Regulations 2001 and in particular Regulations 5 (3) (f) and 7 (2) (f) thereof as the basis for this position. Both stipulate that the complaint or referral "has not otherwise been investigated by the police" as a mandatory criterion for investigation.

241 See 'Ombudsman Says It Can't Investigate Police Killings' *The Detail* (23 November 2011) <https://thedetail.tv/articles/ombudsman-says-it-can-t-investigate-police-killings> accessed 15 February 2024 and Kearney, 'RUC Troubles Killings "Caught in Legal Limbo"' (24 November 2011) (n 232).

242 *Case of Shanaghan v. UK* (n 189) [104].

243 Operation Greenwich report paragraphs 11.60 & 11.62., the former stating: *"The 2001 Regulations state that complaints received under Section 52 of the 1998 Act can only be considered if 'the complaint has not otherwise been investigated by the police.' My Office cannot, therefore, investigate the assault allegations made by Mr Shanaghan as they were investigated by RUC Complaints and Discipline Branch at the time."*

244 See Committee on the Administration of Justice, 'Submission to the Five Year Review of the Police Ombudsman' (Committee on the Administration of Justice 2022) <https://caj.org.uk/publications/submissions-and-briefings/submission-to-the-five-year-review-of-the-police-ombudsman/>.

245 For an Ombudsman report that has covered 1969 police shootings see: OPONI (n 238).

246 British Irish Rights Watch, 'Plastic Bullets: A Human Rights Perspective' (2006), 5.

SETTLEMENTS AND TACTICS BY SECURITY FORCES TO AVOID ACCOUNTABILITY

Security forces have largely failed to accept responsibility for their role in rubber and plastic bullet killings and have failed to discipline individual perpetrators. Instead, security forces' method of dealing with cases of death or injury by rubber or plastic bullets is described by victims' rights organisation Relatives for Justice as 'Deny; Cover-Up; Settle.'[247] In the case of Nora McCabe, the RUC's initial denials of involvement in her death only changed when video footage emerged of the shooting.

In other cases, security forces' testimonies that portrayed victims as rioters blatantly contradicted those of local witnesses. After Francis Rowntree's death, his father rejected 'British Army money,' but after decades of campaigning, the family did reach a settlement with the Ministry of Defence, even though this did not include an admission of liability.[248]

While victims' families are entitled to due reparation, under Article 2 of the ECHR they are also entitled to criminal investigations and trials.[249] By denying victims' families effective recourses for judicial redress on this issue, the British State is circumventing their duty to investigate breaches of the right to life under Article 2 and denying victims' right to truth.[250]

OBSTACLES TO OBTAINING JUSTICE

Families of victims killed by rubber or plastic bullets may never see justice because of obstacles that make it difficult or even impossible to seek or achieve criminal sanctions. Obstacles include blocked evidence and delays; judges and juries favouring testimony from security forces over local witnesses; and deficient laws with which to prosecute.

- *Blocking evidence and delaying:* The British State relies on national security protections and public-interest immunity to block crucial evidence and delay trials. The Government has invoked its 'national security' veto to protect documents in the National Archives that contain information about deaths by plastic bullets. Some courts have tried but failed to rein in the Government's use of national security protections.[251] Two illustrative cases are those of 15-year old Paul Whitters and 14-year old Julie Livingstone (killed in 1981 in separate incidents), whose files have been locked until 2059 and 2064 respectively on 'national security grounds'.[252] In 2022, the Northern Ireland Office released some 'heavily redacted' documents about Paul Whitters' death, and the NI Secretary of State admitted that Whitters 'lost his life needlessly.'[253] The documents revealed the problem of metal caps being left on plastic bullets, contributing to Whitters' death as well as that of 36-year old Peter Doherty in Belfast.[254] The sudden release of these documents emphasises how the contents need not be blocked for national security reasons.[255] Presently no mechanism is open to the families to allow for investigation of the 'metal cap' revelations, and the State has not revealed to previous inquests that metal caps were being discharged at high velocity alongside the plastic bullet.

247 Relatives for Justice, 'Plastic Justice: A Report on the Use of Plastic and Rubber Bullets in Ireland' (2020), 19.

248 Ibid, 31.

249 Ibid, 29.

250 Ibid, 26.

251 Ibid, 26-29.

252 Ibid, 33.

253 'Paul Whitters "Lost His Life Needlessly": NI Secretary of State' *Derry Journal* (9 June 2022) <https://www.derryjournal.com/news/people/paul-whitters-lost-his-life-needlessly-ni-secretary-of-state-3726358>; Matthew Leslie, 'Paul Whitters Death: Brandon Lewis Accused of Adding to Family's Trauma' (www.derrynow.com14 June 2022) <https://www.derrynow.com/news/derry-news/836119/paul-whitters-death-brandon-lewis-accused-of-adding-to-family-s-trauma.html> accessed 16 February 2024.

254 Anne Cadwallader, *Declassified UK*, '"Lodged in Skulls": The Army's Deadly Plastic Bullets Scandal' (2023); Fr Denis Faul and Fr Raymond Murray, 'Plastic Bullets – Plastic Government' (1982), 2-3.

255 *Derry Now*, 'Paul Whitters Death' (n 253).

- *Testimony of police and soldiers favoured:* Another problem faced by families during inquests is when courts favour testimony of security forces over that of local witnesses.[256] In the case of 13-year old Brian Stewart, a civil suit resulted in the verdict that he had thrown stones during a riot, even though the testimony of British soldiers in the case was conflicting and multiple local witnesses provided no evidence of rioting where Stewart was shot.[257] In the case of Seamus Duffy, the coroner exonerated police officers even after their statements were contradicted by new evidence.[258]

- *Deficient laws:* Prosecuting security forces for deploying plastic bullets is difficult due to the Criminal Law Act (NI) 1967, which permits security forces to use reasonable force in preventing crimes. Security forces often portray victims as rioters, including children, which is used to justify the use of plastic bullets. This Act represents a 'lower standard for the use of force than international codes of conduct and human rights treaties to which the United Kingdom is a party,' such as Article 2 ECHR.[259]

8. INQUESTS AND LEGAL CASES TAKEN BY FAMILIES AND RESULTS

The following table shows details relating to the 17 deaths from 1972 to 1989 believed to have been caused by rubber and plastic bullets. Detailed information on people recorded as having been injured by rubber and plastic bullets is not readily available but thought to be in the thousands. According to one source,

> "From their introduction in 1970 to 2005 almost 126,000 rubber and plastic bullets were fired, killing 17 people, including nine children. In 1981 alone the RUC fired almost 30,000 plastic bullets, killing seven people, three of whom were children and thousands more were injured."[260]

256 Relatives for Justice, 'Plastic Justice' (n 247) 21.

257 Ibid.; Committee on the Administration of Justice, 'Plastic Bullets and the Law' (Committee on the Administration of Justice 1990) <https://caj.org.uk/wp-content/uploads/2017/03/No.-15-Plastic-Bullets-and-the-Law-March-1990.pdf>.4.

258 Relatives for Justice, 'Plastic Justice' (n 247) 42.

259 Committee on the Administration of Justice, 'Plastic Bullets: A Briefing Paper' (Committee on the Administration of Justice 1998) <https://caj.org.uk/wp-content/uploads/2017/03/No.-40-Plastic-Bullets-a-briefing-paper-June-1998.pdf> 9.

260 Damien McCarney, '"Innocent People" Comment Is Welcomed by Victims' Families' *Andersonstown News* (15 January 2007) <https://cain.ulster.ac.uk/victims/docs/newspapers/daily_ireland/mccarney_an_150107.pdf>. [Note: the correct number for children killed is eight not nine].

NAME	AGE	PERPETRATOR AND DATE	INQUESTS/CASES/SANCTIONS
Francis Rowntree	11	Army; 22 April 1972	Inquest led to coroner finding in 2017 that use of rubber bullet was unjustified. Family took civil case against Ministry of Defence (MoD), which they won in 2021, leading to settlement. Soldiers anonymised; no individual responsibility.[261]
Tobias Molloy	18	Army; 16 July 1972	Inquest held in Republic of Ireland six days after Molloy's death from a rubber bullet. Because this incident occurred at a border checkpoint Tobias was taken to a hospital in the Republic where he was declared dead. The inquest, outside the jurisdiction, was later deemed insufficient and civil action was taken against the MoD in late 1970s. In 2019, NI Attorney General denied the family a fresh inquest. In 2021, family applied again.[262]
Thomas Friel	21	Army; 22 May 1973	In 2021 coroner 'not persuaded' that Friel was shot by a rubber bullet. In 2023 family sought fresh inquest to 'quash' coroner's findings and the issue remains unresolved.[263]
Stephen Geddis	10	Army; 30 August 1975	The first, and the youngest, person to die after being hit by a plastic bullet. In 2022 coroner found killing unjustified and that MoD 'bears significant responsibility.'[264] Ex-soldier took unprecedented action in a legal bid on his part to quash coroner's findings.[265]
Brian Stewart	13	Army; 10 October 1976	Civil suit resulted in verdict that Stewart was rioting, even though local witnesses including camera crews disputed this, and testimonies from British soldiers were conflicting.[266]
Michael Donnelly	21	Army; 9 August 1980	Family deeply unhappy with the original coronial process and the subsequent HET report – both of which they experienced as inadequate and flawed.[267]

261 James McCarthy, *Belfast Media*, 'Rowntree Family Win Civil Action Against MoD' (2021).

262 Ó Muirigh Solicitors, 'Family of Tobias Molloy, shot dead by British soldier in 1972, request a fresh inquest from Attorney General of Northern Ireland' (2021).

263 Friel's (Liam) Application [2023] NIKB 111

264 Judicial Communications Office, 'Coroner Finds Discharge of Baton Round was not Justified in Death Of Stephen Geddis: Summary of Findings' (2022). <https://www.judiciaryni.uk/sites/judiciary/files/decisions/Summary%20of%20findings%20-%20Coroner%20finds%20discharge%20of%20baton%20round%20was%20not%20justified%20in%20death%20of%20Stephen%20Geddis.pdf> accessed 16 February 2024 5

265 Sharon O'Neill, 'Ex-Soldier Takes Legal Action in Bid to Quash Coroner's Findings over Killing of Stephen Geddis in 1975' *www.belfasttelegraph.co.uk* (18 December 2022) <https://www.belfasttelegraph.co.uk/sunday-life/news/ex-soldier-takes-legal-action-in-bid-to-quash-coroners-findings-over-killing-of-stephen-geddis-in-1975/42227111.html> accessed 16 February 2024.

266 Relatives for Justice, 'Plastic Justice' (n 247), 21; CAJ, 'Plastic Bullets and the Law' (n 257) 4.

267 Relatives for Justice, 'Plastic Justice' (n 247) 35.

Paul Whitters	15	Police; 25 April 1981	Investigation in 1982 concluded deployment of plastic bullet was unjustified.[268] Police Ombudsman investigation in 2007 failed to uncover new evidence but determined that the discharge of the bullet was not justified and was fired under the minimum range. Director of Public Prosecutions decided not to charge officer.[269]
Julie Livingstone	14	Army; 13 May 1981	In 1982, Court determined Julie was an innocent bystander.[270] Files have been locked by British Government until 2064 despite her family requesting them.[271]
Carol Anne Kelly	12	Army; 22 May 1981	Inquest in 1981 led to coroner finding she was an innocent bystander. Given the flawed HET report, her family issued fresh appeal for information in 2018.[272]
Henry (Harry) Duffy	45	Army; 22 May 1981	HET opened investigation but never delivered report. Family requested fresh inquest in 2020.[273]
Nora McCabe	30	Police; 9 July 1981	Found innocent by inquest jury. Officer not charged despite video evidence of shooting. [274]
Peter Doherty	36	Army; 31 July 1981	Two inquest juries failed to decide on issue of innocence. Second jury hamstrung because soldier refused to appear in court. Soldier never charged.[275]
Peter McGuinness	41	Police; 9 August 1981	Inquest concluded innocence but no officer charged.[276]
Stephen McConomy	11	Army; 19 April 1981	In 2018 the family applied to the Attorney General seeking a fresh inquest on the grounds that the original inquest was 'flawed', that the examination of the soldiers' evidence was 'inadequate' and that the coroner had been denied access to important evidence about the lethality of plastic bullets.[277]

268 CAJ, 'Plastic Bullets: A Briefing Paper' (n 259), 3.

269 Police Ombudsman for Northern Ireland, 'Media Releases 2007 - Police Ombudsman for Northern Ireland - Police Ombudsman for Northern Ireland' *www.policeombudsman.org* (16 April 2007) <https://www.policeombudsman.org/Media-Releases/2000-2010/2007/No-new-evidence-killing-was-deliberate-but-use-of> accessed 11 April 2024.

270 Brian Drohan, '"Unintended Consequences: Baton Rounds, Riots, and Counterinsurgency in Northern Ireland, 1970-1981', (2018) 82 Journal of Military History <https://www.academia.edu/36410863/_Unintended_Consequences_Baton_Rounds_Riots_and_Counterinsurgency_in_Northern_Ireland_1970_1981_Journal_of_Military_History_82_2_April_2018_491_514>., 511.

271 Relatives for Justice, 'Plastic Justice' (n 247) 33.

272 Ciara Quinn, 'Carol Ann Anniversary: Info Appeal' *Belfast Media Group* (24 May 2018) <https://belfastmedia.com/carol-ann-anniversary-info-appeal> accessed 16 February 2024.

273 Pat Finucane Centre, '"They tell us to move on, but they won't let us…."' (2021).

274 CAJ, 'Plastic Bullets and the Law' (n 257) 4; Michael Jackson, 'Relatives Bereaved through Plastic and Rubber Bullets Slam Amnesty Plans' *Belfast Media Group* (25 September 2021) <https://belfastmedia.com/plastic-bullets-pic-to-come> accessed 16 February 2024.

275 Denis Faul and Raymond Murray, 'Plastic Bullets, Plastic Government: Deaths and Injuries by Plastic Bullets, August 1981 - October 1982' (1982) <https://michaelharrison.org.uk/wp-content/uploads/2014/01/Plastic-Bullets-Plastic-Government-Deaths-and-Inuries-by-Plastic-Bullets-Aug-1981-Oct-1982-1982.pdf>.2-3.

276 Ibid., 4; CAJ, 'Plastic Bullets and the Law' (n 257) 5.

277 'Plastic Bullet Victim's Family Demand Fresh Inquest' *BBC News* (19 April 2012) <https://www.bbc.co.uk/news/uk-northern-ireland-foyle-west-17766943> accessed 2 April 2024.

Sean (John) Downes	22	Police; 12 August 1984	Police officer charged but acquitted of manslaughter for allegedly defending colleagues from 'imminent threat.'[278]
Keith White	20	Police; 14 April 1986	Inquest found that White was rioting.[279]
Seamus Duffy	15	Police; 9 August 1989	Coroner exonerated RUC officers responsible despite reliance on soldiers' testimony which was later contradicted by new evidence.[280] Scheduled for a new inquest in 2021.[281]

9. LEGACY INQUESTS, PROSECUTIONS AND CIVIL LITIGATION

In the *McKerr* cases, the European Court of Human Rights held that the United Kingdom had violated Article 2 ECHR by failing to adequately investigate killings during the Northern Ireland conflict.[282] In collaboration with the Council of Europe, the UK developed what is known as the 'Package of Measures' to address conflict deaths. As explained in Chapter Two, these measures represent an ad hoc series of mechanisms available for dealing with the past in Northern Ireland, including inquests, a small number of prosecutions, and civil litigation.[283] Despite the fragmented and often unsatisfactory nature of these investigations, they remain all that is available. But as also noted in Chapter Two, the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 (the Legacy Act) would effectively end the entire package of measures.

INQUESTS

The original Legacy Bill allowed any inquest which had substantively commenced by 1 May 2023 to continue. But due to amendments at the Report Stage, there will now be an absolute cut off point for any inquests of 1 May 2024, even if the inquest is at an advanced stage. Only inquests which have entirely completed their proceedings before 1 May 2024 will be permitted to issue their findings. Thus, the Legacy Act will prevent many outstanding legacy inquests from being heard.

Legacy inquests are currently being conducted based on a five-year plan, which includes inquests into 94 killings. Since the creation of the plan, 9 additional cases have been referred to the Legacy Inquest Unit[284] by the Attorney General, accounting for eighteen deaths.

In November 2023, the Presiding Coroner told the public:

> "[T]here are simply no resources available which would enable me, in my role as Presiding Coroner, to allocate responsibility for any of the remaining legacy inquests to coroners at the moment. Even if I were to do so, experience indicates that it would be very difficult for an inquest to come to a conclusion prior to 1 May 2024."[285]

The nineteen unassigned legacy inquests that face closure because of the Legacy Act include inquests into:

- the killings of the New Lodge Six, four of whom were shot by soldiers, on 4 February 1973. Forensic tests of the four men's clothing and swabs were all negative[286]

278 Ibid.

279 CAJ, 'Plastic Bullets and the Law' (n 257) 5.

280 Relatives for Justice, 'Plastic Justice'(n 247) 42.

281 Michael Jackson, 'Relatives bereaved' (n 274)

282 *McKerr v.UK* (n 237).

283 Ibid, p. 15.

284 Established in 2019, the Legacy Inquest Unit was set up within the Coroners Service to process legacy inquests, under the remit of the Lord Chief Justice as President of the Coroners Court.

285 Statement of Mr Justice Humphreys (n 223).

286 Brian Feeney and others, *Lost Lives* (Edinburgh: Mainstream Publishing Company 1999)

- the killing of Thomas Burns, a veteran of the British Navy, by the British Army in July 1972[287]
- the killing of Robert Anderson, who was unarmed at the time of his killing, by British soldiers in 1971.[288]

Several recently concluded inquests have held that the actions of state actors in relation to killings were disproportionate and unjustified. These inquests have therefore been able to deliver truth for the families of the following victims.

- Stephen Geddis (aged 10), shot dead by British soldier on 30 August 1975. Coroner held (verdict 06.09.22) that the victim posed no threat, and the firing of the plastic bullet was not justified.
- Thomas Mills, shot dead by British soldier in July 1972. Coroner held (verdict 13.05.22) that the soldier was not justified in opening fire and the force used was disproportionate to the threat perceived.
- Pat McElhone, shot dead by British soldier on 7 August 1974. Coroner held (verdict 21.01.21) that the shooting cannot be justified.
- Ballymurphy massacre, concerning the deaths of ten civilians shot dead by the British army in August 1971 (Francis Quinn, Fr Hugh Mullan, Noel Phillips, Joan Connolly, Daniel Teggart, Joseph Murphy, Edward Doherty, John Laverty, Joseph Corr, and John James McKerr). Coroner held (verdict 11.05.21) that the killings were unjustified.
- Kathleen Thompson, shot dead by British solider on 6 November 1971. Coroner held (29.06.22) that the shooting was 'unjustified.'
- Leo Norney (17) shot dead by British soldier on 13 September 1975. Coroner held (verdict 03.07.23) that Leo was 'entirely innocent' and that he had been deliberately killed by Paratrooper McKay.[289]

The Panel notes the degree of comfort some families have found from these completed inquests, which makes it even more imperative that legacy inquests continue. After the coroner concluded in September 2022 that the decision to fire the plastic bullet that killed 10-year-old Stephen Geddis was not justified or justifiable, Kieran Geddis, Stephen's brother, said there were "mixed emotions" as their father, who had always maintained Stephen's innocence, was not alive to witness the decision. "Our mother is very old now, but she will be glad to hear that as well. … It's been a long road, we actually thought we'd never get here today. Other families like ourselves never get the opportunity to do this. … That's a sad reflection on today's government."[290]

PROSECUTIONS

Only a handful of decisions to prosecute soldiers have resulted from legacy cases. These prosecutions have led to only one conviction. No police officers have been prosecuted in lethal force cases.

The one soldier who has been convicted as the result of a legacy prosecution is David Holden, who was found guilty of the manslaughter of civilian Aidan McAnespie in 1988.[291] Holden received a three-year suspended sentence and will serve no time in prison.[292] Despite the seeming leniency of the sentence, Amnesty International UK's Deputy Director in Northern Ireland told the press that the "case shows accountability before the law is still possible and must continue." Aidan McAnespie's brother stated that "The most important point is that David Holden was found guilty of the unlawful killing of our brother Aidan".[293]

287 Ibid, 461.

288 Julian O'Neill, Newry: *New inquest ordered for three men shot by Army, BBC* (June 30, 2023), https://www.bbc.co.uk/news/uk-northern-ireland-66066524.

289 For Legacy Inquest verdicts, see https://www.judiciaryni.uk/legacy-inquests-general.

290 Kevin Sharkey, 'Troubles Legacy: Stephen Geddis 1975 Killing Unjustified, Inquest Finds' *BBC News* (6 September 2022) <https://www.bbc.co.uk/news/uk-northern-ireland-62813205> accessed 11 April 2024.

291 *The King v. David Jonathan Holden* [2022] NICC 29129.

292 Amnesty International UK, 'Northern Ireland: Ex-Soldier Guilty of Manslaughter in Aidan McAnespie Troubles Case Receives Three-Year Suspended Sentence' *www.amnesty.org.uk* (2 February 2023) <https://www.amnesty.org.uk/press-releases/northern-ireland-ex-soldier-guilty-manslaughter-aidan-mcanespie-troubles-case> accessed 15 February 2024.

293 Ibid.

In another case, Soldiers A and C were prosecuted for the killing of Joe McCann. Both soldiers were acquitted after the judge held that their 1972 statements to the Royal Military Police, as well as the HET's questioning of the soldiers based on those statements, were inadmissible.[294]

There have been ongoing advocacy efforts calling for an amnesty due to the passage of time making it unlikely that prosecutions will be successful. Two military cases have been central to these efforts. First, former soldier Dennis Hutchings was prosecuted in relation to the fatal shooting in 1974 of John Pat Cunningham, a young man with learning disabilities.[295] Hutchings died whilst on trial.[296] Second, despite several legal challenges and U-turns a decision was made in 2019 to send "Soldier F" for trial on charges relating to murders and attempted murders at the Bloody Sunday massacre. The prosecution against Soldier F was dropped in 2021 but resumed in September 2022. Soldier F has not yet stood trial.[297] These cases illustrate that prosecutions become more difficult with the passing of time – both defendants and witnesses are dying or otherwise unavailable.

CIVIL LITIGATION

Civil litigation initiated by victims and survivors in relation to conflict-related incidents has sometimes resulted in reparations, accountability and information recovery. In response to a question in the UK Parliament in 2022, the Ministry of Defence (MoD) reported that there were 575 legacy civil claims against the MoD relating to the Northern Ireland Conflict. Forty-three claims had been completed in the last three years, with 29 resulting in financial settlements from the MoD (totalling £632,000), and 14 claims discontinued or resolved by other means.[298] This does not include claims against other state agencies.

One example of successful civil litigation is the case of the Ballymurphy massacre, in which the family members of nine people shot by the army received significant confidential settlements in mid-2022 from the Ministry of Defence. Those settlements occurred after the coroner held that the nine civilians were "entirely innocent".[299] A tenth related claim is ongoing. A number of civilians who were injured have also received compensation. The Legacy Act bars any new civil litigation related to conflict deaths, and prevents any civil action brought on or after 17 May 2022 from continuing two months after the Act's passage.[300] This is however one of the issues that the High Court in its ruling found was unlawful.

PART THREE - ASSESSMENT OF FAIRNESS AND EFFECTIVENESS

The following section provides an in-depth assessment of whether the British State fulfilled its obligation under Article 2 ECHR by conducting fair and effective investigations of cases where civilians were killed by state agents during the conflict in Northern Ireland. This involves breaking the concepts of fairness and effectiveness down and into investigative steps and actions that were available to investigators, and subsequently examining to what extent these steps and actions were taken or not.

THE PROCEDURAL DUTY TO CONDUCT EFFECTIVE INVESTIGATIONS

Articles 1 and 2 of the ECHR, read in conjunction, impose on 'High Contracting Parties' (the member states

294 *Joe McCann: Trial of two soldiers collapses, BBC* (May 4, 2021), https://www.bbc.co.uk/news/uk-northern-ireland-56942056.

295 *Statement on behalf of the family of John Patrick Cunningham, on the passing of Dennis Hutchings,* Pat Finucane Centre (Oct. 19, 2021), https://www.patfinucanecentre.org/state-violence/statement-behalf-family-john-patrick-cunningham-passing-dennis-hutchings.

296 *Dennis Hutchings: Trial was in public interest,* say prosecutors, *BBC* (19 October 2021), https://www.bbc.co.uk/news/uk-northern-ireland-58964950.

297 *Bloody Sunday: Soldier F will face murder trial, BBC* (14 December 2023), https://www.bbc.co.uk/news/uk-northern-ireland-67679180.

298 Armed Forces: Civil Proceedings, Ministry of defence written question - answered at on 6 June 2022, https://www.theyworkforyou.com/wrans/?id=2022-05-19.HL374.h.

299 *Ballymurphy victims' families to receive significant damages, BBC* (13 June 2022), https://www.bbc.co.uk/news/uk-northern-ireland-61781663.

300 Northern Ireland Troubles (Legacy and Reconciliation) Act 2023, § 43, available at https://www.legislation.gov.uk/ukpga/2023/41/part/3/crossheading/civil-proceedings-inquests-and-police-complaints.

of the Council of Europe, parties to the Convention) a duty to conduct effective investigations into deaths caused by agents of the State.[301] This includes deaths caused by lethal force as well as deaths caused by negligence.[302] Article 2 consists of both substantive and procedural obligations.[303] High Contracting Parties are under a substantive obligation to safeguard the right to life in law as well as to ban the intentional deprivation of life – although this is subject to certain exceptions as set out in Article 2 paragraph 2 (a) – (c). In the case of a potential breach of Article 2's substantive limb, High Contracting Parties have a procedural obligation to conduct effective investigations into the alleged breaches.[304]

The procedural duty to conduct effective investigations into alleged state killings was confirmed in the case of *McCann and Others v. The United Kingdom.*[305] In paragraph 161 the ECtHR wrote

> "The Court confines itself to noting, like the Commission, that a general legal prohibition of arbitrary killing by the agents of the State would be ineffective, in practice, if there existed no procedure for reviewing the lawfulness of the use of lethal force by State authorities. The obligation to protect the right to life under this provision (art. 2), read in conjunction with the State's general duty under Article 1 (art. 2+1) of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of *effective official investigation* when individuals have been killed as a result of the use of force by, inter alia, agents of the State."[306] [Panel's emphasis)

Consequently, this means that for a High Contracting Party to fulfil the object and purpose of the Convention, the provisions of the ECHR must be interpreted and enforced in a manner which makes them effectively realised in practice. Article 2 presupposes a duty to investigate all deaths caused by agents of the state.

In its guidelines to the application of Article 2, the ECHR refers to the *Da Silva* case where the court states (as in the McCann case above) that a general prohibition of arbitrary killings by state authorities would be ineffective without a procedure for reviewing the lawfulness of the use of lethal force. The guidelines continue

> "The State must therefore ensure, by all means at its disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are repressed and punished".[307]

THE PANEL'S ASSESSMENT - HYPOTHESES AND CHALLENGES

There are two competing allegations surrounding state killings: either (1) the State did not investigate killings by state agents fairly and effectively; or (2) the State did investigate the killings fairly and effectively. Given that numerous public inquiries and other mechanisms have sometimes concluded that the State did not investigate killings by state agents fairly and effectively, the Panel added a third hypothesis: that (3) the lack of fair and

301 Article 1 ECHR on the Obligation to Respect Human Rights: *"The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention." And Article 2 ECHR on the Right to Life: "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary: (a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection."*

302 J Chevalier-Watts, 'Effective Investigations under Article 2 of the European Convention on Human Rights: Securing the Right to Life or an Onerous Burden on a State?' (2010) 21 European Journal of International Law 701.

303 Council of Europe, "Guide on Article 2 of the European Convention on Human Rights: Right to Life", Updated on 31 August 2022, 6 Available at: https://www.echr.coe.int/Documents/Guide_Art_2_ENG.pdf

304 Ibid.

305 *Case of McCann & Ors v. United Kingdom* [1995] ECHR Application no. 18984/91.

306 Ibid.

307 *Guide to Article 2 of the ECHR* (n 303); *Case of Da Silva v. United Kingdom* 2016] ECHR Application no. 5878/08

effective investigations was accidental or circumstantial. The third hypothesis takes into account that there may be reasonable explanations for why it was not possible to investigate the cases according to the standards of the time.

How to test these three hypotheses was the task facing the Panel. The key challenges were:

- changes in investigative policies and practices over time
- access to relevant material.

CHANGES IN POLICIES AND PRACTICES OVER TIME

The first challenge involved specifying what an "effective official investigation" looks like. The Panel believes the word effective requires the investigation to be both fair and effective. However, any present-day investigation must recognise that what might be considered fair and effective can change over time. For example, the killings explored in this report took place over a period in which it is generally acknowledged that many deficiencies in policies and practice existed. There was no mandatory requirement, for instance, to audio record all interviews with suspects. These deficiencies were often compounded by factors such as an atmosphere of fear and confusion, a huge volume of cases, a routine disregard for legal rights, and poor supervision and leadership. It would be unfair to judge investigations from the 1970s and 80s against present day investigative standards and methods, which have seen the implementation of significant legal and procedural safeguards since that time.

ACCESS TO RELEVANT MATERIAL

The second challenge related to accessing relevant material. A complete, accurate and reliable assessment would have required access to the original case files, but, as many independent inquiries have also found, this level of access was not available to the Panel. Many case files have been destroyed, lost or misplaced over the years. Even where some materials were available to the Panel, they frequently lacked details about the nature and extent of enquiries made during the initial investigation. Similarly, the quality of statements was often poor and therefore difficult to assess. In some cases, access to original documents is still restricted, thus making an accurate assessment unlikely.

Some possibilities for gaining access to relevant information had to be rejected due to practical considerations. These included analysing publicly available documents from every possible source (including material produced by academia, the media and civil society organisations) and interviews with all relevant bodies and subjects (including victims, their families, eyewitnesses, alleged perpetrators, investigators, military personnel, judges, officials and nongovernmental organisations, to name but a few). Methodologically, these options would have been challenging, particularly in what is a fraught, contested and complex environment, and achieving impartiality would have been politically near impossible, given the likelihood that it would be easier to access individuals with a grievance against the State than the state actors themselves.

CHOSEN APPROACH

The Panel decided to base the assessment solely on an analysis of official and publicly available documents from official British sources. It is important to note that these reports often provided insufficient details on their own to establish which investigative steps were possible and common to take at the time of the killings. To obtain sufficient data, therefore, it was necessary to analyse cases involving both "direct state killings" as well as "paramilitary killings" (i.e. paramilitary killings suspected state involvement). Some of the reports relate to a single killing while others concern multiple killings. The reports in total relate to 54 individuals killed. The original investigations took place in the 1970s, 80s, and 90s.

The Panel acknowledges the inherent limitations of the chosen approach. First, it is possible that not all public records on the 54 killings will mention every investigative step taken in a particular case or identify any that should but might not have been taken. Second, it may also be the case that the circumstances of a particular death make certain steps unnecessary; therefore the absence of a step may not mean it was overlooked, either accidentally or deliberately. That said, the Panel notes that the methodology used is able to be replicated, meaning that potential critics can scrutinise the method itself, and apply it to the same materials to see if the same conclusions are reached.

The following tables set out the main cases examined.

STATE KILLINGS ASSESSMENT

Devenny, Samuel	Police Ombudsman Report
McCann, Joe	Crown Court Case
McConomy, Stephen	AG Attorney General Application
McGreanery, William	HET Report
Thompson, Kathleen	Coroner's Inquest
Whitters, Paul	Police Ombudsman Report
Heaney, Dennis Michael	High Court Judgment
Geddis, Stephen	Coroner Summary of Findings
Cunningham, John Pat	HET Report
Molloy, Tobias	HET Report
McElhone, Patrick	Coroner's Inquest
McGavigan, Annette	HET Draft Report

CASES INVOLVING PARAMILITARIES

Brown, John Patrick (Sean)	Police Ombudsman Report
Loughinisland	Police Ombudsman Report
Michael Monaghan	Crown Court Case
Raymond McCord Junior	Police Ombudsman Report
Patrick Kelly	Police Ombudsman Report
Investigation into police handling of loyalist paramilitary murders and attempted murders in South Belfast in the period 1990-1998:	Police Ombudsman Report
Samuel Caskey	Police Ombudsman Report
Harry Conlon	Police Ombudsman Report
Aidan Wallace	Police Ombudsman Report
Michael Gilbride	Police Ombudsman Report
Martin Moran	Police Ombudsman Report
Theresa Clinton	Police Ombudsman Report
Larry Brennan	Police Ombudsman Report
Bookmakers Coleman Doherty, Joseph Duffin, Peter Magee, and William McManus, and 15-year-old James Kennedy	Police Ombudsman Report

ASSESSMENT METHODOLOGY

Panel members tasked themselves with finding evidence in the materials for all three hypotheses by way of developing an investigative matrix where information available on each case was checked against the investigative steps the police were expected to take at that time.
In cases where the appropriate investigative steps were not taken, the Panel's task was to examine the available official documents for explanations as to why those steps were not taken; and to search the reports for conclusions and/or evidence that the killings were deemed lawful by those that conducted the inquests or investigations and subsequently wrote the report.

The examined documentation included

- a variety of legal documents detailing individual cases of loss of life or injury during the Northern Ireland conflict, including High Court and Crown Court Judgments, Attorney General Applications, and Coroner's Inquests and summaries of findings. These provided essential legal facts relating to the quality of investigations, and contextual circumstances

- reports from the Office of the Police Ombudsman for Northern Ireland (OPONI). The Office, which is located in Belfast, has been in operation since November 2000 and conducts independent investigations of complaints against the police of Northern Ireland. Some of the aspects that OPONI looks at when assessing the quality of previous investigations include the appropriateness of police behaviour, use of excessive force and/or failure to pursue adequate inquiries

- documents from the Historical Enquiries Team (HET). The HET was established in 2005 with the aim to bring reconciliation and justice to families of victims who were killed during the conflict. The HET, which was wound up in 2014, re-examined previous investigations to make sure they were conducted in a thorough manner in line with Article 2 ECHR as well as the Code of Ethics of the Police Service of Northern Ireland.

ESTABLISHING THE INVESTIGATIVE STANDARD OF THE TIME

The investigations in the reports examined by the Panel were broken down into investigative steps. These formed a baseline of the "investigative standard" available to detectives in the 1970s and 80s, that is, what it might be considered reasonable to expect from an effective investigation at the time.[308] The assessments were informed by advances in the UK such as DNA, as well as the introduction of the Police and Criminal Evidence Act (PACE) 1984 and the PEACE interviewing model which was introduced in 1992.

The following is a list of the identified investigative steps.

- Commence a serious incident/scene log
- Secure all crime scenes (with police cordons as necessary)
- Conduct forensic examination of the scenes
- Forensic crime scene examination by a Scene of Crime Officer (SOCO) – this included: searching for evidence, which entailed the securing and preservation of the scene; fingerprint examination; blood, hair, cartridge cases and bullet heads; crime scene photographs; and mapping the scene
- House to house enquiries guided by an appropriate 'house to house strategy'
- Establish Violence and Crime Protection (VCP) control posts with questionnaires that could be passed to motorists to establish if they were in the area at the time of the incident
- Police dog and handlers to search for suspects and items
- Properly resourced police investigation (ie - assignment of sufficient resources)
- Establishment of a designated investigation team
- Regular case conferences involving the investigating team
- Put up notices on walls to trace witnesses, and leaflets that could be placed on vehicles in the area of the incident,
- Media appeals to try to trace witnesses,
- Carry out reconstructions
- Search the area for CCTV and other passive data; plus subsequent examination of CCTV/passive data
- Forensic examination of items by Northern Ireland Forensic Sciences Laboratory (NIFSL), including ballistic examination of all weapons and other exhibits recovered from the scene, and examination of clothes from victims and suspects
- Post mortem examination(s)

308 One of the panel members is a retired police superintendent with broad experience in investigations who was able to provide specific advice on investigative methods and standards.

- Formal witness interviews, with signed witness statements
- Establish a 'suspect strategy' and 'arrest strategy'
- Identification parades
- House searches for suspects and evidence
- Arrest of suspect(s)
- Search suspect cars and getaway vehicles including forensic examination by a SOCO
- Access to and use of intelligence information
- Swabbing the body of suspect(s) to search for firearms residues
- Formal interviews of suspect(s) under caution.

A matrix (see illustration across) was developed that mapped each investigative step that appeared in relation to each case.

Case number	Ballistics	Witness Interview / statement	House-2-house	Suspect Arrest	Crime scene forensics	Suspect interview
1					X	
2		X				
3						
4						
5	X	X	X	X	X	
6						
7		X	X	X	X	

Illustration of case matrix used to collate the data (not original matrix)

CONCLUSION

The analysis revealed numerous failures on the part of original investigations. Because the onus in this report is on the State and not individuals, the Panel will summarise the failures rather than attach single and individual failures to specific cases and persons. For those interested in reading the reports and make their own assessment a list of the cases has been annexed to the report.

The main conclusion is that the majority of cases examined by the Panel demonstrated poor execution and/or omission of key investigative steps. Investigations appeared superficial and incomplete, with a clear failure in many instances to perform some of the more obvious and rudimentary steps. As an example, investigators sometimes failed to conduct forensic tests that could have connected or eliminated their suspect from the crime scene. This sort of failure has implications for all sides, not least a suspect. Although most cases showed signs of certain steps being undertaken – such as the setting up of police cordons, the taking of crime scene photos, the taking of witness statements, the gathering of forensic evidence and so on – many of these appear to have been carried out in a perfunctory manner.

KEY FINDINGS

The investigations examined by the Panel lacked adequate suspect and arrest strategies, as well as strategies for securing, testing and probing evidence. The arrest strategy involves deciding whether a person should be arrested or not: such a decision will be based on evidence that can implicate or eliminate a suspect from the case. The evidence is then tested in interviews with both witnesses and suspects. The assessment found that arrest strategies failed by either delaying the arrest or not arresting the suspect at all. There were also failures to search the homes of suspects, test suspect alibies, and seize suspect vehicles for forensic examination. The reports also highlight forensic failures to compare the suspect's blood type with blood found at the scene or on the victim.

Regarding interviews, both witness and suspect interviews, and their written statements, were short and failed to supply sufficient detail. Suspect interviews lasted 20-30 minutes and were of poor quality. Keeping in mind the objective of either implicating or eliminating the suspect from the investigation, the interviews failed to gather detailed accounts and challenge those accounts. Alibis for instance, appear to have been taken at face value and not checked.

These failings resulted in important lines of enquiry not being identified or followed up, which resulted in large gaps in both RUC and subsequent independent investigations and affected the conclusions able to be reached. The Panel puts these failures down to a degree of 'confirmation bias'. This term refers to a common human trait where people seek information that confirms what they believe to be true (in more popular parlance, it is known as tunnel vision).

The Panel also found evidence in the reports of failures to disseminate intelligence information to the investigation team, something that may point to collusion. For a more detailed analysis of collusion, see Chapter Five.
The quality of the original police investigations that took place in the 1990s was noticeably better than those of the 1970s and 1980s. The police performed more of the investigative steps available to them. This is confirmed in some of the reports produced by the Police Ombudsman for Northern Ireland.

Having found support for hypothesis 1), that the State did not investigate state killings fairly and effectively, the Panel looked at hypothesis 3), that the lack of fair and effective investigations was accidental or circumstantial. Regrettably, there was no information in the available documents that explains why critical investigative steps were not undertaken and therefore no conclusions can be drawn on hypothesis 3).

DISCUSSION

With reference to the hypotheses guiding this assessment, the Panel did not find any information that explains why most of the cases assessed failed to live up the investigative standard of their time. There are many possible reasons why investigative steps were either poorly executed or not taken at all, including factors such as poor training, a lack of resources, poor communication, a lack of cooperation from relevant parties, and so on. In some cases, a particular step may not have been necessary.
The Panel also recognises that mistakes do happen in investigations, but it is hard to believe that so many mistakes and omissions, and often very similar ones, could be made in so many different cases. The possibility of more sinister reasons for these omissions, such as deliberate decisions to subvert the investigations – thus avoiding the identification and prosecution of perpetrators – must also be a possibility.

Some cases involving British soldiers refer to statements taken from the military police. This may in itself be problematic as military police are not traditionally trained in criminal investigations, interrogations and interviewing. Furthermore, when statements by the military police were not taken under caution – as in the case of the tea and sandwiches approach – they have no legal standing and hence no evidential value. Thus, their inadmissible status prevents them from informing this assessment.

In the materials examined, the Panel found only a few examples where the UK Government complied with its obligations relating to Article 2 of the ECHR. Overall, the investigations can be said to have failed the relatives' rights to truth, justice and reparation; demonstrating instead gross incompetence and negligence at best. Accordingly, the Panel finds that fair and effective investigations were not conducted.

One question directed at the Panel during this work was why members did not examine "all conflict-related killings". The simple answer is that the Panel was asked to focus on killings carried out by state agents (see the 'Introduction' for the reasons for this).

FURTHER CONCERNS

Rather than speculate, the Panel has decided to highlight questions and issues that arose during the process of assessing the 54 specific killings. Most of the issues relate to hypotheses 2) and 3).

Hypothesis 2

It is difficult to understand how and why British authorities have not been more forthcoming with regard to substantiating their claim that the killings in question were investigated fairly and effectively (hypothesis 2). Why, for instance, was RUC Force Order 148/70 issued when it meant that only the military police could take statements from soldiers involved in the incidents? The fact that the soldiers were not interviewed under caution makes them vulnerable in light of both fair trial requirements and due process. As pointed out in the discussion, it also means that whatever was said in their statements cannot be taken into consideration by courts or in reports such as this. At a minimum, this practice seems unprofessional and irresponsible toward the victim, their families and the alleged perpetrators. Why were the soldiers not interviewed by professionals and under caution?

Hypothesis 3

Due to a lack of evidence in the public records available to the Panel, proving hypothesis 3), which theorises that the lack of fair and effective investigations was accidental or circumstantial, turned out to be impossible. When dealing with hypothesis 3) however, another issue arises. The requirement under Article 2 ECHR of fair and effective investigations is not limited to what happened at the time. Given that the conflict in Northern Ireland was never defined as a war, it was criminal law that applied. Under UK criminal law there is no statute of limitations on murder, which was the threshold British courts decided that cases involving soldiers and police needed to meet. This means that the obligations under Article 2 ECHR still apply today. Police in the UK are involved in both murder and war crimes investigations dating back decades, where they are now able to apply investigative and interviewing techniques that have evolved from more than three decades of international research. When applied professionally and effectively, these techniques allow police to gather, collate and submit evidence that stands the test of trial today. Accordingly, the killings in Northern Ireland may still be investigated in a manner compliant with both Article 2 and current investigative and interviewing standards. The fact that Operation Kenova, led by Jon Boutcher,[309] diligently conducts such investigations begs the question of *why* this is not done in all cases?

Other issues about unsuccessful investigations

A third issue concerns cases where the investigative officers did act professionally or where the reports indicate their intention to conduct professional investigations. When they were thwarted, side-lined, stopped and even sabotaged, there may have been a reasonable explanation for it. At the time of an original investigation into a killing, it is understandable that authorities cite security concerns when responding to questions about why the investigation was unsuccessful. However, it seems equally reasonable to think that whatever the security concerns were in the 1970s and 80s, they would have abated sufficiently by the time of later, independent investigations for authorities to come forward and offer an explanation. The Panel questions why such explanations are not forthcoming.

Having uncovered significant issues relating to the investigative standards at the time, the Panel has further concerns about the conduct and transparency of British authorities in addressing the specific killings under review. The lack of substantiation explaining the failure to meet investigative standards, the possibility of deliberate subversion of investigations, and the absence of definitive evidence regarding the accidental or circumstantial nature of the deficiencies, all add weight to these concerns. Further, the failure to conduct interviews under caution with the soldiers involved, and the uncertain legal standing of statements taken from the military police, further compounds the lack of evidence for the conclusions reached in many reports that the killings by state agents were lawful.

The Panel's findings point to a failure of the UK Government to fulfil its obligations under Article 2 of the ECHR, including the rights to truth, justice and reparations for the victims' relatives. Thus, the Panel's conclusion that fair and effective investigations were not conducted in relation to state killings underscores the imperative need for accountability, transparency, and adherence to legal and human rights standards by the British authorities in addressing historical cases of this nature.

309 Interim Kenova report (n 65).

CHAPTER FOUR IMPUNITY FOR TORTURE AND ILL-TREATMENT?

INTRODUCTION

This chapter assesses whether, during the 30-year conflict in Northern Ireland, relevant British authorities

- complied with their obligations under Article 3 of the European Convention on Human Rights (ECHR)[310] (whereby acts of torture or ill-treatment must be considered as criminal offences)
- conducted independent and effective investigations into allegations of acts of torture or ill-treatment committed by the security forces.

The chapter is divided into seven sections:

1. Torture, inhuman and degrading treatment or punishment
2. Relevant law
3. Criminal litigation
4. Civil litigation
5. Specific techniques amounting to torture, inhuman or degrading treatment or punishment
6. Women and children
7. Accountability Efforts

As part of the assessment, the Panel reviewed the relevant legal obligations of the time, how people were abused, how they tried to complain, what happened when they did complain, how the authorities approached civil and criminal cases, how people from vulnerable groups were targeted, and various efforts made to achieve accountability.

The Panel did not explore motives for abuse, or whether security officials believed what they were doing was necessary or productive. Unlike with Article 2 of the ECHR[311] where it is possible to legally conclude that a state killing was lawful, Article 3 makes it clear there is no justification under any circumstances for the torture or ill-treatment of those in custody. The Panel also did not investigate individual allegations of torture or abuse, or assess whether they were true, or what would be an appropriate sanction for perpetrators. Instead, the Panel confined itself to examining impunity and whether credible allegations, at a prima facie level, were adequately investigated and perpetrators prosecuted.

In this chapter, 'prisoners' refers to individuals who had been convicted of a crime; 'prisoners on remand' are people who had been charged, detained, but their cases not yet heard, whereas 'detainees' are individuals who were detained without charge usually for the purpose of interrogation. 'Internees' were also detained without charge (internment was in operation from 1971-1975), but subjected to internment orders with a right to petition an Appeals Committee.

1. TORTURE, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT

The Panel examined allegations of violations committed during the conflict by individuals acting on behalf of the State in their official capacity. Numerous sources have revealed that many individuals were subjected to abuse that met the threshold of Article 3 ECHR. Some involved multiple methods of abuse at the one session, or many separate sessions of abuse in one period of detention. Torture mostly took place within formal detention but could occur outside of it, for example, beatings during everyday street and house searches. The

310 No one shall be subjected to torture or to inhuman or degrading treatment or punishment. Acts of torture or ill-treatment must be considered as criminal offences.

311 Everyone's right to life shall be protected by law.

types of techniques amounting to torture, inhuman and degrading treatment, ranged from casual assaults to more systematic and planned activities. The latter is typified by the application of five techniques: hooding, prolonged wall standing, sleep deprivation, noise torture, and reduced diet.

The infamous operation involving 14 "Hooded Men" in 1971[312] led to two public inquiries (the Compton Committee[313] and the Parker Committee[314]) and the Irish inter-state case against the UK to the European Court of Human Rights (ECtHR).[315] Ultimately, no criminal, individual, or political accountability was secured, so an accountability gap remains. In the face of public pressure and Lord Gardiner's conclusions on the illegality of the techniques, and in the context of the Parker Committee's investigation, British Prime Minister Ted Heath banned the five techniques in 1972.[316] However, there are many recorded and credible cases of one or more of the five techniques being used throughout the 1970s and into the 1980s.[317]

The Panel also examined evidence of other types of cruelty which would fall under the Article 3 definition, such as waterboarding, electric shock treatment, mock execution, the administration of drugs and the threat of the administration of drugs. In addition, some detainees (both male and female) were subject to sexual abuse, sexual degradation, and humiliation.

These violations occurred when members of the security forces exerted control over individuals for varying periods according to the relevant emergency regulations at the time. This physical control could be short-lived, as at vehicle checkpoints, street searches or house searches, but protracted periods of detention for the purpose of intelligence gathering was a particular flashpoint of violence. People could be detained for questioning without charge for up to 72 hours under Section 11 of the Northern Ireland (Emergency Provisions) Act 1973, and for 48 hours under Section 12 of the Prevention of Terrorism Act 1976, which could be extended for a further 5 days with ministerial approval. Separate to this, internment, or indefinite detention without trial, was introduced to the region from August 1971 until December 1975 – a policy which became intimately connected with the course of the conflict.[318] Internees and political prisoners were also vulnerable to state violence, as well as those on remand.

Branches of the security forces were responsible for this violence, either directly or indirectly. They included units of the British Army, the Royal Ulster Constabulary (mainly the Criminal Investigations Department and Special Branch), and prison staff, as well as politicians, legal advisors, and civil servants (mainly in the Northern Ireland Office and Ministry of Defence). The latter cohorts contributed to the culture of impunity which allowed abuses to occur unchecked.

Sites in which torture and related abuses proliferated in Northern Ireland included army barracks, such as the infamous Palace Barracks, Holywood (jointly run by the RUC and Army until 1972), RUC police stations, places of internment (e.g. Long Kesh and Ballykinlar), and the specially designed off-grid interrogation centre at Ballykelly where the "Hooded Men" were tortured in 1971. Later interrogations were conducted in dedicated RUC 'Police Holding Centres', such as Castlereagh, Omagh, and Gough Barracks. All the while, abuses continued in local police stations and in prisons such as the Maze and Armagh Women's Gaol.

312 The 14 "Hooded Men" were subjected the controversial five techniques over 5-6 days in an off-grid interrogation facility at Ballykelly. 12 men were subjected to the techniques (sleep deprivation, exposure to white noise, reduced diet, stress postures and hooding) in August 1971, while a further 2 experienced the same torture system in October 1971.

313 Sir Edmund Compton, 'Report of the Enquiry into Allegations against the Security Forces of Physical Brutality in Northern Ireland Arising out of Events on the 9th August, 1971' (Her Majesty's Stationary Office 1971) <https://cain.ulster.ac.uk/hmso/compton.htm>.

314 Lord Parker of Waddington, 'Report of the Committee of Privy Counsellors Appointed to Consider Authorised Procedures for the Interrogation of Persons Suspected of Terrorism' (Her Majesty's Stationary Office 1972) <https://cain.ulster.ac.uk/hmso/parker.htm>.

315 *Case of Ireland v. United Kingdom* [1978] ECHR Application no. 5310/71.

316 Parker Report (n 314).

317 Peter Taylor, *Beating the Terrorists?* (Penguin Group 1980).

318 Aoife Duffy, *Torture and Human Rights in Northern Ireland* (Routledge 2019) 19-26.

Under Article 3 ECHR, the authorities have an obligation to act as soon as an official complaint has been lodged. Even in the absence of an express complaint, an investigation should be undertaken if there are other sufficiently clear indications that torture or ill-treatment might have occurred.[319] During the conflict, there were complex systems for lodging criminal complaints against members of the security forces. Whilst the RUC launched perfunctory investigations against its own members and the British Army, and files were sent to the DPP, very few prosecutions resulted, and fewer still convictions were secured. Although thousands of complaints were lodged against members of the security forces in the 1970s, 1980s, and early 1990s in respect of actions that would fall under Article 3, the Panel only identified one prosecution that resulted in a custodial sentence.[320]

By contrast, a different pattern is observable in civil litigation pursued by victims often in relation to the same attacks once criminal litigation failed. Hundreds (if not thousands) of civil cases were settled out of court costing the UK taxpayer millions of pounds.[321] These settlements were always negotiated with a denial of liability, though it is clear that behind the scenes state legal advisors advised the NIO or MOD to pay out on the basis that the State would not have been able to mount a successful defence in civil courts. In other words, these cases alleging serious assault, ill-treatment, and associated violence generally associated with security force interrogations (but not solely), were paid out because the Crown's legal advisors assessed that on the balance of probabilities (the civil law threshold), the State would lose if the case went to court. In later years, not only did civil settlements include a denial of liability, but non-disclosure clauses became a frequent requirement.[322]

2. RELEVANT LAW

In this section the Panel outlines the relevant legal obligations, human rights, and criminal and administrative proceedings that ought to have prevented impunity for Article 3 breaches. The legal framework for civil proceedings is set out in the subsequent section on civil litigation.

LEGAL OBLIGATIONS

Protection against torture is a universally acknowledged principle which is recognised in international law.[323] These legal safeguards, laws and conventions have been constructed to ensure that the powers invested in state agents are exercised in line with national and international standards. In addition, the UK is bound by the European Convention on Human Rights (ECHR) which holds that "no one shall be subjected to torture or inhuman or degrading treatment or punishment."[324] This non-derogable obligation applied throughout the Northern Ireland conflict, and is the reason a violation of the obligation formed the basis of the famous inter-state case taken by Ireland against the United Kingdom in the 1970s.[325] Aside from human rights obligations, the ECHR also placed prohibitions on the ill-treatment of detainees and prisoners. These were also codified in UK law, in Northern Ireland specific statutes, as well as common law precedent.[326]

319 Council of Europe, 'Guide on Article 3 of the European Convention on Human Rights' (Council of Europe 2022) <https://www.echr.coe.int/documents/d/echr/Guide_Art_3_ENG> 26-34.

320 Micheál Smith and Pat Finucane Centre, *The Impact of the Parachute Regiment in Belfast 1970-1973* (The Pat Finucane Centre 2018) 34-35. Nicholas Mervyn Hall was the only paratrooper convicted in connection with this assault and was sentenced to 6 months in prison.

321 Just to illustrate, in 1976 £8 million was paid out in personal injuries compensation, TNA(UK): DEFE 13/1044: Note to Roy Jenkins from Merlyn Rees, 21 June76.

322 Correspondence with Patricia Coyle solicitor, dated 4 March 2024.

323 E.g. UN Convention Against Torture; UN International Covenant on Civil and Political Rights, art 7.

324 European Convention on Human Rights (ECHR) art 3.

325 *Ireland v. United Kingdom* (n 315).

326 Criminal Justice Act 1988, para 134; RUC (Discipline and Appeals) Regulation 1977; Police Act (Northern Ireland) 1970; RUC Code of Conduct.

RIGHT TO LIFE AND PROHIBITION ON TORTURE

The UK has voluntarily ratified several key international human rights instruments that contain prohibitions on torture and other forms of ill-treatment.[327] The torture prohibition in the ECHR cannot be suspended even in times of crisis or emergency. Ireland's inter-state petition against the United Kingdom hinged on the "Hooded Men" operation and wider abuses connected with the introduction of internment. In 1976, the European Commission on Human Rights found that the techniques used amounted to torture. The UK Government did not contest this finding, but Ireland appealed to the ECtHR as it wanted to secure criminal or disciplinary consequence for those who had authorised this serious breach of the ECHR. The ECtHR issued its final judgment in 1978, setting a very high threshold to torture and ruled that although the treatment was inhuman or degrading, it "did not occasion suffering of the particular intensity and cruelty implied by the word torture as so understood."[328] This was a significant human rights case that continues to frame the legal landscape on torture many years later.[329]

OBLIGATION TO INVESTIGATE

The ECtHR has developed procedural obligations to accompany the right to life and the prohibition on torture. Article 3 is accompanied by a duty to investigate any allegation of torture or ill-treatment, and that investigation should be independent, effective, prompt, and transparent – involving the victims and their families. While these procedural obligations evolved since the *Ireland v United Kingdom* case, prior to the 1978 Court ruling, Declan Costello, the Attorney General of Ireland, tried to pressure the UK Government to prosecute RUC and Army officers involved in the "Hooded Men" operation. In terms of countering impunity and putting an end to Article 3 violations, this would have been an appropriate course of action. However, given that the operation involved ministerial authorisation,[330] and that the RUC had received assurances that they would not be prosecuted for carrying out this operation,[331] a policy decision not to prosecute was taken, as evidenced in a Northern Ireland Office (NIO) minute.[332] More recent efforts to revise the 1978 judgment by some of the surviving "Hooded Men", their families, and legal representatives, will be examined in the section below looking at post-1998 accountability efforts.

POWERS TO INVESTIGATE COMPLAINTS

There were several pieces of legislation applicable during the conflict which should have ensured that torture and ill-treatment committed by members of the security forces against individuals in Northern Ireland were properly investigated and prosecuted according to the evidence available. Powers to investigate a complaint against the RUC rested with the RUC as per Section 13 of the Police Act (Northern Ireland) 1970. When a complaint was lodged, an investigating officer of inspector rank or above (Complaints and Discipline Branch) was appointed by the Chief Constable. When the investigation was completed, the Chief Constable sent the file to the Director of Public Prosecutions (DPP) who would decide on whether to prosecute the case. The reasoning behind the DPP's decision-making on allegations of criminal misconduct by members of the security forces was not made public.[333]

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327 These legal provisions explicitly protect individuals from any form of torture or cruel, inhuman, or degrading treatment or punishment. The 1948 Universal Declaration of Human Rights in Article 5 states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment"; Universal Declaration of Human Rights (adopted 10 December 1948) Res 217 A(III) (UDHR) art 5. This norm was subsequently codified in Article 7 of the 1976 International Covenant on Civil and Political Rights, while Article 10 of the same treaty emphasises the importance of humane treatment of persons deprived of their liberty; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 7 and art 10. The UN Convention Against Torture specifies that torture signifies "severe pain or suffering" which can be physical or mental, and is committed "at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity"; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted on 10 December 1984, entered into force 26 June 1987) A/RES/39/46.

328 *Ireland v United Kingdom* (n 315) 167.

329 *Case of Selmouni v France* [1999] ECHR Application no. 25803/94.

330 Admitted by Lord Balniel in the House of Commons; HC Deb 09 December 1971 vol 827 cc1671-82 and stated both in the Compton report and the 1978 European Court judgment Sir Edmund Compton, (n 313)

331 Duffy (318) 47.

332 "In relation to the five techniques, there is no point in talking about evidence or investigations. It would not be a week's work to discover who was responsible if we set out [sic] minds to it. As I understand it, the decision not to prosecute was, and is, a policy decision." TNA(UK): CJ 4/2177: Minute from NR Varney to Mr. Innes, on the Irish State Case: Investigation of Allegations of Ill-treatment and Prosecution of Offenders, 13Feb78.

333 See also Prosecution of Offences (Northern Ireland) Order 1972 (repealed) 1972, Art 6(4).

The Royal Military Police (RMP) investigated all offences against different branches of the British Army based in Northern Ireland. If the offence involved an incident purely of a military concern, it rested with the RMP. However, if an allegation of ill-treatment against a civilian was lodged, the matter passed to the RUC.[334]

DEALING WITH BREACHES AND MISCONDUCT

There were laws and codes of conduct specifying disciplinary sanctions for breaches. The RUC (Discipline and Appeals) Regulations (Northern Ireland) 1973 and the RUC (Discipline and Disciplinary Appeals) Regulations 1977 set out disciplinary proceedings for breaches of the RUC Code of Conduct. The Chief Constable could form a Disciplinary Panel with the Police Complaints Board, but this was highly unlikely in respect of the cases under scrutiny here as criminal allegations were always processed within the RUC and members were afforded protection from subsequent disciplinary inquiries by a double jeopardy rule.[335]

Evidently there was a huge volume of rules, regulations, and laws which should have addressed police and army misconduct at the time. However, despite thousands of complaints being lodged, very few prosecutions resulted and fewer still convictions were secured. The next section will drill down into relevant statistics regarding criminal complaints and their consequences, but in the meantime, the following figures on the volume and pipeline of complaints stemming from political arrests under emergency legislation give a snapshot.

In the first nine months of 1977:

- 2490 people were detained "for terror offences," of which 304 individuals made complaints (a 12.2% complaints rate)[336]
- 27 (or 9%) of these complaints had "medical evidence in support of the complaint … such as would justify inviting a court to conclude that the complainant had in fact been assaulted"[337]
- in 120 of these complaint cases (or 39%) "the possibility of assault had to remain open," and in the remainder "an assault could be ruled out"[338]

Out of the 147 potentially credible cases, only 2 prosecutions resulted (1.3% of credible cases, and 0.65% of all complaints in that period). One of these prosecutions resulted in an acquittal and the results of the second are not specified in the documents consulted.[339]

Lack of meaningful accountability in these cases was sustained on many different levels: a 'closing ranks' culture involving police investigating police; perfunctory and flawed Complaints and Discipline investigations; security force leadership, politicians, and bureaucrats supporting and sustaining the culture; and secrecy around decision making by the Director of Public Prosecutions.

The following NIO minute from 1978 on investigations into ill-treatment is revealing.

> "The major difficulty, however, is that there is a large area of doubt about the adequacy of the investigations which were carried out. The files show that as long ago as July 1972 the then Attorney General and Lord Windlesham [Minister of State for Northern Ireland] together concluded that some of the RUC's reports to the DPP had been unsatisfactory. For example, Special Branch officers had been interviewed merely by other Special Branch officers, and not by a specially appointed investigating officer; and police officers simply declined to say anything at all about the allegations."[340]

334 TNA(UK): DEFE 70/13: Memo on the Administration of Justice by RD Sharpe, Lt Col, 19June72.

335 TNA(UK): CJ 4/1648: Note by DA Hill to Mr Marshall, Police Complaints Board, 3Aug77.

336 TNA(UK): CJ 4/2177: AA Pritchard to Secretary of State, 28Mar78.

337 TNA(UK): CJ 4/2300/2: Letter to the Prime Minister, Amnesty International, 'Enquiry into Alleged Ill-Treatment by the RUC' (Amnesty International 1977).

338 Ibid.

339 Ibid.

340 TNA(UK): CJ 4/2177: NIO Minute from NR Varney to Mr. Innes, on the Irish State Case: Investigation of Allegations of Ill-treatment and Prosecution of Offenders, 13Feb78.

3. CRIMINAL LITIGATION

Declassified Northern Ireland files provide evidence on the volume of prosecutions, at least from 1971 to 1978. Depending on the way the prosecutorial pipeline is presented in the surviving documents, it is possible to calculate the percentage of prosecutions and convictions as a percentage of complaints.

This table covering 1971 to 1976 has been collated from several different sources. It covers prosecutions of police officers for assault following complaints from the public.[341]

Year	No of Complaints	No of Prosecutions	No of Convictions
1971	754	4	1 conviction + 1 pending
1972	1415	8	2 convictions + 1 pending
1973	373	3	0 convictions + 2 cases pending trial
1974	380	6	4 convictions
1975	730	9	1 + 2 convictions going to appeal
1976	875	7	3 + 1 case pending trial
Total	4527	37	11 convictions + 2 appeals + 4 pending

Leaving aside cases pending, which were unknown at the time these statistics were compiled, the average prosecution rate for these complaints of assault by the RUC was approximately 0.8%, and the conviction rate was 0.3% which is almost 3 convictions per thousand complaints.

Unfortunately, the figures relating to the prosecution of British Army personnel and RUC members are not disaggregated for these years. However, in a speech made to the European Court of Human Rights in connection with the inter-state case, Attorney General Samuel Silkin noted that "between April 1972 and the end of January 1977, 218 members of the security forces were prosecuted for assault at the direction of the Director of Public Prosecutions."[342] According to an NIO official, when this number is compared to the prosecutions directed against RUC only, "this would seem to indicate that soldiers make up by far the greater part of the 218 prosecutions."[343]

The Bennett report (see Part Seven: Accountability Efforts) noted that between 1976 and 1978, 19 police officers were prosecuted in relation to 8 incidents. These are the reported outcomes

- 16 were found not guilty
- 1 nolle prosequi[344] was entered
- 2 were convicted, but acquitted on appeal
- In 5 acquittal cases, damages were paid out in civil claims.[345]

FAILURE OF CRIMINAL PROSECUTIONS

Civil actions for failed criminal cases had a much higher success rate for the same complaints, most likely due to civil litigation having a lower 'balance of probabilities' standard of proof. A complaint made by Bernard

341 TNA(UK): CJ 4/1648: Prosecutions & Convictions for Assault (page 72), Complaints Against The Security Forces – Brutality, D A HILL, 6Oct77; TNA(UK): CJ 4/2302: Question by Frank Maguire (Fermanagh & South Tyrone MP) to the Secretary of State for Northern Ireland, 8Dec77.

342 TNA(UK): CJ 4/1648 (n 341).

343 Ibid.

344 (in the UK) The dismissal or termination of legal proceedings by the Attorney General.

345 Judge H. G. Bennett, Q.C, 'Report of the Committee of Inquiry into Police Interrogation Procedures in Northern Ireland' (Her Majesty's Stationery Office 1979) 52.

O'Connor regarding torture and ill-treatment he experienced over several days in Castlereagh typifies a pattern where despite lodging a complaint against the RUC, the criminal avenue was terminated with the RUC stating that there was not sufficient evidence to support his allegations. O'Connor sued the RUC in civil court. The case went to trial in June 1980 and O'Connor was awarded £5000 in exemplary damages. There is a tranche of cases where victims tried to pursue criminal justice, but had more success in civil litigation (see Civil Litigation below).

A wall of silence erected by the RUC around criminal investigations also appears to have acted as a key blockage to successful criminal prosecutions. At different stages, both the Attorney General and the DPP noted the problem of RUC intransigence. A 1972 minute from an NIO official states that "The Attorney General is gravely concerned about the continuing failure to obtain satisfactory reports on allegations of ill-treatment from the RUC," and that RUC "silence" had serious implications for the interstate case at Strasbourg, as well as the NIO's ability to defend or to mitigate the damage in such cases.[346]

In 1978, when contending with 27 cases of alleged assault supported by medical evidence that would have almost certainly led a court to conclude that the complainants had indeed been assaulted, the DPP expressed frustration at the RUC Chief Constable's conclusion that bruising in these cases had been self-inflicted. The DPP was detecting patterns in the allegations, such as "that the names of certain officers appeared to come up fairly frequently when allegations of assault were made by prisoners in circumstances where he did not consider that there was any possibility of collusion between the complainants."[347]

Finding virtually no satisfaction within the criminal justice system, victims, their representatives, and campaigners attempted to highlight and end the criminal abuse of people detained by the security forces through publicity, politics, and civil society initiatives (see Accountability Efforts below). Despite certain safeguards being introduced in the early 1980s (e.g. the Bennett reforms), complaints continued into the early 1990s.[348] See table of complaints from 3 Police Holding Centres in 1992.[349]

Such was the concern within the community in 1971 at the arrest and subsequent treatment of children in custody that forty three school principals of primary, secondary and grammar schools throughout Belfast wrote an open letter to '…deplore the actions of the security forces in taking into custody juveniles contrary to the provisions of the Children and Young Persons Act (1968),' The letter, which was widely distributed to political, church and community leaders in Ireland and Britain, went on to express '…our abhorrence of the alleged treatment meted out to these juveniles during questioning.'[350]

EXAMPLES OF TORTURE AND ILL-TREATMENT

The Panel presents some illustrative cases where complainants allegedly abused in custody attempted to pursue their perpetrators through the criminal justice system.[351]

The first is that of Matthew Bradley, a 20-year-old tiler from Ballymurphy who was arrested on 2 June 1976 in connection with the killing of an RUC Special Branch officer.[352]Bradley was taken to Springfield Road RUC station where he was attacked by seven RUC officers who "kicked him, punched him and pulled his hair."[353] His interrogators alleged that he, in fact, had assaulted them. A police surgeon, Dr Robert Irwin, examined him and found a collar of bruising around his neck that corroborated his story. Nevertheless, he was charged

346 TNA(UK): DEFE 70/13: Northern Ireland – Legal Problems and Litigation, note by JM Parkin, Head of C2(AD), 13Jul72.

347 TNA(UK): CJ 4/2885: AA Pritchard details discussions with the DPP NI, 23Feb78.

348 Hannah Quirk, 'Don't Mention the War: The Court of Appeal, the Criminal Cases Review Commission and Dealing with the Past in Northern Ireland' (2013) 76 The Modern Law Review 949, 955.

349 https://www.jus.uio.no/smr/english/about/id/law/nipanel.html

350 From the Association for Legal Justice Archive, on file.

351 In those cases where the victims have been named in the Irish Government case, where they have been named in books or TV documentaries or where the individuals have given permission to the Panel their names are included. Names of victims in declassified documents have not been included.

352 Taylor, (n 317) 66.

353 Ibid.

and convicted of assaulting his interrogators.[354] The DPP directed no prosecutions against his attackers and the Senior Deputy Chief Constable found no cause for disciplinary action.[355] His conviction for assaulting his interrogators was overturned by the Court of Appeal on 12 April 1978; his appeal succeeding "partly because of some inconsistencies in the statements of the police officers involved, and partly because a different interpretation was put upon the medical evidence of injuries to Bradley and the policemen."[356] By that time, he had spent 15 months in prison, six of which were on remand. It is unclear from the records available whether he pursued a civil action against his attackers.

Another typical case is that of PMcK and JL, who were arrested on 31 January 1975 and taken to Cookstown RUC Station, where they sustained severe beatings.[357] Three RUC detectives (Detective Constables James Beattie Wilson, Hugh Patrick O'Donnell (Cookstown) and Hugh Brendan McCormac (Omagh)) and one soldier (William Duncan Haining) were later charged with causing grievous bodily harm on McK.[358] Detective Wilson was also charged with inflicting grievous bodily harm on JL.[359] A newspaper report covering the trial notes that, "at one stage, one of the men made him [McK] take his trousers off and they beat him with a brush."[360] McK was hospitalised as a result of the beatings he received.[361] Though all four defendants were acquitted in relation to the attack, the trial judge, Judge Gibson, opined, "there was no doubt McK received serious injuries as a result of being beaten up while in Cookstown Police Station. He was interrogated for periods totalling about eight hours and sustained a severe beating over a long period. This is a state of affairs which is utterly reprehensible and cannot be tolerated."[362] In relation to JL, who was also arrested and beaten, Detective Constable Wilson was convicted of causing him grievous bodily harm, but his conviction was overturned on appeal.[363] It is unclear whether either man had more success in pursuing civil actions.

The case involving Gerard Donnelly, Gerard Bradley, and Edward Duffy was included in the Irish Government's memorial for the interstate case against the UK. The three were arrested on 20 April 1972 and taken to Broadway Military Post where they were violently assaulted over a 20-hour period. Duffy was only 17 years old at the time. In a subsequent statement, Donnelly described various forms of physical abuse, including having a lighted cigarette brought "close to my eyes and said that they would burn them out if I didn't stop yelling", being spat upon, having his hair pulled out, having his limbs twisted, being choked, and multiple instances of beating.[364] Following the prolonged attacks on Donnelly, Bradley, and Duffy, their attackers panicked and tried to transfer the three men to Armagh Prison; however, the Medical Officer there refused to accept them into custody "for fear that at least one of them might die in his custody."[365] The three men were hastily transferred to the military wing of Musgrave Hospital. A subsequent NIO minute in relation to their civil action admitted "there is no doubt about our liability in the civil case. The Royal Army Medical Corps Colonel who examined them said that all three showed evidence of violent assault. They had a systematic pattern of severe bruising over the sternum, lower rib cage, abdomen and crotch. There was also bruising over the arms, legs and ankles. Duffy had a broken elbow."[366] Duffy was still not fit to appear in court five weeks after the assault.[367] While the DPP did direct the prosecution of Private WRR Craig (of the King's Own Scottish Borderers) and two RUC officers with occasioning actual bodily

354 TNA(UK): FCO 87/674 jpg20-21 DC Gowdy to AF Goulty in the ROI dept FCO, 16Mar77.

355 TNA(UK): CJ 4/2177, letter from PWJ Buxton to PS/PUS, 24Apr78.

356 Ibid.

357 TNA(UK): DEFE 24/981, PDF5.

358 TNA(UK): CJ 4/970 Irish Press report, 14May75, PDF 225.

359 Ibid.

360 TNA(UK): CJ 4/970: Irish Times, 20 May 75.

361 TNA(UK): CJ 4/967: Confidential NIO memorandum, 30July75.

362 Ibid.

363 TNA(UK): FCO 87/674: (n 354). See also TNA(UK): CJ 4/967 circa PDF28, 30May75.

364 Fr Denis Faul and Fr Raymond Murray, *The RUC: The Black and Blue Book* (1976) 34 - 36.

365 John McGuffin, *Internment* (1973) 125.

366 TNA(UK): CJ 4/970: Northern Ireland Civil Litigation, MJD Fuller, 17June75.

367 McGuffin, Internment (n 365).

harm on Duffy, they were not convicted.[368] Regarding the later civil action, legal counsel concluded that the State did not have a defensible case due to the men "having suffered extensive injuries."[369] Duffy settled for £6000, while Donnelly and Bradley each received £5000, which were high amounts for damages in the mid-1970s.[370]

On 24 May 1973, FM was arrested at Crossmaglen with his cousin OM and both were taken to the Crossmaglen RUC police station where they were allegedly assaulted by 20 to 30 soldiers. After receiving medical treatment for injuries resulting from the assault, both were taken to Bessbook RUC Station. During the transport to Bessbook, the men alleged that lit cigarettes were held close to their faces. These allegations resulted in a joint Royal Ulster Constabulary/Royal Military Police criminal investigation which concluded that FM did "sustain serious assault" from "off duty soldiers" during his detention at Crossmaglen.[371] As a result, the DPP directed the prosecution of two members of the British Army Parachute Regiment, Privates Anderson and Gooderidge, on charges of assault. Both were found guilty, and fined £50 and £25 respectively, as well as 12 months' imprisonment suspended for 2 years (the maximum sentence for assault was 5 years).[372] Despite the allegation that 20 to 30 soldiers had participated in the assault, only these two members of the Parachute Regiment were prosecuted. Subsequently, FM brought a civil suit in which the Crown Solicitor advised the MOD/NIO to settle the claim for up to £3500 due to the "very serious nature of the assault", and the corroborative medical evidence available.[373]

PMcC was arrested on 3 January 1974 under the Special Powers Act for unspecified reasons and taken to Springfield Road RUC Station.[374] McC had served in the Parachute Regiment of the British Army until 1966 when he was medically discharged because of an injury to his left leg. In a statement recorded the day after his release from RUC custody, McC notes that when he told his interrogator about the reasons for his medical discharge, "he started kicking my left leg."[375] McC also reported kicks to his testicles and squeezing of his testicles.[376] He was made to sign a form stating he had not been ill-treated in any way. He saw his own doctor following his release. Three soldiers – Lieutenant B Erskine-Crum and Warrant Officer II Simmonds of 2 Scots Guards, and Sergeant FC Walker of 12 Intelligence and Support Company – were prosecuted on a charge of assault occasioning actual bodily harm. The Army's account "was that McC became violent during his interrogation and the injuries recorded by the Medical Officer i.e. several bruises and weals to his head, body and legs, resulted from the lawful restraint used upon him."[377] Of note, Lieutenant Erskine-Crum was the son of the former General Officer Commanding Northern Ireland, Vernon Erskine-Crum (1969-1971). The three accused were found not guilty by the Belfast City Commission.[378] Subsequently, McC brought a civil action and Crown Counsel advised settling this case (for £1000-£1500) because "[t]he Army's case is not a strong one and settlement out of court would at least avoid the embarrassment of having to defend ourselves a second time."[379]

BK and CL were arrested on 5 October 1974 and taken to Bessbrook RUC Station. Both complained of rough treatment and assault. CL was examined by a medic who found he had bruises on his shins and agreed with his claims that he had been maltreated.[380] The men lodged a formal complaint with the RUC, but none of the

368 TNA(UK): DEFE 70/13, see also TNA(UK): DEFE 24/981.

369 TNA(UK): DEFE 24/981: PDF40, MJD Fuller, 17June75.

370 TNA(UK): DEFE 42/981, MJD Fuller, 15July75.

371 TNA(UK): DEFE 24/981: Northern Ireland Civil Litigation – *FM v MOD*, 25May76.

372 Offences against the Person Act 1861 §.47.

373 TNA(UK): DEFE 24-981 (n 371).

374 TNA(UK) FCO 87/390: Association for Legal Justice, statement by PMcC, 4Jan74.

375 PMcC, ALJ statement, 4Jan74.

376 TNA(UK): FCO 87/390: PDF93 PMcC, ALJ statement, 4Jan74.

377 TNA(UK): CJ 4/967, letter from Ken Carter C2(AD) to DUS (Army) July75.

378 Ibid.

379 TNA(UK): DEFE 24/981: C2(AD), 10July75. CJ 4/967: Note from PS to DUS(Army), Northern Ireland Litigation – PMcC v MOD & Another, 10July75.

380 TNA(UK): DEFE 24/981, Claims of BK & CL, KJH Carter, C2(AD), 9Oct5.

soldiers were prosecuted. They submitted civil claims and the RUC took the legal advice to settle out of court.[381]

JT and JC were arrested sometime prior to May 1976 and "[t]here was medical evidence to support the allegation [of assault] and the police investigation found two troopers of 1 Royal Tank Regiment who witnessed assault on the two men by two Ulster Defence Regiment (UDR) men."[382] The DPP ordered prosecution of the two UDR men, as well as [s] 2nd Lieutenant Gibson and Private W Mosgrove, on a charge of "assault occasioning actual bodily harm."[383] Gibson and Mosgrove were acquitted at trial. JT and JC then submitted civil claims, and the legal advice was to settle out of court.[384]

Pearse Kerr was 17 when he was arrested on 18 August 1977 and taken to Castlereagh RUC station where he was abused, beaten, and ill-treated. On being sent to Ulster Hospital Kerr was found to have a fractured wrist.[385] Although Kerr had made inculpatory statements while under interrogation, charges against him were withdrawn due to the medical evidence that he had been abused.[386] None of the detectives who had interrogated Kerr were ever prosecuted, though at one point the DPP "regarded the Kerr complaint as being something of a test case against which he might check his suspicions that RUC interrogators are sometimes rather over enthusiastic." The DPP asked for an investigation to be conducted on the extent of other complaints levelled against "this particular interrogation team."[387] Kerr successfully pursued a civil claim for damages against the Chief Constable.[388]

Patrick Fullerton was arrested in November 1977 and taken to Strand Road RUC Station in Derry where he was assaulted, including being beaten with the shaft of a brush. The DPP did order prosecution under section 42 of the Offences Against the Person Act 1861 of some of the five detectives who interrogated Fullerton.[389] While the judge was in no doubt that Fullerton was assaulted he could not attribute specific blame to any individual. Thus all five defendants were acquitted.[390] Taylor argues that the case "illustrates the near impossibility of convicting police officers of assault. The DPP directed a prosecution. The case was carefully prepared. By all accounts Fullerton was impressive in the witness box. There was strong medical evidence. There was rare forensic evidence as a result of the fibres found on the broom handle. Nevertheless, the guilty went free with the innocent."[391]

To wrap up this section on criminal justice processes, the Panel also presents the only case where there is evidence that a member of the security forces was given a custodial sentence: this was for violence and ill-treatment meted out during a stop and search operation.

On 4 December 1971, while walking down the street, Jim McDonald was stopped by paratroopers, ordered to adopt a stress position against a wall, and was threatened. Over 2.5 hours in the back of a British Army Saracen, McDonald was "beaten, burned with cigarettes, sexually assaulted, urinated upon and subjected to sectarian abuse, while a loaded gun was also put into his mouth."[392] He described how "they showed me dirty photos and asked me if I would like to have a go. They were putting their hands in my trousers."[393] Uniquely, a paratrooper, Nicholas Mervyn Hall, was convicted for his part in the assault and sentenced to 6 months in

381 Ibid.

382 TNA(UK): DEFE 24/981: KJH Carter, 21May76. (The specific date is not cited in the source document.)

383 Ibid.

384 Ibid.

385 Taylor, (n 317) 203.

386 Ibid, 205.

387 TNA(UK): CJ 4/2300/2: AA Pritchard, Deputy Under Secretary of State, NIO, Stormont Castle, to the PUS NIO Belfast, 7Feb78.

388 Taylor, (n 317) 205.

389 Ibid, 226.

390 Ibid.

391 Ibid, 227.

392 Micheál Smith and Pat Finucane Centre, *The Impact of the Parachute Regiment in Belfast 1970-1973* (The Pat Finucane Centre 2018, 49.

393 Ibid, 50.

prison.[394] McDonald eventually received an apology from the Minister of State for the Armed Forces, Penny Mordaunt in 2015, following activism by the Pat Finucane Centre on his behalf.[395]

ADMISSIBILITY OF STATEMENTS

The 1973 Emergency Powers Act (EPA) introduced juryless trials, as well as a specific rule regarding the admissibility of statements.[396] Under common law, confession evidence was only admissible if the statement was given voluntarily.[397] Prior to the 1973 EPA, involuntary statements were generally not admissible in court. However, section 6 of the Act introduced a significant policy change and a raising of the threshold of what statements might be acceptable in court.[398] Section 6 specified that a statement shall be ruled inadmissible if,

> "… prima facie evidence is adduced that the accused person was subjected to torture or to inhuman or degrading treatment in order to induce him to make the statement… Once such a prima facie case is made, the statement will be disregarded unless the prosecution is able to rebut such prima facie evidence to the satisfaction of the court. The standard of proof required to satisfy the court of the rebuttal is that of criminal cause – i.e., beyond reasonable doubt."[399]

While the burden of proof remained on the prosecution to prove that the statement had not been obtained by using torture or inhuman or degrading treatment, this vague formulation did not specify the use of the threat of physical violence and gave a wide latitude for interpretation. There are a number of cases where prosecutions against those charged with terrorist offences failed due to not meeting Section 6 standards (see Appendix B).[400]

4. CIVIL LITIGATION

While civil litigation cannot secure criminal accountability, the following analysis is presented to contrast the impunity in criminal law outlined above. There were two possible ways of claiming compensation in respect of actions by the police or army in Northern Ireland: one was by making a claim under the Criminal Injuries to Persons (Compensation) Act (NI) 1968, the other was to initiate a civil action for damages.[401]

POLICY OF SETTLING OUT OF COURT

The RUC's default position was not to defend against allegations of ill-treatment because they did not want to submit witnesses to court.[402] A 1975 MOD minute sets out the policy on whether to contest a case or settle the matter out of court, which rested on whether "the legal liability to pay compensation would be upheld by the Northern Ireland courts."[403] If crown counsel advised that legal liability would be established and they would not be able to mount a successful defence, the policy was to "instruct our legal representatives to negotiate with the plaintiff's legal advisers with a view to achieving settlement out of court on the best possible terms. This would mean negotiating the best possible financial settlement (for the State) with the denial or minimum admission of legal liability."[404]

394 Connla Young, 'Para Torture Victim Demands British Apology' *The Irish News* (22 July 2015). <https://www.irishnews.com/news/2015/07/22/news/para-torture-victim-demands-british-apology-199577/> accessed 13 February 2024.

395 Smith and PFC (n 392) 50.

396 TNA(UK): FCO 87/390: Note to Frank Field, Director, United Nations Association, 14May74.

397 Quirk, (n 348).

398 Ibid.

399 Amnesty International, 'Report of an Amnesty International Mission to Northern Ireland (28 Nov - 6 Dec 1977)' (Amnesty International 1978) 7.

400 https://www.jus.uio.no/smr/english/about/id/law/nipanel.html

401 TNA(UK): CJ4/970: P Coulson, 5May75.

402 TNA(UK): DEFE 70/13: circa PDF108.

403 TNA(UK): DEFE 13/914: Letter from MHC Warner, Head of C2(AD) to APS/Secretary of State, 10Jan75.

404 Ibid.

The decision to settle out of court was primarily motivated by acknowledgment that the court would, on the balance of probabilities, find in favour of the plaintiff and that the State would not be able to mount a successful defence. Such cases were accompanied by corroborative medical evidence of brutality and ill-treatment, yet even where cases were settled, part of the legal strategy was to maintain that this did not indicate acceptance that "all or any specific allegations are true," which was considered particularly important "in cases where ill-treatment or brutality is alleged against members of the Security forces."[405]

Two further, though important, considerations in not contesting were: to avoid adverse publicity that would be associated with a court case; and that the quantum for damages would probably far exceed what had already been established in civil court.[406] In later years, it also became common to attach non-disclosure clauses (i.e. 'gagging orders') to civil settlements. These three factors together act to deny accountability and full reparation.

SETTLEMENTS

The Panel was unable to find a comprehensive overview of the volume of civil claims settled out of court, but suffice it to say that millions of Treasury pounds were spent settling civil actions arising from abuses by members of the security forces. It is possible, however, to present snapshots of certain time periods during the conflict, with supplementary tables incorporated into the Appendices.[407]

One such snapshot is that between the start of the conflict and June 1976, £21,873,934 was paid out by the NIO under the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968, which included £189,750 to the "Hooded Men" mentioned earlier.[408] This payout pattern continued post 1976.

According to a letter from the Secretary of State to the chair of the Standing Advisory Council for Human Rights, between 1988 and 1992, the RUC received "3231 claims for compensation for assault, false arrest, false imprisonment, malicious prosecution, death or injury by shooting or plastic baton round and negligence or trespass to the person or property."[409] Unfortunately, this document on compensation arising from Police Holding Centres does not break the total down into individual categories (e.g. the number of claims for assault).

Another document notes that one firm of solicitors had received "£134,229 compensation in settlements for 58 clients who had been detained in police custody" between 1 June 1989 and 24 July 1992. Appendix C presents statistics regarding civil cases in 1974, Appendix D covers the financial years 89/90, 90/91, and 91/92, while Appendix E lists a couple of dozen cases of servicemen charged with civil offences while on duty in Northern Ireland, with brief descriptions of the charges and outcomes.[410]

OUTCOMES OF COMPENSATION CASES

The following tables detail the outcomes of complaints investigations in cases where compensation was paid subsequent to alleged assaults in holding centres over a period from 1989 to 1992.[411] The statistics relate to 27 successful compensation cases, 23 of which were also subject to criminal investigation.

405 Ibid.

406 See also Luke Moffett and Kevin Hearty, 'More than a Number: Reparations for Those Bereaved during the Troubles' (Queen's University Belfast 2023).

407 https://www.jus.uio.no/smr/english/about/id/law/nipanel.html

408 TNA(UK): DEFE 13/104: APS to Secretary of State from DB Omand, Compensation in Northern Ireland 23June76.

409 TNA(UK): CJ 4/10182: Letter from Peter Brooke, Secretary of State in NIO to Oliver Napier, 24Feb92.

410 https://www.jus.uio.no/smr/english/about/id/law/nipanel.html

411 TNA(UK): CJ4/10182: Outcomes of Complaints Investigations in Cases where Compensation was paid subsequent to alleged Assaults in Holding Centres, 1992.

INVESTIGATION OF CASES

Of the 27 cases where compensation was paid in respect of an alleged assault in a Holding Centre, 23 (85%) were the subject of complaint investigations by RUC Complaints and Discipline Branch.

Investigation	Number	%age
Case investigated	23	85%
Case not investigated	4	15%
Total	27	100%

FORWARDING OF INVESTIGATED CASES TO DPP

Of the 23 cases which were investigated by RUC Complaints and Discipline Branch, 21 resulted in papers being forwarded to the DPP.

Cases	Number	%age
Cases to DPP	21	91%
Cases not to DPP	2	9%
Total	23	100%

DPP RESPONSES TO FORWARDED CASES

Of the 21 cases which were the subject of DPP study, only 1 resulted in a criminal prosecution. Two officers were acquitted of all charges.

DPP Decisions	Number	%age
Prosecution	1	5%
No prosecution	19	90%
Awaiting decision	1	5%
Total	21	100%

OUTCOMES OF ALL INVESTIGATED CASES

In the 23 cases which were the subject of investigations by RUC Complaints and Discipline Branch, the most frequent outcome was no further action being taken, or of no disciplinary action (see below).

Outcomes	Number	%age
Informal action	1	4%
Case dispensed, no further action ("Reg 17")	9	39%
No disciplinary action*	9	39%
Case withdrawn	1	4%
Awaiting outcome	3	13%
Total	23	100%

*This category includes the case referred to at table 3. above which resulted in a criminal prosecution, in which the cases against two officers were dismissed.

As shown in Tables 2 and 3, out of 23 cases investigated by the RUC Complaints and Discipline Branch, 21 case files were forwarded to the DPP. In only one case did the DPP direct a prosecution (approximately a 4% prosecution rate), and in that case the two officers were acquitted of all charges.[412] This signifies a 0% conviction rate for the 23 assaults that won compensation in successful civil cases.

Hundreds, if not thousands, of civil cases were settled out of court during the conflict. Appendix F compiles some illustrative cases, taken from declassified NIO and MOD files, that include the legal reasoning behind the settlements.[413] Approximately 22 cases are described, as well as references to five "Hooded Men" civil actions.[414] These settlements were always negotiated with a denial of liability, even though state legal advisors behind the scenes instructed the NIO/MOD to pay out because the State would not have been able to mount a successful defence in court.

5. SPECIFIC TECHNIQUES AMOUNTING TO TORTURE, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

The Panel felt that one approach to tackling historic torture and abuses is to lift the lid on particularly cruel techniques used on detainees during the conflict, including methods or processes that are not well known or understood. This section focuses on the following:

- Waterboarding
- Electric shock treatment
- Sexual assault/degradation
- Mock execution
- Administration of drugs/threat of the administration of drugs
- Medical abuse
- Hospitalisations and death.

The Panel selected these categories because a modern audience has different frames and lenses through which to view torture and ill-treatment due to what has emerged in recent years in cases such as Abu Ghraib, Camp Breadbasket, Guantanamo Bay, and the Baha Mousa case.[415] In addition, the Panel met individuals who reported being subjected to these techniques.

WATERBOARDING

The Pat Finucane Centre is aware of about a dozen documented cases of water-boarding that occurred during the Northern Ireland conflict. One of these was Féilim Ó hAdhmaill, who was waterboarded in 1978. He says "… I was lying over a table. The towel was over my head and face region. They held it tight at the back. Someone had my arm, another had my other arm and there were two more with each of my legs. There were at least 4 of them holding me down. There were about 7 of them in the room. A guy then poured water over my mouth and nose region. He poured enough to cover the face region. I thought they were going to kill me. It was like panicking from drowning."[416]

This example of waterboarding seems to be an outlier, insofar as it was conducted in 1978 by the RUC at Castlereagh Police Holding Centre. Most other instances occurred earlier in the conflict, in 1971 or 1972, and involved the British Army, who were technically allowed to arrest suspects, but were only supposed to hold people in custody for up to four hours before either release or transfer to RUC custody.
The second highlighted case is that of Liam Holden, a man at the centre of recent legal proceedings, culminating in a High Court judge determining in 2023 that he had been subjected to waterboarding in 1972. Unfortunately,

412 It appears that these officers were dismissed by the RUC, despite the acquittal; Ibid.

413 https://www.jus.uio.no/smr/english/about/id/law/nipanel.html

414 https://www.jus.uio.no/smr/english/about/id/law/nipanel.html

415 Ian Cobain, *A Secret History of Torture* (Portobello 2013).

416 Féilim Ó hAdhmaill reference to 1978 statement, on record with the Pat Finucane Centre.

Holden did not live to hear that determination: he died just weeks before the judgment was published. Holden had been arrested on 3 October 1972 by the Parachute Regiment, and taken to Black Mountain base for approximately 5 hours prior to his transfer to Castlereagh. Holden was waterboarded and abused by members of the Parachute Regiment in the early hours of 4 October, when he purportedly provided a "confession" before being taken to Castlereagh. On the basis of this confession alone, Holden was convicted on 19 April 1973 for the murder of Private Frank Bell and was sentenced to death.[417] He spent 17 years and 2 months in prison. Later, due to an application to the Criminal Cases Review Commission and a referral to the Court of Appeal, Holden's conviction was deemed unsafe. He successfully sued for compensation under the Criminal Justice Act 1988 and was awarded compensation at the statutory limit of £1,000,000.[418]

Holden also issued a writ for damages regarding "the unlawful arrest, false imprisonment, malicious prosecution, assault, battery and trespass to the person," and was likewise successful in this claim, with the judgment delivered in 2023. Justice Rooney found, on the balance of probabilities, "that the plaintiff was subjected to waterboarding; he was hooded; he was driven in a car flanked by soldiers to a location where he thought he would be assassinated; a gun was put to his head, and he was threatened that he would be shot dead. It is the view of this court that the said ill-treatment caused the plaintiff to make admissions and a confession statement."[419]

The judge accepted Holden's descriptions of waterboarding: that during this unlawful questioning at Black Mountain Army base, "he was lifted off a chair, placed on the ground and that his hands and legs were held down. A towel was placed on his face and then water was poured slowly over his face. He could not breathe. He tried to breathe through his mouth, but gagged as he sucked water in. He tried to breathe through his nose but felt the water going up into his nose. He described a drowning sensation and felt himself 'sinking away.'"[420] Holden was posthumously awarded £350,000, of which £50,000 specifically pertained to waterboarding, hooding, and death threats.[421]

ELECTRIC SHOCK TREATMENT

By November 1971 "authenticated reports of electric shock treatment were coming out of the interrogation centres and were common knowledge."[422] The Sunday Times reported that William Joseph Johnson and Patrick Fitzsimmons had been subjected to electric shock treatment at Girdwood Barracks in January 1972 and McGuffin estimates that over 20 men had been subjected to this torture method in the context of interrogation.[423] Dr JP Lane wrote to the press in February 1972, stating that the latest variant of brutality was "the application of electricity through electrodes placed on a limb to extract the 'truth'."[424]

The Panel discovered Case B, where there is both a historic paper trail, as well as a contemporary statement to rely upon. B says he was also subjected to waterboarding, but this section focuses just on the electric shock element of his allegations. He was arrested by the British Army on 1 February 1972 and was detained at an army barracks on Black's Road for approximately 5 hours. While there he was beaten, waterboarded, and subjected to electric shock treatment. Fifty years after the incident, B describes how he was made to hold paddles attached to a machine which generated a charge when wound up. The current suddenly discharged, which was like "white light flashes above my brain," and "it's almost as if it broke my brain."[425] This treatment had long term effects: "I don't have a good memory even today. The white light completely took over the whole thing.

417 Holden was the last person sentenced to death in the UK.

418 *Case of Holden v. Ministry of Defence and the Police Service of Northern Ireland* [2023]

419 Ibid, para 160.

420 Ibid, 179.

421 Ibid, para 235, (a) Waterboarding, hooding and threat to kill £50,000. (b) Psychological injury (compensation already received). (c) Unlawful Detention (compensation already received). (d) Malicious Prosecution £10,000. (e) Misfeasance in Public Office £10,000. (f) Aggravated damages £30,000. (g) Special Loss £250,000.

422 *Case of Holden v. Ministry of Defence and the Police Service of Northern Ireland* [2023]

423 McGuffin (n 365) 124.

424 Document on file in Pat Finucane Centre archives.

425 International Expert Panel: State Impunity & the Northern Ireland Conflict, meeting October 2022.

There was an internal explosion in my head."[426]

By the time B was transferred to Crumlin Road Prison, his medical report details a range of injuries. "There were scattered contusions about the chest and abdomen, shoulder, right elbow, the dorsum of the right hand, and the left elbow and left forearm. The impression one is given by this report is that he had been assaulted. Some of the photographs for signature indicate that he was in a highly nervous state. Indeed, even on his arrival at the Prison at Belfast, he was fatigued and apprehensive and had a black eye and other bruising."[427]

B pursued a civil case at the time. A legal advisor for the NIO, WA Campbell, noted that the soldiers denied assaulting him, but "that this is difficult to accept given the medical report."[428] Furthermore, Campbell was of the opinion that "[n]o doubt they [the soldiers] will deny that any electrical shocks were administered but the Judge may find it difficult to accept the soldiers' denials on this point when he will be unable to accept their denials on the question of assault in view of the medical evidence… A Judge will be likely to take the view that it is a severe assault that leaves bruising for a considerable period."[429]

What is interesting is not just that the NIO decided to settle this case with a denial of liability (as was typical in such cases), but that there was a particular sensitivity to the allegations of B having "been subjected to electric shock treatment and having had his head immersed in water for prolonged periods of time."[430] An NIO solicitor sought to have these particular allegations withdrawn from B's statement of claims, even though the settlement on individual allegations of assault was with a denial of liability.

Many other civil cases followed this pattern; that is, of pressure from the legal-political apparatus to withdraw specific allegations that civil servants and legal advisors deemed too unpalatable and that might attract unwanted publicity. This was of key importance to them in the propaganda war; greater certainly than stamping out the torture techniques at source.

SEXUAL ASSAULT/ DEGRADATION

Sexual assault has long been considered a form of torture, since it destroys the body and autonomy of the person who suffers it. One description is as follows.[431] "Like torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person. Like torture, rape is a violation of personal dignity, and rape in fact constitutes torture when inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

Sexual violence is particularly susceptible to impunity. It is often committed in private, designed to create and exploit a sense of shame and guilt in the victims, and leave little evidence. It is important to investigate instances of sexual violence to the full extent of the law – prosecutorial processes need to be tailored to the specificity of these crimes. There is a growing awareness of the long-term damage and trauma of sexual violence and a

426 Ibid.

427 TNA(UK): CJ 4/967: JR v Ministry of Defence and Others, Advice on Evidence by WA Campbell, 12May75.

428 Ibid.

429 Ibid

430 TNA(UK): CJ 4/967: letter from Ken Carter to Douglas Milne, 19June75.

431 *The International Tribunal for Rwanda, in the Tax Case v. Akayesu* (para. 597). See also The European Court of Human Rights in the *Case of Aydin v. Turkey* [1997] ECHR Application no. 23178/94 which understood that "Rape of a detainee by an official of the State must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim. Furthermore, rape leaves deep psychological scars on the victim which do not respond to the passage of time as quickly as other forms of physical and mental violence." (par. 83).

move towards confronting these abuses. [432]

Degrading treatment under Article 3 of the ECHR is linked to assaults on the person's dignity. In the case of *Iwańczuk v. Poland* (2001), the Court determined that strip searching that was carried out in an inappropriate manner (e.g. where a prison guard examined the prisoner's sexual organs without gloves while making humiliating remarks) constituted degrading treatment.[433] Sexual assaults, again along a continuum, and specific rape threats against women, were known about. For example, punitive and especially humiliating strip searches of female internees and prisoners in Armagh Prison, and UK jails in the 1970s and 1980s, caused controversy at the time and were reported in newspapers, Hansard records, victims' testimonies, and secondary sources. There is growing literature from around the world on these forms of gender-based attacks involving the physical and mental debasement of women. Specific experiences are discussed further in the section on Women and Children.

The issue of sexual assaults on male detainees in these contexts is less well known or understood. Arguably, this mode of attacking male detainees/prisoners is complex and difficult to explore because it was occurring in a patriarchal society organised on heteronormative lines – where the conflict heightened masculinities and involved strictly-defined roles and expectations of masculine behaviour. Certain religious or cultural taboos around sexuality, and in particular, homosexuality, could be exploited with liberty, in the knowledge that these violations would, for the most part, go unreported. Nonetheless, some allegations of this nature surfaced during the conflict and others have emerged more recently when arguably a culture shift has enabled what occurred to be contextualised as sexual assault. Such assaults consisted of – against a backdrop of verbal abuse with sexually explicit and humiliating language – handling men's sexual organs, squeezing their testicles, prolonged forced nudity (with no security reason), members of the security forces urinating on male prisoners, strip searches with digital anal penetration (again without a legitimate security reason), and anal penetration with objects.

EXAMPLES OF SEXUAL ASSAULTS

These forms of sexual ill-treatment, most often associated with interrogation, have been well documented, not least by Catholic priests Fathers Denis Faul and Raymond Murray who, from 1971, wrote extensively about various forms of abuses by the British State.[434] Amongst others, they highlighted the types of sexual abuse outlined above, namely "hand squeezing of the testicles," the "insertion of instruments in the anal passage," and "urinating on prisoners."[435] The Association for Legal Justice and Amnesty International also dealt with allegations of this nature.[436] This section presents other typical examples, before examining instances where interrogatees pursued civil actions.

Gerard McAllister was arrested on 17 September 1971 and taken to Palace Barracks, Holywood,[437] where he was allegedly abused by RUC Special Branch officers and soldiers. As McAllister was being questioned by a Special Branch officer, a soldier grabbed McAllister's testicles. If a reply was found unsatisfactory, the officer would nod to the soldier, and the soldier would squeeze.[438]

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432 This culminated in the UN sponsored 'Convention on the Elimination of All Forms of Discrimination against Women' which was passed in New York on 18 December 1979, and was ratified by the UK in 1986. The declaration expressly prohibited the 'Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs'. United Nations General Assembly, 'Convention on the Elimination of All Forms of Discrimination Against Women', (8 December 1979) United Nations, Treaty Series, vol. 1249, 13. In practice the ratification of the convention postdates much of the crime discussed in the report below. However, the intent of the legislation is clear – states can and should be held accountable for their use of sexual violence. Indeed, as we will see in the jurisprudence resulting from CEDAW, crimes of sufficient severity can and are prosecuted retrospectively.

433 *Case of Iwańczuk v. Poland*, [2001], ECHR Application no. 25196/94 § 59.

434 'Fr Murray Fr Faul' *(Fr Murray Fr Faul)* <https://frmurrayfrfaul.ie/>

435 McGuffin, (n 365) 126.

436 TNA(UK): FCO 87/390: Association for Legal Justice, 6Jan74; 'Report of an Amnesty International Mission to NI' (n 399) 13.

437 During the roughly three decades of the NI conflict, the barracks served as the home base for battalions rotating, especially those on a two-year "accompanied" tour with their families.

438 TNA(UK): DEFE13/917, article in the Sunday Times, 24Oct71.

The case of Seamus Martin details the aggravated form of strip searching he was subjected to at Long Kesh either by a doctor or sometimes by the prison guards themselves. Immediately after digital penetration of the anal passage, the guards would stick the same fingers in the internee's mouth and if the individual objected, "they stuck their fingers in disinfectant and then shoved them in your mouth."[439]

Edward Brophy was arrested on 25 September 1978, and taken to Castlereagh RUC police station, and "on three occasions he said police officers opened his trousers, exposed his private parts and flicked his penis up and down by hand. He said one officer spat in his face and at one time tried to force him to drink a cup of liquid which he said was "piss", and [when he] was not able to do this, he threw it over him, and made him wipe up what was spilt on the floor."[440]

While the unavailability of relevant documents makes it is unclear whether civil actions were pursued in respect of the above allegations, they certainly were in relation to the following cases, all with a sexual assault or sexual degradation dimension.

Brendan McDermott was arrested in February 1972. Although the formal details of his arrest, detention, and interrogation are uncertain, his case was highlighted in a Granada TV programme aired in September 1972. In this, "McDermott claims one of his interrogators tried to force a metal chair leg up his behind. His medical report states 'the bruising spreading in towards the anus could be consistent with an assault in this area by someone using a blunt instrument'."[441] McDermott took a civil action against the MOD, with his solicitor requiring disclosure of documents which apparently the MOD could not locate.[442] As with so many other cases, the outcome of this civil action is not stated in the public documents available to the Panel.

Thomas Gorman was arrested on 29 August 1972 and abused by soldiers and RUC Special Branch personnel before being taken to the military wing of Musgrave Park Hospital, Belfast. A medical report was consistent with his allegations of abuse and ill-treatment.[443] It confirmed for example that "compression of the testicles was carried out."[444] Gorman's own statement details beatings, stress postures and other abuses. "The army man then grabbed my arm and twisted it up my back. All this time the plainclothes man was punching me in the stomach and on the privates. I told them I couldn't help them but still they kept on. At one point the Branch man grabbed me by the privates and pressed very very hard. I had to scream and I nearly passed out with the pain, again he asked me for information."[445] Later, Gorman said that during a medical examination, "I could hardly walk with the pains in my ankles knees back and privates."[446] Special Branch argued that he sustained his injuries when he had to be restrained; however, crown counsel found that "there is some basis for complaint beyond this [what was sustained during restraint]," and the advice was to settle the case without liability.[447]

Lawrence O'Neill was arrested in possession of 700 rounds of ammunition on 13 November 1971 and subsequently convicted. O'Neill brought a civil claim for wrongful arrest and assault in custody. His initial case outlines severe physical abuse but not specific sexual abuse."[448] O'Neill's medical report confirmed his claims, detailing "heavy bruising of the lower chest and upper abdomen and tenderness of the lower ribs. His left pupil was sluggish in reaction to light. On this evidence there is little doubt that O'Neill sustained injury at the hands of the Security Forces," and therefore, the advice was to settle out of court.[449] In recent times, O'Neill

439 Ciarán de Baróid, *Ballymurphy and the Irish War* (Pluto Press (UK) 2000) 203.

440 Taylor (n 317) 307.

441 TNA(UK): CJ 4/600/1: Transcripts from Granada TV, 'World in Action,' 25Sep72. See also: Brendan Mc Dermott NAUK ref DEFE 24/1914

442 TNA(UK): DEFE 24/981: note by Mrs. N Painter 1Oct76.

443 TNA(UK): CJ 4/970: Medical report by Dr Conor Gilligan, PDF 149, 4Sept72.

444 Ibid.

445 TNA(UK): CJ 4/970: Thomas Gorman statement, PDF 150, Sept72.

446 Ibid.

447 TNA(UK): CJ 4/970: Ken Carter to PRN Fifoot, 8May75.

448 TNA(UK): DEFE 24/981: Patrick Lawrence O'Neill v MOD & Others, KJH Carter, 18Dec75.

449 Ibid.

gave a fuller account of the abuse he received, including assaults on his genitalia, sexual humiliation, and being hit in the testicles while maintaining stress postures. "[An RUC officer] stood in front of me, took down his trousers and pissed all over my head."[450] Four RUC officers ordered him to take down his trousers and when he refused "two of them held me and two took down my trousers and one of them produced a condom and tried to fit it on my penis and he said, 'if you could manage to ejaculate and give us some spunk we'll send it to your girlfriend'."[451] Initially O'Neill wasn't allowed to go to the toilet, but when he was, "I pissed blood and my testicles were swollen the size of that mug … there was blood dripping from my penis … all this hardened, congealed. I was a terrible mess."[452]

While the sexual assault/humiliation dimension did not feature in O'Neill's historic civil claim, this is perhaps understandable given the nature of the attack and the difficulty many men in those days had in revealing sexual abuse. It may be that society has now reached a time where a proper audit of sexual crimes committed by the security forces on both men and women can be conducted.

DEATH THREATS AND MOCK EXECUTION

While verbal death threats against detainees were common during the conflict, and arguably would fall within the purview of Article 3 ECHR as degrading treatment or punishment[453] the accompaniment of a mock execution can be viewed as an aggravated form of this kind of abuse. There are dozens of examples of this happening in police holding centres and army barracks, particularly during interrogations while a confession or statement was being demanded. A gun would be put to the detainee's head, the hammer cocked, and the trigger released. Usually the gun was unloaded, but sometimes blanks were fired near or around the person's head or body. In that moment, the detainee would have had no idea whether the offenders were bluffing. Any such threat was likely to be viewed as real.

In the William (Liam) Holden case, he was first waterboarded then bundled into a car and taken to Glencairn, which he describes as "a loyalist killing field, there were that many Catholics found dead."[454] The perpetrators took Holden into the field, put a gun to his head, cocked it and told if he "didn't admit to killing the soldier there and then, that they would shoot me dead and just blame the loyalists on it." So Holden confessed to a murder he had not committed.[455] In his case against the MOD and Chief Constable PSNI (2023), the ruling stated that Holden "suffered considerable mental distress and emotions of extreme fear as a result" (see outcome in the Waterboarding section above).[456]

The mock execution of JJ McQuillan is strikingly similar. McQuillan was arrested on 27 December 1971 and initially taken to the Springfield Road RUC station and then on to Palace Barracks, Holywood, "where he was handcuffed and then taken to a field off the Springfield Road where, he alleges, he was subjected to a mock execution and kicked."[457] McQuillan pursued a civil claim which was settled for £2,500, a reasonably high amount at the time. However, a noteworthy element to emerge from recently declassified state papers, is the advice that "Crown Counsel considers that we would have considerable difficulty in rebutting some of the more sensational allegations including that of mock execution."[458] Had the information in the now declassified paper been known, one can speculate that the offer might have been higher.

450 Video testimony, Lawrence O'Neill, [2023], HCC solicitors.

451 Ibid.

452 Ibid.

453 See the recent *Case of Oganezova v Armenia* [2022] ECHR Applications nos. 71367/12 and 72961/12

454 Interview with Liam Holden is from an Irish language documentary and was edited to shortform with consent for publication in March 2023. All permissions are in place. The footage was filmed at the office of HCC Solicitors by Indee Productions in 2013 after the convictions were quashed.

455 Ibid.

456 *Case of Holden v. Ministry of Defence and the Police Service of Northern Ireland* [2023].

457 TNA(UK): DEFE 24/981: JJ McQuillan v MOD, KJH Carter, Apr76.

458 Ibid.

ADMINISTRATION OF DRUGS/THREAT OF THE ADMINISTRATION OF DRUGS

Claims have emerged that drugs were either administered to people under interrogation or there were threats to administer drugs. For example, Amnesty International's 1971 report carries accounts from newspaper reports, historic statements, civil writs, and testimonies, of detainees being threatened with a 'truth serum' in a syringe.[459] Coming from disparate sources, four cases all stemming from autumn 1971 are linked to one place – Palace Barracks, Holywood.

In one of these cases, that of Liam Patrick Clarke, a civil action was pursued.[460] Just as MOD legal advisers were sensitive to claims of electric shock treatment and water torture, there was sensitivity to the allegations about administration of a truth drug. They sought to have this allegation withdrawn from Clarke's statement of claim (as well as an allegation about caning the soles of his feet), while settling the case without an admission of liability.[461]

Evidence that a drug may have been administered during interrogation was included in the Irish state memorial for its interstate case.[462] Thomas Kearns was arrested on 1 May 1972 and taken to the Newry RUC station. He was interrogated for several days and immediately upon release was examined by his family doctor, Dr Seamus McAteer. On the basis of this examination, Dr McAteer stated in his medical report, "it was obvious that he had taken some form of drug and everything pointed to amphetamine."[463] Dr McAteer sent a urine sample to the lab of City Hospital in Belfast which found, "1 microgram of amphetamine present per 10 m.c. [microscopy culture] of urine."[464] This was enough of the drug "to indicate that he had been given a considerable dosage."[465] While there could be another explanation, the lab report, alongside witness statements, makes it hard to exclude the possibility that Kearns had been drugged, and supports the notion a) that interrogatees were threatened with drugs and b) drugs were administered in some cases.

MEDICAL ABUSE

Article 3 ECHR imposes an obligation on states to provide adequate medical care for persons deprived of their liberty.[466] The mere fact of a detainee having seen a doctor and being prescribed certain medications does not mean this obligation has been fulfilled. Records must be maintained; supervision ought to be comprehensive – aimed at treating the person's condition and preventing an aggravation of symptoms. Essential medical treatment ought to be comparable to what is generally available. Yet evidence exists that medical abuses were committed against detainees, prisoners, and internees.

These attacks largely fall into two categories. The first is characterised by omissions or neglect, such as failing to provide female detainees/prisoners with common painkillers to relieve menstrual cramps, failing to provide detainees with their prescribed medications, and delaying the transfer of prisoners with serious conditions to be treated at appropriate medical facilities. A likely example is that of James Brendan Moyne, who died at the Maze prison of an "acute bronchial spasm," on 13 January 1975.[467] His brother subsequently issued a writ "alleging negligence in the supervision, management and control of HM Prison, Maze, and in the treatment, provision and effecting of emergency medical services."[468]

The second category involves the more cynical and active targeting of a detainee's current or historic physical

459 Amnesty International, 'Amnesty International Report on Allegations of Ill-Treatment Made by Persons Arrested under the Special Powers Act after 8 August, 1971' (Amnesty International 1971).

460 TNA(UK): CJ 4/970: Liam Patrick Clarke v MOD & Others, statement of claims.

461 TNA(UK): CJ 4/970: Ken Carter to Douglas Milne, 30Apr75.

462 TNA(UK): CJ 4/203/2: Irish State Memorial, May 1972, report by Dr Seamus McAteer, 22May72.

463 TNA(UK): CJ 4/203/2: Irish State Memorial, May 1972, report by Dr Seamus McAteer, 22May72.

464 Ibid.

465 McGuffin, (165) 125.

466 UNGA Res 43/173 'Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment' (9 December 1988) UN Doc A/43/173, Principle 24.

467 TNA(UK): CJ 4/1675: From MW Hopkins in Stormont House, 6 Jan 76 to Mr Jackson, Mr Margetts.

468 Ibid.

condition. Examples include a female prisoner not having the opportunity to give informed consent regarding a life-changing operation, as well as extreme post-operative abuse, and an allegation that a gunshot wound victim was subjected to a physical assault by Royal Marines while recovering at Royal Victoria Hospital.[469] Some of these allegations suggest collusion between healthcare professionals and members of the security forces.

Patrick Kelly was recovering from a recent operation on his leg when he was interrogated at Castlereagh. A few days later at his first court appearance, his mother was shocked at his appearance, noting "he was like a corpse."[470] His solicitor told her that "they had worked on his sore leg, where he had the operation, and made him sign a 'confession' while under torture."[471] Horrified by the cruelty her son reported and his physical appearance at court, his mother reported his case to Amnesty International.[472]

George Burt was shot by a foot patrol operating near the Falls Road on 12 December 1971 and rendered unconscious. He submitted a civil claim regarding his injuries and "an alleged assault by Royal Marines whilst he was at the Royal Victoria Hospital."[473] Legal advice was that medical reports were not inconsistent with "some ill-treatment of a minor nature."[474] With regard to the claims of assault in hospital, it was deemed difficult to secure attendance of the marines in question as witnesses, and a "similar difficulty [was] envisaged with the civilian doctors who were on duty."[475] Legal advice was to settle some of the elements of the claim, but to seek withdrawal of the allegation regarding the hospital assault. A subsequent note reveals that "we have been unable to find any witnesses, other than one Marine to rebut the allegations of assault in the Royal Victoria Hospital."[476] The case was settled for £600 with a denial of liability for the hospital assault, which was viewed by the MOD as "a satisfactory and surprisingly cheap settlement."[477]

Paul Duffy, aged 20, was arrested on 21 February 1977 and taken to Omagh RUC station. Duffy had had his right kneecap removed following a road traffic accident. He alleged beatings and abuse while interrogated and that they seemed to concentrate on his knee, making him squat against the wall a lot.[478] On day three, he was assaulted by Detective Constable Latimer and Detective Sergeant Boyd of Armagh CID, who started knocking and kicking his injured knee and making him squat to put pressure on it.[479] When he saw a police doctor, Dr McClements, the doctor referred him to the casualty department at Tyrone County Hospital. A crown had also been knocked off one of his teeth. Upon release, Duffy was examined by his own doctor who took note of a range of injuries. He submitted a complaint to the RUC Complaints and Discipline Branch. The DPP directed no prosecution, so Duffy took a civil action and was posthumously awarded £550 in July 1979 (having been shot dead in 1978 in an SAS stakeout operation).[480]

DEATHS AND HOSPITALISATIONS

Many detainees were hospitalised during the conflict, and some died, from various causes. Examples include the following. Brian Morgan suffered a heart attack after being detained as part of the internment round-up on 9 August 1971 and forced to do rigorous exercises at Ballykinler military camp.[481] Patrick McMahon disappeared in January 1978 after being released from RUC custody.[482] His body was found the same day as that of Brian

469 TNA(UK): DEFE 24/981: MJD Fuller, PDF285, 29Apr76.

470 TNA(UK): CJ 4/2178: Mrs Kathleen Kelly to Mr Humphreys, Amnesty International, 4Sep77.

471 Ibid.

472 It is unclear how old Patrick was at the time.

473 TNA(UK): DEFE 24/981: George Burt v MOD & Others, KJH Carter, 26Apr76.

474 Ibid.

475 Ibid.

476 TNA(UK): DEFE 24/981: MJD Fuller, PDF285, 29Apr76.

477 Ibid.

478 Taylor, (n 317) 116.

479 Ibid, 116.

480 Ibid, 120.

481 Denis Faul and Raymond Murray, *The Hooded Men: British Torture in Ireland, August, October 1971* (Wordwell 2016). Gerrard McKerr statement, 23 August, 1971 105.

482 TNA(UK): CJ 4/2177 letter from AW Stephens to Mr Hannigan, JPEG2, 1June78.

Maguire, who died in Castlereagh Police Holding Centre on 10 May 1978. Maguire had been arrested on 9 May 1978, and taken to Castlereagh where he purportedly made inculpatory statements about hiding a gun which was assumed to have been used to shoot an RUC officer. The next morning it is reported that, "Maguire was last seen alive at 0710 am this morning, on being returned from a visit to the lavatory. He was found hanging by a sheet hem from a wire grill in his cell at 0730 when his breakfast was taken in."[483] He had been examined by Dr Alexander on arriving at Castlereagh, who had prescribed 2 Valium tablets.[484] Maguire's mother said at the time, "Brian had too much to live for to commit suicide… I think they went too far with him."[485] It is unclear from available records whether any civil actions were pursued in connection with these deaths.

Several detainees were removed directly to hospital from places of detention. One case relates to Patrick O'Neill who was so badly beaten at Girdwood barracks that he was unable to return to work for three months. JP Lane, a surgeon at the Mater Hospital and a former officer at the Royal Army Medical Corps, testified that O'Neill's left leg was fractured and that the soles of his feet bore the marks of some form of bastinado (a carpet rod).[486]

A second case is that of James Rafferty who was interrogated for 3 days at Omagh RUC Station in November 1976 and released without charge and "spent the following four days in hospital recovering from his injuries".[487] Though epileptic, he had been subjected to stress postures, beatings, sleep deprivation, exercises etc. He was examined by Dr O'Neill acting on behalf of Rafferty's own GP. "D' O'Neill [the police doctor] noted that Rafferty was tender around the forehead and scalp, and had four or five bruises two inches in diameter in the area of the stomach. He also had abrasions and bruising on the lower back. Both doctors agreed that Rafferty should receive urgent hospital treatment".[488] He was taken to Tyrone County Hospital in a police car. A consultant there, Mr McMurray, noted Rafferty's complaints: "He said he had been kicked and punched in the abdomen, been pulled by the hair and knocked unconscious. On examination he noted the Rafferty was suffering from a degree of amnesia and had difficulty in maintaining his balance. There were "multiple dark black bruises on his upper abdomen", and a bruise and abrasion at the base of the spine above the bottom."[489] Mr McMurray noted that Rafferty had experienced headaches and dizzy spells most likely due to a mild degree of concussion.[490] In October 1978 the Police Authority set up a Tribunal to examine Rafferty's complaint and the members were appointed in the spring of 1979. By the summer of 1980, the Tribunal had not even started its inquiries.[491]

In another instance, Peter McGrath was arrested on 6 June 1977 and taken to Castlereagh, after which he was transferred to Dungannon RUC station where he was medically examined and then sent to hospital. He was transferred to the military wing of Musgrave Park Hospital in Belfast, after which he was transferred to a psychiatric institution.[492]

A final example relates to Eddie Rooney who was arrested in 1977, taken to Springfield Road RUC Station where it was alleged that he "was seriously injured when he was thrown from an upper-storey window of Springfield Road Barracks to bounce off a parked car 25 feet below".[493] While it is known that no criminal prosecutions resulted from these cases, it is less clear whether any civil actions were pursued.

A civil case was pursued by Peter Farrell in relation to injuries he received while detained in Omagh RUC station on 21 December 1976. "Farrell told the RUC investigating officer that at the top of the stairs – there were nine

483 TNA(UK): CJ 4/2177 PWJ Buxton to Mr Dunn, 18 May78.

484 TNA(UK): CJ 4/2177, letter from PWJ Buxton to PS/SoS about death of B.Maguire 10May78

485 Taylor, (n 317) 284.

486 McGuffin, (n 365) 123.

487 Taylor, (n 317) 85.

488 Ibid, 96.

489 Ibid, 96-7.

490 Ibid, 97.

491 Ibid, 106.

492 Ibid, 187.

493 de Baróid, (n 439) 200.

steps with a concrete landing at the bottom – he was pushed in the back by a policeman. He remembered nothing more until he woke up in hospital the next day with five stitches in the back of his head."[494] Farrell was taken by ambulance to Tyrone County Hospital where he was found to be suffering from amnesia and remained in hospital for almost 2 weeks. Farrell suffered PTSD symptoms as a result and was unable to return to work for 6 months. He registered a complaint against the RUC in March 1977. Farrell's civil action was heard in the High Court on 11 September 1979 and he was awarded £600 in damages.[495]

WOMEN AND CHILDREN

Sexual abuse of women and children in the context of detention was often designed to shame the victims and induce feelings of vulnerability in the victims. Abuse takes many forms, including rape, threats of rape, sexual assault, strip searching and other types of abuse such as sleep deprivation, beatings, and lack of access to a toilet.

WOMEN

THREAT OF RAPE

According to the European Court of Human Rights, the threat of rape causes sufficient psychological duress to be considered an act of torture.[496] A 1978 Amnesty International report on Northern Ireland noted that " women said that they had been threatened with rape and in two cases the light in the interview room was allegedly switched off just after the threat was made."[497] In one of these cases, a woman arrested in 1977 and detained in Castlereagh for 3 days was allegedly threatened with rape and that her child would be taken away.[498]

SEXUAL ASSAULT

Women report being subjected to acts of sexual assault during interrogation. One former prisoner who spoke to panel members, described being "pushed down the corridor, into a darkened room. I was feeling about the corner, trying to figure out where I was in the pitch darkness. There was a doctor's couch in the room. Men in black came in and grabbed me and laid me out spread eagled. They began saying stuff like 'we are going to rape you now', hands were running all over my body, four men holding me down, lots of hands. They were saying 'what are you going to say to your provo family when you're pregnant with one of our babies'. Then the lights went on and they pretended it never happened."[499]

STRIP SEARCHING

In a series of cases, the ECtHR found that a strip search repeated once a week constituted degrading and humiliating treatment.[500] During the NI conflict, punitive strip searching of women was a method used to humiliate and degrade female prisoners and those on remand.[501] A former prisoner, being one of two female prisoners on remand in a male prison, described her ordeal. "It was 13 months of daily sexual abuse. We were

494 Taylor, (n 317) 112-3.

495 Ibid, 115.

496 *Case of Gäfgen v. Germany* [2010] ECHR (Application no. 22978/05): the threat of rape amounted to a breach of Article 3.

497 'Report of an Amnesty International Mission to Northern Ireland' (n 399).

498 Ibid.

499 Panel Meeting with victim 6th April 2023.

500 Cumulative invasive strip searches] the Court found a violation of Article 3 of the Convention (see also, *Case of Horych v. Poland* [2012] ECHR Application no. 13621/08 93-103; *Case of Paluch v. Poland* [2016] ECHR Application no. 57292/12) §§ 37-48; *Case of Karwowski v. Poland* [2016] ECHR Application no. 29869/13 33-43). the applicant was subjected to a strip search in an inappropriate manner, such as the making of humiliating remarks (*Case of Iwańczuk v. Poland*, [2001] ECHR Application no. 25196/94 59; see also *Case of Valašinas v. Lithuania*, [2001] ECHR Application no. 44558/98 117.

501 During a strip-search the prisoner is told to remove all her clothes (including sanitary towels or tampons) for inspection and hand them to the warders. The women are usually scrutinised from top to bottom, then ordered to turn around while their backs are examined. Warders also inspect their hair, palms of their hands, and soles of their feet. Many searches also involve the prisoner's anal and vaginal passages being held open and pried into with hands and fingers. Prison officials maintain that this does not constitute an 'internal' search as no 'instrument' is inserted.

strip searched every day, this soon escalated up to six times a day... We would get one hour exercise; [we] would walk out and keep [our] eyes on the ground. We were surrounded by men, who would openly masturbate at us and shouted foul abuse. This was worse at night."[502]

Armagh Jail, built in 1790, housed Republican women prisoners from the start of the conflict until a new high security facility was established at Maghaberry in 1986. In 1982, an incoming governor purportedly favoured a harsh regime which entailed strip searching women. Philomena Gallagher explains that all women over the age of 15, "women menstruating, pregnant women, women returning to prison after hospital visits, and grandmothers were subjected to strip searching."[503] The prison chaplain, Father Raymond Murray, addressed the issue of degrading strip searches of women at Armagh Jail, pointing out that it was contrary to the Universal Declaration of Human Rights and Article 3 ECHR.[504] If women refused to comply, their clothes were forcibly stripped off, they were often assaulted, put in solitary confinement, or lost privileges and remission of their sentences. Punitive strip searches with no real security purpose were experienced as a physical and psychological attack, with one former prisoner describing it as sexual violence, in which "our bodies are being violated."[505] Gallagher notes that by 1992 over 4000 of these strip searches had been conducted on women prisoners and women on remand in Northern Ireland and England without any items threatening security ever found.[506]

Female prisoners at Maghaberry experienced a mass strip-search on 2 March 1992, a traumatising experience for most. That morning the women were informed that everyone would be strip searched and they would be punished if they resisted. Some women attempted to barricade themselves in their cells – male guards in full riot gear gained entry to a cell with two women, one of whom was pinned down by four male guards, and "while she lay helpless and screaming, one of them rubbed his hand over the lower half of her body, violently squeezing her bottom. They twisted her limbs in various directions and carried her to another wing to be forcibly stripped by female screws."[507] This operation continued throughout the day until 9.00pm. A civil action was taken against the prison governor of Maghaberry in relation to this mass strip-search incident. The outcome is unknown.[508]

OTHER TYPES OF ABUSE OF WOMEN

In his 1976 annual report, Father Murray highlighted various other types of abuse used against women including that prisoners were being subjected to sustained sleep deprivation.[509] He also raised the case of a girl who allegedly sustained "multiple bruising" with the prison's Governor and the Northern Ireland Office.[510] There have been numerous other accounts of women prisoners receiving violent beatings,[511] such as "when Mairéad [Farrell] stood talking through the spy[hole] to Ann Bateson the male screws jumped her. They pinned her with her back against Ann Bateson's cell door and rained kicks and punches on her. They then grabbed her by the arms and legs and carried her along the landing, kicking and punching her all the while. They threw her into an empty cell where they kicked her again as she lay on the floor."[512]

A lockdown at the prison in February 1980, saw women confined to their cells for days. The prisoners' parents complained about the many negative consequences: "[t]o deprive the girls of toilets for five days, February 7-12, to lock them up 24 hours a day, no hot water, laundry or sanitary towels during these days, to prevent their

502 Panel Meeting with victim 6th April 2023.

503 Philomena Gallagher, 'Women Imprisoned as a Result of the Struggle' (1997) 17 Canadian Women Studies <https://cws.journals.yorku.ca/index.php/cws/article/view/8837> 52.

504 Raymond Murray, *Hard Time* (Mercier 1998).

505 Gallagher, (n 503) 52.

506 Ibid, 53.

507 Ibid, 56.

508 As with other cases, the Panel's PhD researcher's request to access the relevant file, in this case H.M Prison Maghaberry (Female) Full Searching NIO/37/60, was denied by PRONI (14 December 2023, e-mail on record).

509 Murray, (n 504).

510 Ibid.

511 Margaretta D'Arcy, *Tell Them Everything* (Pluto Press (UK) 1981) 63.

512 Síle Darragh, *'John Lennon's Dead'* (BTP Books 2022).

spiritual adviser and concerned people from seeing them for a week, these are other stupid and cruel abuses of power that we will not tolerate."[513]

Women's rights activist Margaretta D'Arcy, who spent three months in Armagh Gaol in 1981, gives a powerful account of the daily ordeals the women faced. Examples of what the women took to be deliberate harassment included:

> "in-coming mail would 'get lost'; prisoners' letters would be read and the contents laughed at; photos sent in would 'get lost'; parcels of tissues and religious magazines would be delivered broken; only a portion of the food supplied would be served, and the rest thrown out; food would be distributed unequally; food would apparently be allowed to go cold, particularly fried dishes; certain prisoners seemed to be picked on for rough searches, in an attempt to provoke aggro; the screws would curse and swear under their breath about us; slops would be shoved back under cell doors when the wing was being cleaned; prisoners' buzzers would go unanswered and the writing paper we were entitled to would not be supplied.… There was a bare minimum of food, very seldom did we get fresh vegetables or fruit. Hunger pangs never left us. I had never expected this feeling of permanent starvation."[514]

CHILDREN

During the conflict many children were held for questioning by the RUC and sometimes by the British military. The authorities had produced various guidelines outlining safeguards for children being questioned, but these were not always observed. Such was the concern within the community in 1971 at the arrest and subsequent treatment of children in custody that forty-three school principals of primary, secondary and grammar schools throughout Belfast wrote an open letter to "…deplore the actions of the security forces in taking into custody juveniles contrary to the provisions of the Children and Young Persons Act (1968)." The letter, which was widely distributed to political, church and community leaders in Ireland and Britain, went on to express "… our abhorrence of the alleged treatment meted out to these juveniles during questioning."[515] There have been some attempts since 1998 to address the abuse of children (see Post-1998 Accountability Efforts below).

OFFICIAL GUIDANCE

According to declassified NIO files, juveniles were considered as those under 17, but youths over the age of 10 could be arrested.[516] The guidance said that all juveniles arrested by the military were to be handed over to the RUC without delay. They were not to be taken to Police Holding Centres, but to RUC stations. Parents or guardians were to be informed "at the time of the arrest, or as soon thereafter as is practicable, of the RUC station to which the juvenile is being taken." The guidance did not say anything about an adult (parent or guardian) being present with the juvenile during questioning.[517]

The 1979 Bennett Report[518] noted that Administrative Directions stemming from the 1978 Judges' Rules stated that "as far as practicable children and young persons under the age of 17 years should only be interviewed in the presence of a parent or guardian, or in their absence, some person who is not a police officer and is of the same sex as the child." The report continued: "It appears that, as in the case of access by solicitors, the RUC drew a distinction, in fact if not in principle, between "terrorist" and "non terrorist" cases. In the former, parents appear rarely to be admitted into the interview room, at least when the juvenile is over 15, because of the probability that they will advise silence."[519]

In her 2013 study of the performance of the Court of Appeal and the Criminal Cases Review Commission in cases relating to the conflict, Hannah Quirk also noted that, "[w]hilst the (non-statutory) Judges' Rules and RUC Code stated that juveniles should not be questioned without a parent or appropriate adult present, this

513 Murray, (n 504) 76-77

514 D'Arcy, (n 511) 63.

515 From the Association for Legal Justice Archive, on file.

516 TNA(UK) CJ 4/607: Questioning and Arrests under Special Powers Act – Procedures (Juveniles).

517 Ibid.

518 Bennett Report, (n 345).

519 Ibid, 43.

too was denied routinely and confessions obtained in such circumstances were usually admitted. In terrorist cases, parents were rarely admitted into the interview room when the juvenile was aged over 15. Suspects were questioned intensively by shifts of officers for long periods."[520]

Some of those questioned reported their abuse in custody. British government documents from 1974 list juveniles questioned at the Hastings Street RUC station in Belfast who "received treatment about which they have complained".[521] Examples cited in the NIO telegram included

- a 15-year-old boy who claimed he was injected in detention on 18 November 1973 at the RUC station, and was forced to perform exercises with a sand bag
- a 15-year-old boy who said he was taken to Hastings Street barracks on 28 December 1973 for the seventh time in 12 days, and systematically beaten
- a 13-year-old boy who said he was brought into the barracks on 1 January 1974, physically ill-treated, and threatened with a gun
- a 15-year-old boy who alleged he was kicked and beaten in custody on 18 November 1973 by non-uniformed officers – who he thought did not have Northern Irish accents – and was told his name would be given to loyalists for the 'assassination list' if he did not cooperate.

The Association for Legal Justice reported on 6 January 1974 that "[s]ince December 31st [1973], when a soldier was shot at the junction of Beechmount Avenue and Islandbawn Street [in Belfast] there have been mass arrests of young people between the ages of 13 and 17. On Saturday the association received reports of 11 arrests from that area. Many of these people have been held by the army under the four-hour rule provided by the Northern Ireland (Emergency Provisions) Act".[522]

A British government telegram from 26 January 1974 to the British Embassy addressed the complaints from juveniles held by the British military where procedures had not been followed [capitals in original].[523]

> THE ARRESTS OF [X], [X] AND [X] WOULD APPEAR TO HAVE BEEN CARRIED OUT CONTRARY TO PARAGRAPH 26 OF THE ARMY ARREST INSTRUCTIONS OF 9 AUGUST 1973. AS A MATTER OF POLICY YOUNG PERSONS AND CHILDREN ARE NOT TO BE ARRESTED LATE AT NIGHT OR EARLY IN THE MORNING. [X] WAS HELD BY THE ARMY FOR 3 HOURS 55 MINUTES, ONLY 5 MINUTES SHORT OF THE STATUTORY MAXIMUM PERIOD OF 4 HOURS. THIS ALONE COULD BE CONSTRUED AS "HARASSMENT"…. [X] CAME INTO POLICE CUSTODY AT 4.05 AM HAVING BEEN ARRESTED EARLIER BY THE ARMY. AS ALREADY NOTED, THE ARMY POLICY ON ARRESTS OF JUVENILES HAS NOT BEEN FOLLOWED IN THIS CASE. ALTHOUGH [X's] MOTHER WAS PRESENT DURING THE POLICE INTERROGATION, THE MALTREATMENT MIGHT BE ALLEGED AGAINST THE SOLDIER WHO ARRESTED HIM.
>
> [X] APPEARS TO HAVE BEEN IN ARMY/RMP CUSTODY FOR 5 HOURS 5 MINUTES CONTRARY TO THE PROVISIONS OF THE EMERGENCY PROVISIONS ACT, UNLESS RMP ARE TO BE REGARDED AS CIVIL POLICE FOR THIS PURPOSE. THIS POINT OUGHT TO BE INVESTIGATED.
>
> THE PROCEDURE TO BE FOLLOWED WHEN ARRESTING AND "SCREENING" JUVENILES SHOULD BE MORE FORCIBLY SPELT OUT TO THE TROOPS ON THE GROUND AND SHOULD INCLUDE THE REQUIREMENT THAT PARENTS BE PRESENT WHEN ANY INTERROGATION PROCESS TAKES PLACE. 4 OF THE PRESENT 8 ALLEGATIONS COULD THUS HAVE BEEN AVOIDED.[524]

520 Quirk, (n 348). Also, the RUC Code (1974), para 127 stated that "Police pursuing enquiries involving Children and Young Persons must bear in mind that where at all possible children and young persons should be interviewed in the presence of a parent/guardian or other adult friend, and that the venue selected for the interview should not be one which could be calculated to intimidate, unduly embarrass or frighten the person interviewed." The Children and Young Persons Act (Northern Ireland) 1968, s 52(2) provides that "Where a child or young person is arrested or taken to a place of safety, such steps shall be taken as may be practicable to inform at least one person whose attendance may be required under this section".

521 TNA(UK): FCO 87/390: NIO Belfast telegram from Galsworthy, 26Jan74.

522 TNA(UK): FCO 87/390: Association for Legal Justice, 6Jan74.

523 TNA(UK) FCO87/390: Telegram 26 January Lists Allegations as Provided by Conlon to the British Embassy.

524 Ibid.

7. ACCOUNTABILITY EFFORTS

Non judicial efforts to combat torture and ill-treatment by security forces during the relevant 30-year time frame were pursued almost from the start.

THE COMPTON COMMITTEE AND THE PARKER COMMITTEE

Abuses associated with internment arrests, as well as the "Hooded Men" operation led to the establishment of the Compton Inquiry (1971).[525] The Compton Committee conceded that the "special exercises at Ballykinler" and the "obstacle course" at Girdwood had "caused some hardship," but concluded this was unintentional and did not amount to brutality.[526] With respect to the five techniques (hooding, wall standing, sleep deprivation, excessive noise, and reduced diet), the Committee found "no evidence of physical brutality, still less of torture or brain-washing."[527]

The report was widely regarded by the Catholic nationalist minority community as a whitewash. Subsequently, a second inquiry under the chairmanship of Lord Parker of Waddington (the Parker Committee) was convened in 1972 to consider whether these interrogation techniques should be retained or modified. While the majority report concluded that in some cases the techniques "would offend against English law," their use could be justified by the fact that the information gained during interrogation "was responsible for saving the lives of innocent civilians."[528] Nonetheless, Lord Gardiner, in his minority report argued that the techniques were "objectionable in all circumstances."[529] The Gardiner statement, along with pressure mounting in respect of Ireland's inter-state case, and public pressure from campaigners and nationalist politicians, led British Prime Minister Ted Heath in 1972 to introduce a ban on the five techniques.

CONTINUING USE OF THE 'FIVE TECHNIQUES'

Despite the ban on use of the five techniques, the Panel discovered many cases where one or more had continued to be used throughout the 1970s, often in association with beatings and physical brutality. For example, this trend was noted by a member of the Northern Ireland Police Authority, Donall Murphy, who was increasingly disaffected with RUC intransigence vis-à-vis complaints. Writing to Roy Mason (Secretary of State for Northern Ireland) in June 1978, Murphy observed that while the five techniques did not continue in the same form as in 1971,

> "all the elements are alleged to be still in use. The concentrated periods of wall standing or variations on it, the deprivation of sleep, associated periods of beating at the same time, the hooding with slight variations now using plastic bags, overall the fact is physiologically and mentally the same as complained off [sic] and undertaken not to repeat. The fact that today no attempt is made to conceal injuries and bruises alleged to have been sustained during interrogation would indicate that the perpetrators don't care who knows and this I would suggest is further indication that the [alleged actions] have been carried out with full knowledge and toleration."[530]

INCREASING CONCERN OVER LEVEL OF VIOLENCE, POSSIBLE COLLUSION AND UNRELIABLE 'CONFESSIONS'

In the letter referred to above, Donall Murphy suggests that the criminal impunity afforded to perpetrators may have explained the proliferation of Article 3 ECHR abuses. However, there was increasing pressure on the political-military-security apparatus to end abuses, both from external forces (politicians, civil society organisations, victim groups, solicitors, priests) and from internal sources (army doctors, police surgeons, political and legal bureaucrats, the DPP).

Initially, the role of examining detainees was taken by army doctors, but police surgeons took on this mandate

525 Compton Report, (n 313), Introduction by the Home Secretary.

526 Ibid, 160, 134.

527 Ibid, 14.

528 Parker Report, (n 314).

529 Ibid.

530 TNA(UK): CJ 4/2178: Donall Murphy, a member of the NI Police Authority writes a scathing letter to Roy Mason in which he explains his decision to withdraw from Police Authority meetings, while remaining a member of the PA, 29Jun78.

in 1975/1976 following a revolt by army doctors in the winter of 1974-1975.[531] Internment ended in December 1975 and there may be a connection between the loss of these executive powers and the increasing intensity of interrogation abuses in the late 1970s. Towards the end of 1976, police surgeons had become concerned about the condition of people they were seeing. Due to the increased prevalence of complaints, they alerted the Police Authority to their concerns in early 1977.[532] Chief Police Surgeon, Dr Robert Irwin, was "completely disgusted by repeated evidence that had come his way of police brutality and malpractice," as well as another police surgeon, Dr Jackie Henderson, who was "convinced that the police are acting improperly at Castlereagh in their handling of suspects."[533]

The concerns of police surgeons added to a chorus of voices from a range of diverse external and independent sources, including several "respectable" British and Irish newspapers,[534] a Thames TV programme highlighting 10 cases (8 Catholic, 2 Protestant) of inhuman and degrading treatment, the Social Democratic and Labour Party (SDLP), and clerical leaders across the four churches of Northern Ireland. In addition, a group of 30 solicitors wrote to the Secretary of State for Northern Ireland about their "conviction that ill treatment of subjects by police officers, with the object of obtaining confessions, is now common practice, and that this most often, but not always, takes place at Castlereagh RUC station and other police stations throughout Northern Ireland. We find it very difficult to accept that this happens without the knowledge of a substantial number of police officers of senior rank."[535] In other words, the solicitors were alluding to collusion on the part of senior police managers and the likely unreliability of confessions arising from ill-treatment.

Diplock court judges also expressed dissatisfaction and doubt about the way confessions were being obtained. Similarly, the Attorney General and the DPP raised concerns with the Chief Constable of the RUC, Kenneth Newman towards the end of 1977 in connection with 300 cases of people charged with scheduled offences. It is believed that about 10% had corroborating medical evidence of assault, and while assault could be ruled out in 50% of the overall cases, 40% may well have gone either way in court.[536] The DPP noted that the volume of prosecutions did not reflect the volume of reported assaults.

Finally, loyalist organisations (the UDA and Ulster Loyalist Central Co-ordinating Committee) also raised concerns about allegations stemming from Castlereagh (circa October 1977),[537] with the Ulster Citizens' Civil Liberties Advice Centre producing a 40-minute recording that reconstructed the abuses and brutalities allegedly occurring in Castlereagh.[538]

AMNESTY INTERNATIONAL INVESTIGATION

The police surgeons' concerns appeared to have been addressed by the end of 1977 as "the cause for complaint seemed to have dried up at source."[539] This may have been as the result of the UK Government authorising an Amnesty International mission to carry out a rapid assessment of the allegations. They found that the volume of complaints dropped abruptly between November and December 1977 (presumably as a result of fewer assaults happening before and during the inspection). For example,

- in November 1977 there were 8 complaints stemming from 77 interrogatees (10.3% complaint rate) at Gough PHC, and 31 complaints from 147 interrogatees at Castlereagh (21% complaint rate),

531 Taylor, (n 317) 149.

532 Ibid, 179.

533 TNA(UK): CJ 4/2867: Allegations of RUC Brutality, a letter from JSS Beels to Mr Ford, regarding a meeting on Sept 28 with Seamus Mallon and Dr Joe Hendron, 4Oct77.

534 Listed in an NIO minute as The Sunday Times, The Belfast Telegraph, and The Guardian.

535 TNA(UK): CJ 4/2300, part 1: A letter from J. McGrory to the Secretary of State for Northern Ireland, 10Nov77

536 Taylor, (n 317) 228.

537 TNA(UK): CJ 4/1648: A Liaison Staff document with further details loyalist organisations concerned about the allegations stemming from Castlereagh, 21Oct77.

538 'Report of an Amnesty International Mission to Northern Ireland' (n 399).

539 TNA(UK): CJ 4/2300 2: Sir Myles Humphreys of the Police Authority for Northern Ireland writes to Roy Mason, the Secretary of State for Northern Ireland.

- but in December 1977, there was only 1 complaint from 28 interrogatees at Gough (3.5% complaint rate), and 4 complaints from 101 interrogatees at Castlereagh (3.9% complaint rate).[540]

The Amnesty International mission occurred over 10 days in December 1977.[541] It investigated 78 cases in detail (58 of these from Castlereagh), and an additional 26 cases where medical reports were made available to the team.[542] Amnesty were able to corroborate injuries sustained by interrogatees, that maltreatment had occurred in certain cases, that abuse was more likely to occur during detention, and that the symptoms described by the victims resembled that of torture which has taken place in other countries during investigations.[543] Amnesty International recommended that an independent inquiry be established.

REFUSAL OF POLICE TO ACKNOWLEDGE ABUSE

Despite these initiatives, and while Amnesty International were still drafting their report, by March 1978 the police surgeons observed that ill-treatment had resumed.[544] In a meeting with the RUC Chief Constable Kenneth Newman, Dr Robert Irwin stated that "standards had improved during the autumn of 1977, but only to slip again more recently."[545] Irwin intimated that he would "ensure wide publicity for his views" if he did not get satisfaction.[546] Yet the Chief Constable was seemingly impervious to petitions from the police surgeons and the Police Authority. In a meeting with an NIO official, Irwin stressed that despite recent representations, nothing had changed and he was "alarmed at the number of prisoners showing signs of injury which could not have been self-inflicted."[547] He noted that the ill-treatment was "associated with a group of eight or ten policemen who were consistently described to the doctors by injured prisoners, and who were familiarly known to the doctors as the 'goon squad'."[548]

Furthermore, Irwin believed that "maltreating prisoners under interrogation [was] a matter of policy approved by the Chief Constable. There was a marked increase in the incidents of injury when Deputy Chief Constable John Hermon [Newman's deputy] was absent on leave."[549] Apparently, Newman had publicly denied receiving representations from the police surgeons, although they had written to him on three occasions and they complained that "minutes of liaison meetings with the RUC were doctored to exclude their complaints," and that these minutes were then relayed to the Police Authority to maintain that the police surgeons had no complaints.[550] The doctors felt that they had been manipulated "to secure a favourable report from Amnesty International," and even more worryingly, "some of them have been subjected to personal threats by anonymous phone calls."[551] Dr Elliott sought a transfer from the Armagh Holding Centre due to the "intolerable situation regarding maltreatment of persons under interrogation."[552]

THE BENNETT COMMITTEE OF INQUIRY

In the aftermath of the Amnesty International report, the Secretary of State for Northern Ireland, Roy Mason, established a Committee of Inquiry ("the Bennett Committee") in June 1978. Their remit was: "to examine police

540 Taylor, (n 317) 242-3.

541 The Amnesty report was sent to the UK government on 2 May 1978 and published on 13 June 1978 (n 399).

542 Ibid, 11.

543 Ibid, 20.

544 TNA(UK): CJ 4/2300 2 (n 539).

545 TNA(UK): CJ 4/2300/2: Meeting of members of the Complaints and Publicity Committee with Doctors Alexander, Elliot and Irwin, 6March78.

546 Ibid.

547 TNA(UK): CJ 4/2300/2: Treatment of Prisoners at Police Centres note directed to the NIO Belfast, received by DUS, maybe written by Maurice Hayes, but definitely an NIO circular, 7Apr78.

548 Ibid.

549 Ibid.

550 Ibid.

551 Ibid.

552 TNA(UK): CJ 4/2300/2: Note of a Meeting Held in Dundonald House, 18Apr78. This transfer was put on ice after certain assurances had been given to the doctors by the Chief Constable.

procedures and practice in Northern Ireland relating to the interrogation of persons suspected of scheduled offences; to examine the operation of the present procedures for dealing with complaints relating to the conduct of police in the course of the process of interrogation; and to report and make recommendations."[553]

Setting up the Committee of Inquiry may have been an effort by the NIO to control the public narrative about detention and interrogation abuses, but just ahead of the publication of the Bennett Committee report, Dr Robert Irwin finally fulfilled his promise to go public. In his interview on 'LWT's Weekend World which aired in March 1979, Irwin stated that he had seen approximately 150-160 cases over the previous three years where the injuries sustained by complainants could not have been self-inflicted.[554] Immediately, a smear campaign was launched against Irwin, with sources claiming that he was "bitter and angry" with the RUC for failing to identify and prosecute a member of the security forces (possibly SAS) who had raped his wife.[555] The Daily Telegraph reporter who ran the story claimed his source was within Whitehall, while other journalists confirmed that following the Weekend World broadcast, they received tips from RUC sources that Irwin's character could be impugned.[556] Being an institutional whistleblower for interrogation abuses had serious ramifications for the chief police surgeon.

The Bennett Committee found "that many of the RUC's interrogators were of junior rank and had no formal training; there were areas of uncertainty as to exactly what treatment would render statements inadmissible; there were uncertainties too over the application of the Judges' Rules; no police officer had ever been successfully convicted of ill-treatment, despite successful civil claims against the RUC and out of court settlements."[557]

The Bennett report made several recommendations, including the instalment of CCTV in interrogation rooms, prompt medical examinations, that the RUC should provide the Police Authority with more information about complaints so that the latter agency could discharge its statutory function, and the DPP should make known his reason for not proceeding with a prosecution in cases of public interest.

Implementation of Bennett reforms did improve the situation and complaints dropped sharply (159 complaints in 1979 to 15 in the first two months of 1980).[558] In part, this may be due to the installation of closed-circuit cameras in many interrogation rooms within a year of the report being published. Although the Panel accepts that the degree and intensity of Article 3 ECHR violations reduced because of the range of reforms, members also noted evidence of complaints and allegations of ill-treatment continuing throughout the 1980s and into the early 1990s (see Appendix D).[559]

REPUBLIC OF IRELAND AND ENGLAND

The Panel noted that those charged with conflict-related crimes in the Irish State and in England during the 1970s also reported being abused in detention in ways not dissimilar to those reported by detainees in Northern Ireland. Several examples are given below.

In a conflict-related crime in the Irish State in 1976, six men – Osgur Breatnach, Nicky Kelly, Mick Plunkett, John Fitzpatrick, Michael Barrett, and Brian McNally – were charged with robbing a mail train near Sallins in Co Kildare. Following interrogation by gardaí that involved coercion and ill-treatment, all except Mick Plunkett signed confessions. The robbery was later claimed as the work of the IRA. The men were tried, convicted and imprisoned as part of a process involving the non-jury Special Criminal Court which ruled that the injuries sustained while in custody by some of the men were self-inflicted. In 1980 Breatnach and McNally were acquitted and released on the grounds that their confessions were made under duress. To date, there has been no

553 Bennett Report (n 345) 1.

554 Taylor, (n 317) 319.

555 TNA(UK): PREM 16/2137: Letter from Philip Wood to Mr Lankester, 16March79.

556 TNA(UK): PREM 16/2137: letter from JG Pilling to Philip Wood (10 Downing St), 19March79.

557 Taylor, (n 317) 324.

558 Ibid, 338.

559 https://www.jus.uio.no/smr/english/about/id/law/nipanel.html

effective investigation into their case and no members of the gardaí have been held criminally accountable.[560]

In England, Billy Power was one of six Irish men wrongly convicted of the Birmingham pub bombings in 1974 and sentenced to life in prison. He was exonerated with the others and their convictions quashed in 1991. He says that during his 1974 police interrogation in Morecambe he was beaten and spreadeagled against the wall and a voice said, "Stretch his balls," and that someone put his mouth close to Power's ear and bellowed, "You'll never have sex with your wife again." This was the point at which Power surrendered. "I screamed 'okay, okay'. I had to say something to stop them. I couldn't take any more." [561] No-one has ever been convicted for the assaults perpetrated against the six men while in police custody and although the six men eventually received compensation, the rightful perpetrators of the Birmingham pub bombings have never been identified.

In association with the 1974 Guildford pub bombings (blamed on the 'Guildford Four' and 'Maguire Seven'), Anne Maguire was convicted of making bombs for the IRA and sentenced to 14 years in prison. She was exonerated and her conviction quashed in 1991. She says during her police interrogation she was kicked and slapped. Her 13-year-old son Patrick was arrested at the same time with five other members of her family and a family friend. Patrick was also wrongly convicted and sentenced to four years in prison, which he served at adult prisons. He reports that during his 1974 police interrogation, "[t]hey kept asking me about the nitroglycerine, … and every time I denied it the bloke hit me. He slapped me round the face and cuffed me at the back of the neck and on the head."[562] His conviction was also quashed in 1991.

Carole Richardson was 17 when she was arrested in 1974 in connection with the same Guildford events. She was sentenced to life in prison, but was exonerated with her charges quashed in 1989. During her 1974 police interrogation, she said "…(Police Officer W) hit me. He hit me one in the left jaw with the back of his hand. I lifted my arm to my face to protect myself and he punched me in the ribs."[563]

In 1993, three former detectives from Surrey police were tried for conspiracy to pervert the course of justice in the Guildford Four case. All were acquitted, meaning that, once again, there was no accountability for the ill-treatment of innocent detainees. [564]

In August 2023 Bridie Brennan, the sister of the late Gerry Conlon, another of those wrongly convicted for the 1974 Guildford bombings by the IRA, announced she planned to sue Surrey Police and the Police Service of Northern Ireland (PSNI) amid claims he was tortured.[565]

560 Bernice Harrison, 'Sallins Train Robbery: A Miscarriage of Justice with No Closure' (*The Irish Times* 25 September 2023) <https://www.irishtimes.com/podcasts/in-the-news/sallins-train-robbery-a-miscarriage-of-justice-with-no-closure/> accessed 14 February 2024.

561 Chris Mullin, Error of Judgement: *The Truth about the Birmingham Bombings* (Poolbeg Press 1997) 53.

562 Robert Kee, *Trial and Error* (Hamish Hamilton 1987).

563 Ibid, 134.

564 John Mullin, 'Guildford Four Case Detectives Cleared: From the Archive, 20 May 1993' *The Guardian* (20 May 2013) <https://www.theguardian.com/theguardian/2013/may/20/guildford-four-detectives-cleared>. see also Ronan Bennett, *Double Jeopardy* (Penguin 1993).

565 Tanya Gupta, 'Guildford Four Family to Sue Pub Bomb Police Forces' *BBC News* (18 August 2023) <https://www.bbc.co.uk/news/uk-england-surrey-66547385>;The Guildford pub bombings killed five, injured 65 and led to one of Britain's biggest miscarriages of justice when 11 people were wrongly jailed - the Guildford Four and the Maguire Seven.

POST-1998 ACCOUNTABILITY EFFORTS

There have been some efforts since 1998 at establishing truth and accountability for what happened on the matter of torture and ill-treatment during the conflict.

1971 HOODED MEN INTERROGATIONS

In the case of the 14 "Hooded Men", there has been a convoluted saga involving multiple legal actions over many years as the men have sought some degree of justice for their ill-treatment[566]. Documents uncovered in a documentary from Irish broadcaster RTÉ in 2014 revealed that the British Government misled the European Court of Human Rights about the severity of the Army's interrogation techniques on the "Hooded Men", and the extent of their long-term physical and psychological consequences.[567] The documentary also suggested that the Secretary of Defence at the time, Peter Carrington, had authorised the interrogation tactics, and that Prime Minister Ted Heath knew about it.[568]

In 2018 the Irish Government appealed to the ECtHR to overturn its 1978 ruling (which held that the UK had carried out inhuman and degrading treatment, but fell short of defining it as torture), but the Court was not persuaded and let the original judgment stand.[569]

In 2014, the Chief Constable of the PSNI publicly committed to launching an investigation into this historic torture operation, but the investigation stalled. So in 2015, Francis McGuigan, one of the hooded men, and Mary McKenna, the daughter of Sean McKenna, another of the men, issued judicial proceedings against the PSNI, Secretary of State for Northern Ireland, and Department of Justice.[570]

Two years later the High Court ruled that the decision by the PSNI not to investigate the allegations of torture was unlawful and should be reversed.[571] The PSNI appealed this finding. In the Court of Appeal, Northern Ireland's most senior judge, the Lord Chief Justice Sir Declan Morgan, said the treatment of the men "would, if it occurred today, properly be characterised as torture".[572] When the case was heard at the Supreme Court, the justices ruled that the PSNI had been wrong not to investigate the allegations of torture, and concluded that the PSNI decision not to investigate in 2014 was "irrational" and that the treatment of the hooded men was "deplorable" and "deliberate policy."[573]

After decades of campaigning for an apology from the PSNI by the men, their representatives and families, in June 2023 the PSNI publicly apologised to the "Hooded Men" for their treatment in 1971. Joe Clarke, one of the men, received notification of the PSNI apology on his death bed.[574] Whilst the apology was seen as a type of justice at last, the relief was tinged with sadness for those of the men did not live to witness it. Following the apology, the PSNI announced that it will review the "Hooded Men" case, and produced terms of reference for

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566 During interrogation at Ballykelly Army base, the men were hooded; beaten; deprived of sleep, food and water; and forced to stand in the stress position.

567 Summer Eldemire, 'From Belfast to Guantánamo: The Alleged Torture of Northern Ireland's "Hooded Men"' (*The Intercept* 22 March 2018) <https://theintercept.com/2018/03/22/ireland-hooded-men-torture/>.

568 Ibid.

569 '"Hooded Men": PSNI "Wrong Not to Investigate Torture Claims"' *BBC News* (15 December 2021) <https://www.bbc.co.uk/news/uk-northern-ireland-59667405>.

570 Committee on the Administration of Justice, '"Hooded Men" Appeal to Be Heard in the UK Supreme Court' *Committee on the Administration of Justice* (14 June 2021) <https://caj.org.uk/latest/hooded-men-appeal-to-be-heard-in-the-uk-supreme-court/> accessed 14 February 2024.

571 'The Hooded Men: Torture, Lies and a Quest for Justice' (www.amnesty.org.uk 11 June 2021) <https://www.amnesty.org.uk/hooded-men-torture-uk-ireland>.

572 '"Hooded Men": PSNI's Appeal over Inquiry Dismissed' *BBC News* (20 September 2019) <https://www.bbc.co.uk/news/uk-northern-ireland-49767777> accessed 14 February 2024.

573 '"Hooded Men": PSNI "Wrong Not to Investigate Torture Claims"'(n 569).

574 Julian O'Neill, 'Hooded Men: Police Apologise over 1971 Interrogations' *www.bbc.com* (13 June 2023) <https://www.bbc.com/news/uk-northern-ireland-65892145> accessed 14 February 2024.

a review which is set to be carried out by the Legacy Investigation Branch.[575]

REDRESS BOARD FOR ABUSE IN RESIDENTIAL INSTITUTIONS

In March 2020, following an inquiry into historical institutional abuse in Northern Ireland, a 'Historical Institutional Abuse Redress Board' was established by the British Government to process applications for compensation from those who suffered neglect, maltreatment, emotional abuse, physical abuse or sexual abuse whilst in residential institutions in Northern Ireland between 1922 and 1995.[576]

The institutions in question include children's homes and orphanages, as well as prisons where children were held during the conflict. O Muirigh Solicitors in Belfast act for a number of former child prisoners who experienced abuse and estimate that the number of claimants abused in some form by institution staff, "would fall into the hundreds."[577] One of these was Ciaran McGillicuddy, who was 16 when he was jailed in the Maze Prison early in 1979. He says:

"I was subjected to physical and verbal abuse whilst being forcibly washed with a deck brush. During several of these washes I was also sexually assaulted by a Prison Officer. I was thrown into a metal tub which had freezing water in it. I was held down by prison staff who then scrubbed me with a wire brush. One Prison officer…, disposed of the wire brush and started rubbing my private parts with his hands instead. Another prison officer who was holding me down but noticed this happening said 'stop with that faggot stuff, you can beat the shit out of them but none of that faggot stuff.' … The prison officers then proceeded to cut my hair with a dull pair of scissors, cutting and grazing my head and neck. I was then made to run a gauntlet back to my cell before the next prisoner was dragged from his cell and exposed to the same treatment."[578]

The Redress Board has received more than 4,035 applications and £77 million has been paid to survivors. The Board recognises the need to do more to reach survivors who are not yet aware of the help and support available to them.[579]

DELAYED JUSTICE

As is clear throughout this report, justice in many cases has been far too long in coming. A further example is the case of four teenagers known as the 'Derry Four' – Michael Toner, Stephen Crumlish, Gerald McGowan and Gerard Kelly – who were arrested in 1979 in Derry and charged with the murder of a British soldier, Stephen Kirby. They were detained in Strand Road Police Holding Centre, and during a 3-day detention period had no access to lawyers, legal advice, parents or family members, and were subjected to physical and verbal ill treatment by the RUC interviewing officers. After a gruelling and lengthy pre-trial period, all four escaped from Northern Ireland for a life in exile, where they "lived their lives under the shadow of the most serious and grave false allegation with active Bench Warrants from a court in Belfast hanging over their heads."[580]

In 2003, the men complained to the Police Ombudsman that they had been forced to make false confessions. They announced in 2019 that they have accepted a significant out of court settlement from the Chief Constable PSNI but had to wait until 2022 for the Police Ombudsman to publish a report confirming that the teenagers' statements "were not voluntary and were obtained unfairly and in a coercive atmosphere." Whilst justice was achieved, accountability was not. No one involved in the interrogations and coerced false confessions has ever been prosecuted.

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575 Connla Young, 'PSNI to Review Hooded Men Case' (The Irish News 5 July 2023) <https://www.irishnews.com/news/northernirelandnews/2023/07/05/news/hooded_men-3411766/> accessed 14 February 2024.

576 'About Us' (*HIA Redress Board* 12 February 2020) <https://www.hiaredressni.uk/about-us> accessed 14 February 2024.The Historical Institutional Abuse (Northern Ireland) Act 2019 received Royal Assent on 5 November 2019. The Act provides the legal framework for the Redress Board.

577 Interview with O'Muirigh Solicitors.

578 Statement provided by O'Muirigh Solicitors.

579 Rebecca Black, '£77m Paid out so Far to Survivors of Historical Institutional Abuse' (Evening Standard16 October 2023) <https://www.standard.co.uk/news/uk/northern-ireland-support-high-court-government-b1113721.html> accessed 11 April 2024.

580 'Derry 4 Case against Chief Constable Settles | the Pat Finucane Centre' (28 January 2019) <https://www.patfinucanecentre.org/state-violence/derry-4-case-against-chief-constable-settles>

OPERATION KENOVA

Chief Constable of the Bedfordshire Police John Boutcher was commissioned by the PSNI in 2016 to investigate the activities of the British spy codenamed Stakeknife, who for many years operated as a state agent while a senior member of the IRA.[581] The interim report on Operation Kenova was published in March 2024, and included references to crimes including murder, attempted murders and torture, where the British agents responsible for them were not brought to justice.

The report notes that "During the Troubles, the Home Office Circular 97/1969 entitled 'Informants Who Take Part in Crime' provided guidance on the management and conduct of agents. The principles they expressed were reflected in various internal directives and regulations implemented by the security forces during the Troubles. However, there were problems: the guidelines were not designed or suitable for the type of conflict experienced in Northern Ireland, they could not sensibly be followed and they were routinely ignored. The failure either to apply or recognise the inadequacy of the guidelines allowed an environment to evolve in which people were tortured or killed without efforts being made to protect them or to bring agents responsible for serious crimes to justice."[582]

The damning report also found that "The security forces sometimes knew serious offences were taking place, including murder and torture, but to protect their sources they did not always pass on or act on this intelligence to the detriment of the rule of law. In many cases, the perpetrator reoffended and the organisation handling the agent concerned continued to protect them despite the agent's repeated involvement in serious criminal offences."[583]

The report also identified "occasions when agents were under surveillance by the security forces and the surveillance team was withdrawn leaving the victim exposed to torture and murder. Failings extend to PIRA ISU [Internal Security Unit] members not being arrested and prosecuted when the evidence was readily available. This permitted murderers, and those involved in torture and abduction, to escape the rule of law and this happened repeatedly."[584]

The Kenova report also said that victims who survived IRA mistreatment "named those responsible for violence against them and I have established that some of them were agents when they committed acts of torture, including shootings. There is no information about these agents' criminal activities in their contact records with their handlers and it has not always been possible to tell whether they told their handlers about their criminal acts."[585]

Despite the evidence uncovered by Kenova, the Public Prosecution Service (PPS) announced there were to be no prosecutions in relation to the crimes investigated. [586]

581 Sir Iain Livingstone, former Chief Constable of Police Scotland, took over as Head of Kenova in 2023, when Jon Boutcher was appointed Chief Constable PSNI. However, Boutcher was heavily involved in the release of the Kenova interim report.

582 Kenova report, (n 65) 35.

583 Ibid, 16.23.

584 Ibid, 71.7.

585 Ibid, 67.3.

586 Ibid.

CONCLUSION

This chapter has shown that acts which clearly meet the definition of torture or ill-treatment under Article 3 ECHR were commonly carried out by members of the RUC and British military during the 30-year NI conflict. It has also shown that, owing to the State's failure to meet legal obligations to conduct independent and effective investigations in complaints of abuse, few perpetrators of such acts have been held to account.

In his 1976 report on his duties as chaplain at Armagh Women's Gaol, Father Raymond Murray noted that "[n]obody in the community can understand why the British Army and RUC seem to be immune from prison sentences for offences, for killing people and assaulting prisoners."[587] Almost 50 years later, the same thing can still be said. Despite a wealth of ad-hoc committees of inquiry, inquests and civil actions, and the efforts of victims groups, prison surgeons and priests, impunity appears to have been afforded to the vast majority of those committing offences that would qualify under Article 3.

587 Murray, (n 504).

CHAPTER FIVE
IMPUNITY FOR COLLUSION?

INTRODUCTION

This chapter examines impunity in the context of collusion. We should stress at the outset that this is not intended to be a history of collusion between British state forces and paramilitary groups during the conflict; rather, the Panel's focus is on whether and where collusion fuelled impunity. The chapter begins with an overview of the difficulties encountered when attempting to define "collusion" and the forms and contexts in which collusion has been a feature of the Northern Ireland conflict. It then argues that there is clear evidence of a de facto culture of impunity in relation to collusion in Northern Ireland, drawing heavily on reports from State-appointed Police Ombudsmen. Next, this chapter focuses in particular upon the role of collusion in relation to the killing of solicitor Pat Finucane, the Rock Bar incident, and the operation of informers within the IRA's internal security unit. The chapter also considers the long-term harm on families and to wider society of a failure to bring perpetrators to justice due to collusion. The chapter ends with a discussion about collusion as evidenced in the interim Operation Kenova report.

COLLUSION - DEFINITIONS, BACKGROUND, CONTEXT

Establishing an exact definition of "collusion" has been at the heart of much political debate and public discourse for many years in Northern Ireland. Collusion is not defined in UK law,[588] nor is it defined in international law instruments, although the term is used in the case law of the European Court of Human Rights, including in cases relating to the Northern Ireland conflict.[589] Collusion may involve criminal acts, but there is no criminal offence of "collusion" per se. It may also amount to a human rights violation, where the state fails in its obligation to protect its citizens. Despite this lack of a universally accepted definition of collusion, in the past thirty years a series of reports by state-appointed inquiries and bodies has delineated and expounded the definition and meaning of collusion in the Northern Ireland context.

As detailed below, collusion is largely accepted as referring to the responsibility of the State for 'involvement in' or 'turning a blind eye to' the criminal acts otherwise attributed to non-state actors. It denotes, more specifically, the responsibility of the British Government and security forces – the police, the military, and the security service (MI5) – for wrongful actions carried out by members of paramilitary organisations including the Ulster Defence Association (UDA), Ulster Volunteer Force (UVF) and the Irish Republican Army (IRA).[590] Instances of collusion in Northern Ireland have included many murders and other physical attacks, usually involving firearms or explosives, often against unarmed civilians.

588 The most proximate offence could be "misconduct in a public office" ("misfeasance" if in a civil action).

589 See for example *Shanaghan v. UK* (n 189) including the reference, at paragraph 94, to the Courts exploration as to "whether the degree of collusion attracted State responsibility in respect of the killing itself"; the assertion it was beyond the Court's remit on this individual case to establish whether there was a practice of collusion [98]; and referenced collusion repeatedly in its conclusions [122]. See also *Finucane v UK* (n 189), the *Case of Brecknell v UK* [2007] ECHR Application no. 32457/04 and other cases. In the *Case of Popa v Moldova* [2013] ECHR Application no. 17008/07 at paragraph 47 the Court sets out that an "effective investigation required under Articles 2 and 3 serves to maintain public confidence in the authorities' maintenance of the rule of law, to prevent any appearance of collusion in or tolerance of unlawful acts…" citing *McKerr v. UK* (n 237) among other authorities.

590 For further detail and background to the conflict see the Introduction and Chapter Two.

Stevens

In 2003, the former Commissioner of the Metropolitan Police (London), Lord John Stevens, who investigated the murder of solicitor Pat Finucane and other killings by loyalists, defined collusion broadly, as a practice which is

> "evidenced in many ways. This ranges from the wilful failure to keep records, the absence of accountability, the withholding of intelligence and evidence, through to the extreme of agents being involved in murder".[591]

He further stated that

> "the failure to keep records or the existence of contradictory accounts can often be perceived as evidence of concealment or malpractice. It limits the opportunity to rebut serious allegations. The absence of accountability allows the acts or omissions to go undetected. The withholding of information impedes the prevention of crime and the arrest of suspects. The unlawful involvement of agents in murder implies that the security forces sanction killings."[592]

Stevens further elaborated relevant issues, for example that

> "The co-ordination, dissemination and sharing of intelligence were poor. Informants and agents were allowed to operate without effective control and to participate in terrorist crimes. […] Nationalists were known to be targeted but were not properly warned or protected. Crucial information was withheld from senior investigating officers. Important evidence was neither exploited nor preserved."[593]

Cory

A similar definition was given by Judge Peter Cory, a former Justice of the Canadian Supreme Court. Following agreement at the 2001 Weston Park talks, Cory was tasked by the British and Irish governments to review six cases where there have been allegations of collusion.[594] Cory found that "Because of the necessity for public confidence in government agencies the definition of collusion must be reasonably broad when it is applied to such agencies."

Cory elaborated that government agencies

> "must not act collusively by ignoring or turning a blind eye to the wrongful acts of their servants or agents or by supplying information to assist those servants or agents in their wrongful acts or by encouraging others to commit a wrongful at."

Cory emphasised that

> "Any lesser definition would have the effect of condoning, or even encouraging, state involvement in crimes, thereby shattering all public confidence in these important agencies."

Thus according to Cory's definition, indications of state collusion can emerge from actions or inactions of government agencies which have directly contributed to killings, as well as from acts which indirectly contributed to killings by facilitating paramilitary activities. This definition encompassed patterns of behaviours of turning a blind eye to threats made against individuals, and failure to protect them.

Smithwick

Irish judge Peter Smithwick, who chaired a tribunal investigating allegations of collusion between the Irish police and the IRA in the killing of two senior RUC police officers, endorsed the approach of Cory, adding that

591 John Stevens, 'Stevens Enquiry: Overview and Recommendations' (Metropolitan Police Service 2003) at Para 1.3

592 Ibid, paras 4.7-4.9.

593 Ibid.

594 Northern Ireland Office and Department of Foreign Affairs, 'Implementation Plan Issued by the British and Irish Governments on 1 August 2001' (Northern Ireland Office and the Department of Foreign Affairs 2001).The Weston Park Agreement 2001 [paras 18-19] committed to the appointment of a judge to investigate allegations of collusion into the cases of Harry Breen and Robert Buchanan, Pat Finucane, Rosemary Nelson, Billy Wright, Robert Hamill, and Lord Justice and Lady Gibson; Cory Collusion Inquiries Reports and other relevant documents are available on the Ulster University CAIN website here: https://cain.ulster.ac.uk/issues/collusion/read.htm

"No party has challenged this definition and I remain of the view that it is the correct one."

Smithwick stated that he would examine collusion in the broadest sense of the word.

> "While it generally means the commission of an act, I am of the view that it should also be considered in terms of an omission or failure to act. In the active sense, collusion has amongst its meanings to conspire, connive or collaborate. In addition, I intend to examine whether anybody deliberately ignored a matter, turned a blind eye to it or pretended ignorance or unawareness of something one ought morally, legally or officially, oppose."

It is important to note that the PSNI itself has supported this definition, and in a written submission stated that "The tribunal's definition is a comprehensive definition, properly framed and considered."[595]

O'Loan and Maguire

Baroness Nuala O'Loan, who was appointed by the UK government in 1999 as the first Police Ombudsman for Northern Ireland, endorsed the definitions of both Cory and Stevens.[596] However, Dr Michael Maguire, who served as Police Ombudsman from 2012-2019, said that despite the numerous definitions of collusion that had emerged over the years he was more drawn to the Smithwick definition. He stated

> "Many of the issues I have identified in this report, including the protection of informants through both wilful acts and the passive 'turning a blind eye'; catastrophic failures in the police investigation; and destruction of exhibits and documents are in themselves evidence of collusion as defined by Judge Smithwick.[597]

de Silva

Some have proposed a narrower definition of collusion. Sir Desmond de Silva, appointed in 2012 by the British Government to review the killing of solicitor Pat Finucane, adopted a somewhat narrower "working definition" of collusion. Whilst de Silva emphasised that

> "I do believe, as Judge Smithwick has said in relation to his Tribunal, that omissions by state agencies must be considered alongside positive acts when drawing a definition of collusion," he also stated that "in order to fall within the ambit of collusion, such omissions must be classified as deliberate and not merely represent examples of incompetence or inefficiency."

de Silva therefore considered collusion to involve:

> "(i) agreements, arrangements or actions intended to achieve unlawful, improper, fraudulent or underhand objectives; and (ii) deliberately turning a blind eye or deliberately ignoring improper or unlawful activity."

It is worth emphasising that de Silva noted that his "working definition" is "not purporting to be definitive", but one he considers "appropriate in relation to the allegations made and for the purposes of this particular case".

Billy Wright Inquiry

A more restricted definition had also been adopted by the 2005 Billy Wright Inquiry, which explicitly rejected the Cory definition as too wide. According to the Billy Wright Inquiry, "the essence of collusion is an agreement or arrangement between individuals or organisations, including government departments, to achieve an unlawful or improper purpose." Thus, this definition requires deliberate agreements to commit unlawful acts and excludes turning a blind eye or deliberately ignoring something. It should be stressed that unlike Cory, the Office of the Police Ombudsman for Northern Ireland and others, this inquiry looked at a very specific and

595 Smithwick Tribunal, Written Submissions on Behalf of the PSNI, 5.

596 OPONI 'The Death of Raymond McCord Junior and Related Matters' (n 98) 132.

597 Police Ombudsman for Northern Ireland, 'Public Statement by the Police Ombudsman in Accordance with Section 62 of the Police (Northern Ireland) Act 1998. Relating to a Complaint by the Victims and Survivors of the Murders at the Heights Bar, Loughinisland, 18 June 1994' (Police Ombudsman for Northern Ireland 2016), 7.

perhaps unusual case: the killing of loyalist leader Billy Wright inside the Maze Prison in 1997, and the allegation that there was collusion between the state actors and the republican group the Irish National Liberation Army (INLA) in killing him, as he was perceived by the State to be a risk to the peace process.

Hutchinson

Finally, a narrow definition, which like de Silva also emphasised the importance of a collusive act being deliberate, was offered by Al Hutchinson, who served as the police Ombudsman in 2007-2012. Hutchinson found that"

> "The essence of collusion requires that a number of elements be present. Not only must there usually be an agreement between two or more parties, but there is also an additional requirement that a sufficiency of evidence exists to establish, on balance, that the act or omission complained of was deliberate and not merely negligent or inadvertent."[598]

It must be noted that this report's findings were quashed following a legal challenge, and the Ombudsman investigation was reopened by Hutchinson's successor, Michael Maguire, who as noted above adopted the wider approach provided by Judge Smithwick.[599]

Anderson

The narrower definitions were either confined to the specific inquiries or essentially discredited, as in relation to Hutchinson, and the more accepted definition remains an expansive one. The current Police Ombudsman, Marie Anderson, supports the wide-ranging nature of previous definitions. She states:

> "I am in favour of broad definitions encompassing collusive behaviours reflecting the views of Lord Stevens and Judge Cory. This applies to acts and omissions which can encompass collaboration, agreements, or connivances. It can also include the more passive 'turning a blind eye.'[600]

In two 2022 reports[601] Anderson identified several common features of collusion, creating a possible definition in itself.

- Collusion is context and fact specific.
- It must be evidenced but is often difficult to establish.
- Collusion can be a wilful act or omission.
- It can be active or passive. Active collusion involves deliberate acts and decisions. Passive (or tacit) collusion involves turning a blind eye, or letting things happen without interference.
- Collusion by its nature involves an improper or unethical motive.
- Collusion, if proved, can constitute criminality or improper conduct (amounting to a breach of the ethical code of the relevant profession).
- Corrupt behaviour may constitute collusion.[602]

598 Police Ombudsman for Northern Ireland, 'Public Statement by the Police Ombudsman pursuant to Section 62 of the Police (Northern Ireland) Act 1988. Relating to the Complaint by the Relatives of the Victims of the Bombing of McGurk's Bar, Belfast on 4 December 1971' (Police Ombudsman for Northern Ireland 2011) <https://www.policeombudsman.org/getmedia/893d20b0-5ed6-4b37-8568-264ddd857428/McGurk-s-Final-Report.pdf?ext=.pdf>. 75.

599 On the problems found in OPONI's operation under Hutchinson see CAJ, 'The Apparatus of Impunity?' (n 66).

600 OPONI 'Investigation into Police Handling of Certain Loyalist Paramilitary Murders and Attempted Murders in the North West of Northern Ireland during the Period 1989 to 1993' (n28) 28.

601 Operation Greenwich and Operation Achille. These two police collusion reports dealt with multiple cases and made findings of 'collusive behaviours'. The Operation Greenwich report dealt with the north west of Northern Ireland, 1989-1993 and Operation Achille dealt with south Belfast 1990-98; Ibid; Police Ombudsman for Northern Ireland, 'Public Statement by the Police Ombudsman pursuant to Section 62 of the Police (Northern Ireland) Act 1988. Relating to Public Complaints: Investigation Into Police Handling Of Loyalist Paramilitary Murders and Attempted Murders in South Belfast in the Period 1990-1998' (Police Ombudsman for Northern Ireland 2022).

602 OPONI' Investigation into Loyalist Paramilitary Murders and Attempted Murders in the North West of Northern Ireland during the Period 1989 to 1993' (n 28) 326.

SUMMARY

While the precise meaning of collusion remains contested, there appears a consensus across a range of judicial and state-sponsored inquiries that in order to enable accountability and truth-recovery and gain public trust, collusion should be understood broadly, to encompass both deliberate actions and 'turning a blind eye'. It should also be noted that the majority of academic writing and NGO reports, as well as several court judgments, have adopted wider definitions.[603] The Panel finds that, as part of the state obligation to ensure accountability, truth, reparations and guarantees of non-repetition, collusion must indeed be treated broadly. Anderson's list contains core elements from Stevens, Cory, Smithwick and de Silva and may well fit the bill.[604] The fact that it is shown as a list illustrates the difficulty of incorporating the necessary features into a concise, single-sentence definition. The Panel therefore adopts the definition used by Anderson.

THE MANY FACES OF COLLUSION

There are many ways in which the State and its agents are perceived to have colluded with republican and loyalist armed groups operating in Northern Ireland during the conflict. As noted previously, it includes both instances of commission and omission.

Collusion can occur at different times relating to the commission of violent or unlawful events. For example:

- Before attacks. Collusive actions may include direct involvement in the planning of assassinations or other violent acts, and actions such as providing paramilitaries with weapons or intelligence, as well as failing to warn intended victims of threats or to provide adequate protection to those threatened by paramilitaries.

- During attacks. Collusion may include direct involvement in the execution of attacks and other unlawful acts, and state agents facilitating or turning a blind eye to such unlawful activity as it occurs.

- After attacks. Collusive actions may include: state agents failing to rigorously investigate paramilitary killings; ensuring that perpetrators escape; obstructing investigations by fellow officers or other security force agencies or failing to pass on relevant information to such investigators; and overlooking or ignoring critical and easily accessible forensic evidence. Collusion can also include: failure to properly hold accountable members of the security forces alleged to have passed information to paramilitaries; the enabling or tolerating of killings by informers; or acting in ways that allow killers to evade detection or successful prosecution.

FORMAL AND INFORMAL COLLUSION

There is a "collusion continuum", ranging from individual (or informal) collusion to institutional (or formal) collusion. While such activities would not be officially condoned, the notion of collusion implies that an operational space is created in order to make collusion possible. In some instances, this kind of behaviour has implicated institutions and individuals within the state security system as well as the political elites.[605]

Formal collusion would consist of the sanctioned use of armed groups with directives coming from the operational and/or political levels. Such collusive behaviour is organised, planned and bureaucratised by elements within the security forces. Informal collusion could include individual members of the security forces, sympathetic to a particular cause, operating in tandem with paramilitary groups or passing intelligence information to

603 See the civil case of *Michael Monaghan and Chief Constable of the Police Service of Northern Ireland* [2023] NIKB 49 -https://www.judiciaryni.uk/judicial-decisions/2023-nikb-49 (paras 7,8, 124 & 125).

604 The language used by OPONI later shifted to the term "collusive behavior", which will be explained in a subsequent section.

605 Ruth Jamieson and Kieran McEvoy, 'State Crime by Proxy and Juridical Othering' (2005) 45 The British Journal of Criminology 504-527.

paramilitaries without official sanction.

As noted above, some commentators object to the wide-ranging definition of collusion, arguing that a finding of collusion can only be based on evidence of a formal agreement (albeit secret) between state agents and paramilitaries. The Panel is not persuaded by this argument. Many aspects of collusion do not require any communication between state agents and paramilitaries. For example, the failure of security forces to warn individuals of a threat to their lives, the failure to stop weapons being stolen from army bases or smuggled from abroad, or security forces allowing perpetrators to escape from the scene of a crime or obstructing investigations – none of these require any formal bilateral agreement or contractual arrangement, and in theory can occur without the awareness of paramilitaries. A charge of collusion, therefore, does not depend on uncovering a secret agreement to deliberately and consciously plot with paramilitaries to engage in a criminal act. Rather, it should include allowing attacks to occur and frustrating investigations. The only path to accountability and truth is to adopt an inclusive definition of collusion.

FINDING COLLUSION - CHALLENGES AND NUANCES

Moving on from defining and illustrating collusion, the Panel notes several specific challenges and nuances relating to the issue.

DIFFICULTY IN PROVING COLLUSION

First, examining and corroborating suspicions of collusion is challenging.[606] Investigating collusion is not simply about finding out who 'pulled the trigger'. Rather, it requires trying to unearth the broader relationships, structures, patterns and organisational cultures that enabled the killing or other human rights violation. By its very nature collusion is intended to be covert, to minimise evidence of its existence and maximise the space for deniability on the part of state agencies. It is carried out in the main by security and investigative personnel, often by clandestine intelligence branches (e.g. the RUC's Special Branch, secret military intelligence units, MI5) whose very essence involves maintaining secrecy. Such agencies have traditionally operated with limited oversight and without effective lines of accountability.

Thus collusion tends not to involve "… a normal bureaucratic decision involving a paper trail through the files showing official sanction".[607] As Judge Smithwick asserted in the report of the inquiry into allegations of collusion between the IRA and members of An Garda Siochana: "Collusive acts are, by their very nature, surreptitious. Absent a phone call or incriminating bank transfer, if collusion has occurred, the evidence of it will almost certainly be difficult to find."[608]

Collusion is therefore not something that is likely to be corroborated by finding official state documents that explicitly and elaborately explain and authorise a policy of collusion. It occurs precisely in spaces where there is a lack of regulation, supervision and accountability. As former Police Ombudsman for Northern Ireland Dr Michael Maguire told the Panel, collusion was often "subtle", involving for example "withholding or delaying intelligence. Evidence was not appraised in good faith, or not appraised with the full picture, or [was revealed] too late to be of use. Collusion and collusive behaviour on one hand was informal and on the other was [due to] structural and organisational culture."[609]

Given that maximising "plausible deniability" has been described as a key feature of collusion,[610] the investigative challenges involved in trying to determine whether collusion was involved in a particular case or cases speaks directly to the need for an independent, broad-mandate inquiry, provided with the relevant legal powers and

606 Human Rights Watch, 'To Serve without Favor: Policing, Human Rights, and Accountability in Northern Ireland' (Human Rights Watch 1997) <https://www.hrw.org/reports/1997/uk1/>.

607 G Ellison and Jim Smyth, The Crowned Harp : Policing Northern Ireland (Pluto 2000) 147

608 Judge Peter Smithwick, 'Report of the Tribunal of Inquiry into Suggestions That Members of an Garda Síochána or Other Employees of the State Colluded in the Fatal Shootings of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan on the 20th March 1989' (Oireachtas 2013) 424. http://opac.oireachtas.ie/AWData/Library3/smithwickFinal03122013_171046.pdf

609 Meeting with the Panel, Belfast, 3 April 2023.

610 Bill Rolston, '"An Effective Mask for Terror": Democracy, Death Squads and Northern Ireland' (2005) 44 Crime, Law and Social Change 181.

resources to ensure an effective investigation.

DIFFICULTY IN DETERMINING THE EXTENT OF COLLUSION

Another key challenge in discussions of collusion is determining how widespread it has been and the degree to which the practice has been systematic and institutionalised. Many have argued that if collusion has indeed occurred, it has been perpetrated by a very small number of individuals acting on their own (without official knowledge or authorisation) and on only rare occasions.

MORE THAN JUST A FEW BAD APPLES

Some acknowledge the existence of collusion, but interpret it as the work of a few "rotten apples": as deviant, individual acts, which do not indicate anything systematic. From such a perspective, cases of collusion during the conflict were few and isolated, and do not implicate the State and its agencies and policies. The former head of RUC Special Branch, Raymond White, for example, has rejected claims of widespread collusion, but admitted a small number of individual officers were involved in collusion.[611] This has long been a common response to allegations.

In 1994, when responding to allegations of collusion between the security forces and loyalist paramilitaries, the RUC's Chief Constable said: "I am absolutely satisfied that collusion is neither widespread nor institutionalised. From time to time, however, there will be some bad apples in every barrel".[612]

Similarly, in 1997 RUC management told Human Rights Watch (HRW) that there have been "remarkably few" cases of police officers passing information on to loyalist paramilitaries but in those cases which have been spotted, those individuals have been "dealt with." In response, HRW noted that in fact, there has never been an acknowledged criminal or disciplinary charge levelled against an RUC officer for offences relating to collusion.[613] Almost three decades later, the Panel also found no historical examples of an RUC officer being convicted for offences relating to collusion. Police Ombudsman Maguire was adamant when he told panel members: "We're not dealing with bad apples or rogue officers: [there were] too many instances of collusive behaviour. People died, [and] people were protected."[614]

FREQUENTLY AND OFFICIALLY SANCTIONED

Nor are the features of collusion simply an indication of sporadic failures of the British counter-insurgency system. Rather, the prevalence of collusion would suggest that, in some instances at least, there was a culture of tolerance towards collusive acts or omissions as part of the bigger counter-terrorist effort. Again, the fact that it has not been possible to find cases of police and army officers being punished for involvement in collusion seems to indicate that they were not seen to be violating the orders or the organisational mindset of their institutions. The issues raised in the various reports and inquiries – some of which are detailed below – do not suggest incidental and infrequent failings but a broader organisational culture which in some instances directed and implemented collusion and in others, was tolerant of collusive actions or inactions.

For example, the de Silva report uncovered a security force assessment that in the mid-to-late 1980s, 85% of UDA intelligence against potential targets had originated from the RUC and military. This included 270 separate instances of security force leaks to the UDA just for the period between January 1987 and September 1989.

Stevens suggested that of the 210 paramilitary suspects arrested during the course of his investigations, 207 turned out to be state agents/informants.[615] The sheer level of informant infiltration of loyalism does not itself mean collusion but it is nevertheless a strong indicator of potential for tolerance, direction and lack of adequate

611 Rebecca Black, 'Collusion: Ex-RUC Special Branch Boss - My Shame at "Cadre" of Security Force Personnel Involved in Northern Ireland Loyalist Murders' BelfastTelegraph.co.uk (25 October 2013) <https://www.belfasttelegraph.co.uk/news/northern-ireland/collusion-ex-ruc-special-branch-boss-my-shame-at-cadre-of-security-force-personnel-involved-in-northern-ireland-loyalist-murders/29698720.html> accessed 14 February 2024. .

612 Irish Times, July 5 1994, cited in Graham Ellison and Jim Smyth, 'Bad Apples or Rotten Barrel? Policing in Northern Ireland' in Otwin Marenin (ed), *Policing Change, Changing Police* (Routledge 2018) 171-204.

613 Human Rights Watch, 'To Serve without Favor (n 606).

614 Meeting with the Panel, Belfast 3 April.

615 'UK Agents "Worked with NI Paramilitary Killers"' *BBC* News (28 May 2015) <https://www.bbc.co.uk/news/uk-32887445>.

efforts to prevent or investigate loyalist attacks. It is evident that agents working for all the security forces were participating in criminality, presumably including murder and that this was part of the institutional culture.[616]

The goal of those who argue that collusion only consisted of a few isolated cases is of course to negate the need for a far-reaching and thorough inquiry into the issue. While the Panel has been unable to evaluate the exact scope of collusion – that would be the role of such an inquiry – members are convinced, based on the evidence already covered by state-sponsored bodies, that collusion was often a significant feature of the practice of state agencies throughout the entire conflict. It cannot be relegated to the actions of a few rotten apples or be said to have happened without an underlying level of systemic tolerance and facilitation.

NUANCES TO TAKE INTO ACCOUNT

Although a strong case can be made to show that collusion is widespread, the Panel accepts that such a claim must acknowledge certain key facts.

First, not every failure by law enforcement agencies should automatically be considered as collusion. Police Ombudsman Maguire made the following distinction.

"Individual examples of neglect, incompetence and/or investigative failure are not (de facto) evidence of collusion. However, a consistent pattern of investigative failures may be considered as evidence of collusion depending on the context and specifics of each case. This is particularly the case when dealing with police informants who were participating in crime."[617]

Second, accepting that collusion was widespread does not mean all or most police officers were involved. Evidence over the years suggests there were many officers who undoubtedly acted professionally and with courage and dedication to serve the interest of justice and worked diligently to investigate conflict-related crimes. It is clear that some such officers were undoubtedly obstructed in their duties by fellow police officers.

Acknowledging the reality of collusion as more than the result of a 'few bad apples' does not imply blaming each and every individual officer who ever served in the police or negating the professionalism of those who served with integrity. As noted, collusion manifested itself in internal struggles within the police with Special Branch undermining CID investigations. For example, Police Ombudsman Maguire, examining the Loughinisland case, concluded for that "there have been many within the RUC and the PSNI who have worked tirelessly to bring those responsible to justice," and that "the initial police response to the Loughinisland murders was appropriate and timely."[618]

It should also be noted that some of the evidence for collusion emerged, or was corroborated by, whistleblowers from within the security forces,[619] again demonstrating plurality of views and practices.

Third, while there was obvious collusion with republicans (e.g. as detailed in the Kenova report, see below) it should be clarified that the charge of widespread collusion with pro-state loyalist paramilitaries in particular, does not imply that all loyalist activities were orchestrated by the State and that loyalist groups and activists were no more than stooges of state agencies. Loyalist paramilitaries exhibited political ideology and agency independent of the State; the UDA and UVF were certainly not just state-run counter-gangs or branches of state security apparatus. Loyalist groups were not simply passive objects of state manipulation, and at times it may

616 John Sweeney, 'de Silva Report on Finucane Case Turns Spotlight on MI5' *BBC News* (13 December 2012) <https://www.bbc.co.uk/news/uk-northern-ireland-20708070> accessed 8 April 2020.

617 OPONI Loughinisland Report (n 597) 6.

618 Ibid, 7.38.

619 Johnston ('Jonty') Brown, a CID detective who was obstructed from investigating the murder of Finucane, revealed this to the Stevens inquiry and to the media; Stevens Enquiry (n 591). The Pat Finucane Centre, 'Full Transcript of UTV's "Insight" Interview with CID Detective Sergeant Johnson "Jonty" Brown | the Pat Finucane Centre' (www.patfinucanecentre.org (1 May 2001) <https://www.patfinucanecentre.org/policing/full-transcript-utvs-insight-interview-cid-detective-sergeant-johnson-jonty-brown> accessed 14 February 2024.

have been the reverse: it may be that loyalists infiltrated state structures rather than the other way around.[620]

At times the relations of governments and pro-state armed groups were nuanced and complex, and at times antagonistic.[621] Such relations can be fluid, changing over time; pro-state groups do not passively follow state directives in each and every case, and often have a dynamic of their own in their targeting and operational strategies.[622] Certainly not all killings and attacks by loyalists involved collusion. And at times they directly opposed the State. For example, in 1974, the UDA, in collaboration with other loyalist groups, coordinated a strike against the Northern Ireland power-sharing executive that led to its collapse. And over the years, many loyalists were prosecuted and imprisoned by the State (some after being abused in police detention, see Chapter Four on Torture). The UDA was not proscribed by the British Government as a terrorist group until 1992, although declassified documents from military, police and government sources suggest the authorities knew that the UDA was carrying out violent attacks, including bombings and murders, using the *nom de guerre* of the Ulster Freedom Fighters.[623]

Acknowledging the challenges and nuances outlined above, the pertinent point in the context of this report is that the State has never held itself responsible for its role in paramilitary violence. The fact that many loyalists were imprisoned is not the issue when examining state impunity: the issue is that the Panel has been able to identify only a small handful of state actors (police officers, soldiers, or MI5 personnel) who were imprisoned or held accountable in any other way for their role in collusion and impunity. These cases appear to be exceptional.

The most prominent 'collusion prosecution' example is that of Brian Nelson, an army (FRU) agent and UDA chief intelligence officer. This only occurred as a result of the independent Stevens 1 inquiry which, as recently revealed in the Operation Kenova Interim Report, demonstrated that, through Nelson, the "the FRU had been involved in passing intelligence to the UDA for the purposes of targeting people for murder."[624] Nelson's prosecution occurred despite considerable official pressure to prevent both it and the Stevens inquiry from accessing information.[625] Kenova also sets out how the Stevens 1 inquiry led to the prosecution of two UDR soldiers in relation to the leaking of security force information from Dunmurry RUC station, noting (in line with the Stevens and de Silva findings) that "Almost all the military related documents that the UDA held were ultimately supplied by members of the security forces".[626]

One further example relates to a solider (a Royal Marine) Derek Adgey, for leaking information to loyalists on republican suspects in 1994. Adgey reportedly admitted to 10 counts of soliciting murder, nine of recording information and three of collecting information and was convicted but received only a four-year sentence.[627] On his release Adgey ended up as a contractor in Iraq for one of the UK's largest private security firms.[628] These, as mentioned, are exceptional cases. The imprisonment of loyalists does not negate state responsibility and impunity for collusion.

620 Dale Pankhurst, 'Collusion Vs. Infiltration: Exploring The British State-Loyalist Paramilitary Relationship Through A Loyalist Ex-Combatant Lens' www.Qub.Ac.Uk (17 January 2023) <https://Www.Qub.Ac.Uk/Research/GRI/Mitchell Institute/Researchandimpact/Blogs/Collusionvsinfiltration.Html> Accessed 14 February 2024.

621 Andrew Thomson And Dale Pankhurst, 'From Control To Conflict: A Spectrum And Framework For Understanding Government-Militia Relationships' [2022] Studies In Conflict & Terrorism 1.

622 Jamieson and McEvoy, (n 605) 504.

623 See NAUK CJ4/10324; As Rolston (2005) Described "Loyalist Paramilitary Organisations Cannot Merely Be Seen As State-Run Counter-Gangs. Their Autonomy From State Forces Is Beyond Doubt;" Yet Also Says "Although Relatively Autonomous, The Loyalist Paramilitary Groups Were A Pawn In The State's Counter-Insurgency Strategy" Rolston, (n 610) 196.

624 Interim Kenova Report (n65) 55.2.

625 Ibid. Paragraphs 55.6 and 61.8. Paragraph 55.7 states: "On 23rd January 1992, Nelson pleaded guilty to 20 serious crimes including five counts of conspiracy to murder. On 3rd February 1992, after hearing character testimony, including from the FRU, Nelson was sentenced to 101 years' imprisonment with an actual sentence of 10 years' imprisonment to be served."

626 Ibid, paras 54.2 and 54.5.

627 See 'Soldier passed details to UFF' Irish Times 24 Feb 1996 (https://www.irishtimes.com/news/soldier-passed-details-to-uff-1.31641)

628 Matthew Tempest and political correspondent, 'Rifkind Made Head of Iraq Security Firm' *The Guardian* (13 April 2004) <https://www.theguardian.com/politics/2004/apr/13/iraq.iraq1> accessed 11 April 2024.

COLLUSION IN CONTEXT

That collusion between state agencies and paramilitaries was not a random deviation from 'normal' practices can be further established by situating it in the context of other structural forces and influences. Collusion in Northern Ireland continued patterns of practice and thinking used by British forces earlier in a series of colonial contexts.[629] Collusion:

- involved the use of a variant of what were termed elsewhere as 'counter-gangs'
- was shaped by policies giving primacy to intelligence over ordinary law enforcement
- was influenced by social dynamics linking security forces and the unionist community
- reflected the British mindset which saw republican groups – and not loyalists – as the enemy that needed to be defeated.

These are briefly reviewed below.

1. USE OF COUNTER-GANGS

Collusion may be viewed as a variant of a well-known British military strategy of using "counter-gangs" in pursuit of state objectives.[630] Many soldiers in the British Army (as well as some police officers) had extensive counter-insurgency experience in other countries when political violence broke out in 1969.[631] The best-known exponent of the strategy of relying on locally-recruited "counter-gangs" has been General Frank Kitson, who was involved in counter-insurgency operations in Kenya, Malaysia and Cyprus before arriving in Northern Ireland in the early 1970s. Kitson explained this technique in a series of well-known books,[632] in which he detailed the importance of using local covert militia forces in ways that allow the state to sustain the appearance of maintaining the rule of law while using such covert forces to terrorise the enemy and the community from which they came. Most pertinently, collusion was also linked with a tradition of impunity for those exercising it: those involved in collusion in Kenya, Malaysia or Cyprus were not held legally accountable.

2. INTELLIGENCE PRIMACY

Another important factor in understanding collusion lies in the broader context of the British policy of "intelligence primacy". This essentially placed intelligence, rather than law enforcement and criminal prosecutions, as the main goal of key state agencies in Northern Ireland. Manifestations of collusion linked to this underlying rationale include the protection of informers carrying out crimes and the obstruction of RUC CID investigations by RUC Special Branch, M15 or military intelligence units.

The Walker report, named after the senior MI5 officer (later head of MI5) who drafted it, resulted in police detectives being ordered not to arrest suspected terrorists without consulting the force's intelligence-gathering section. This was the enactment of a policy directive stating that people arrested could be recruited as agents rather than charged with a criminal offence.[633] This approach arguably resulted in RUC Special Branch becoming a "force within a force", and informers involved in violence being seen as a "protected species" – often much to the frustration of RUC investigating officers.[634]

The Kenova report found, for example, that "The separation of intelligence from investigations that evolved during the Troubles resulted in a number of terrorists not being arrested and pursued through the criminal justice system. We have identified incidents in which the security forces were aware that someone was at risk of being kidnapped and interrogated by PIRA and did not act on this information. They neither warned the person concerned about the danger that existed nor took action to protect them".[635]

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629 Kitson (n 9).

630 Mark McGovern, 'State Violence and the Colonial Roots of Collusion in Northern Ireland' (2015) 57 Race & Class 3.3-23.

631 Ellison and Smyth, (n 607) 136

632 Kitson (n 9).

633 For further details see Ian Cobain and Owen Bowcott, 'RUC Told to Put Intelligence before Arrests, Reveals Secret MI5 Report' *The Guardian* (26 June 2018) <https://www.theguardian.com/uk-news/2018/jun/26/special-branch-ruc-put-evidence-before-arrest-walker-mi5-report-northern-ireland> accessed 14 February 2024.

634 See for example Johnston Brown, Into the Dark (Gill & Macmillan Ltd 2005).

635 Kenova report, (n 65) 34-5.

With the primary role of policing transformed from the prevention and detection of crime to a system in which intelligence collection was the dominating issue, it is hardly surprising that collusion became a prominent part of the approach of the security forces.

3. SOCIAL DYNAMICS LINKING SECURITY FORCES AND THE UNIONIST COMMUNITY

The social embeddedness of security forces within the unionist community is also pertinent in understanding collusion. The areas from which the Ulster Defence Regiment was recruited, predominantly loyalist working-class areas and small towns in rural areas, were also precisely those localities where the Ulster Defence Association had support.[636] Collusion between members of the UDR and loyalist paramilitaries "was inevitable given the geographic, social class and religious background of those recruited to the regiment."[637] The tacit understandings and clandestine relationships underpinning many aspects of collusion can be better understood bearing this social context in mind.

4. STATE VIEWS OF REPUBLICANS VERSUS LOYALISTS

Finally, collusion reflected the underlining political reality of the conflict. Though the British State has tried to present itself as an impartial umpire in the conflict, it was of course a major military and security actor. Loyalist groups were essentially pro-state actors, engaged in protecting and preserving the State and the status quo from its enemies. Both loyalists and state forces shared the view that republican insurgency was the main problem, and the state security forces are believed to have regarded the loyalists as "the good guys".[638] In a paper attached to a December 1971 memo between senior civil servants, Brigadier Frank Kitson (then commander of the British Army in Belfast),[639] makes it clear he would not be focusing on loyalist groups, even while aware of their potential for sectarian violence. His immediate mission, he declared was "to destroy the IRA" (p.5).[640] The State appears to have seen itself as being at war with the IRA rather than with all armed groups – and broadly, at different times at least, viewed loyalist armed groups as their allies in this war.[641] A logical consequence of this approach was to protect such 'allies' from detection, investigation and prosecutions. Collusion is, at least partly, a reflection of these political realities.

POLICE OMBUDSMAN INQUIRIES

As noted, state-appointed Police Ombudsmen have conducted a series of exhaustive inquiries into police investigations of dozens of murders and other serious crimes during the conflict. Statutory Reports and public statements followed these inquiries, and have acknowledged that in many cases collusion, collusive activity, a pattern of collusive actions, or collusive behaviours by the police, contributed to failures to properly investigate these crimes, and therefore contributed to impunity.

O'Loan

The first Police Ombudsman, Nuala O'Loan, was appointed in 1999. During her tenure, she carried out a number of investigations into covert policing and collusion. According to the investigative journalist website The Detail:

> "In the seven years during which Mrs O'Loan was at the helm of OPONI it carried out a number of high profile and damning investigations into serious failings in the RUC and later the PSNI including the RUC/PSNI's handling of the Omagh Bomb, the murder of Bellaghy GAC chairman

636 Ellison and Smyth, (n 607) 139.

637 Ibid.

638 Rolston, (n 610) 181.

639 Kitson to P. J. Woodfield 4 December 1971 para 12 ('The MRF and Its Director of Terrorism - Frank Kitson' (McGurk's Bar Massacre28 June 2014) <https://mcgurksbar.com/mrf-director-of-terrorism/> accessed 14 February 2024.

640 Another example, found in the UK archives, of this political reality is the remarkable existence of a separate Ministry of Defence 'Arrest policy for Protestants' in the 1970s; see https://www.patfinucanecentre.org/declassified-documents/arrest-policy-protestants

641 For example, the OPONI report into Loughinisland notes that the focus of police investigation and intelligence gathering in the area was almost entirely directed towards the IRA while neglecting the threat from the activities of Loyalists; OPONI Loughinisland Report (n 597) 64.

Sean Brown and the protection of Mount Vernon UVF leader Mark Haddock from involvement in 11 murders because he was a Special Branch informer."[642]

Hutchinson

The Secretary of State appointed O' Loan's successor, Canadian Al Hutchinson in 2007, despite the latter's views that the Police Ombudsman should not be investigating historic cases. His appointment resulted in the historic work of the Ombudsman's office slowing and derailing. Critical reports first from the Committee on the Administration of Justice (CAJ) and then the Criminal Justice Inspectorate (CJI) led to Hutchinson's resignation in September 2011 and he ceased to function in the role in January 2012, at which time an interim Ombudsman took over. Among the findings of the CJI inspection were that, under Hutchinson: legacy investigation reports "were altered or rewritten to exclude criticism of police with no explanation"; "Ombudsman staff investigating some of the worst atrocities of the Troubles believe key intelligence was deliberately withheld from them"; and "senior Ombudsman officials demanded to be disassociated from investigation reports after their original findings were dramatically altered without reason".[643]

Maguire and Anderson

A third Ombudsman, Dr Michael Maguire, was then appointed and took up post in July 2012. Thereafter the historic work of the office resumed and has continued under the current Ombudsman Marie Anderson, in post since April 2016. The Council of Europe Committee of Ministers have raised concerns the current Ombudsman has also faced repeated constraints in relation to a lack of resources and disclosure.[644]

As discussed above, the use of the term collusion by the Ombudsman's office has changed a little over the years. The alternative term "collusive behaviour" was adopted by the OPONI in a court case brought against the Police Ombudsman in 2020 by retired Royal Ulster Constabulary (RUC) officers in relation to the Ombudsman's powers. In 2022, a group of officers were granted by the High Court a judicial review of the Ombudsman's legal right to make findings of collusive behaviour.[645]

FACTORS AFFECTING OMBUDSMAN INVESTIGATIONS

Successive Ombudsman reports have scrutinised police investigations into murders and other crimes between 1974 and 2000. They detail how various collusive behaviours by the police "impeded investigations",[646] were "almost certainly designed to exculpate individuals, who may have been involved, and other information designed to distance individuals from … murders",[647] acted to "undermine the effectiveness of these [murder] investigations and, in turn, impeded the ability of police to bring the perpetrators of these serious crimes to

642 'New Report Puts Pressure on Hutchinson to Quit or Be Sacked' *The Detail* (September 2011) <https://www.thedetail.tv/articles/new-report-puts-pressure-on-hutchinson-to-quit-or-be-sacked>.

643 Ibid.

644 See Decisions of the Committee of Ministers in the Northern Ireland cases: https://hudoc.exec.coe.int/eng#{%22execidentifier%22:[%22004-2202%22]} For example in September 2019 "the Office of the Police Ombudsman for Northern Ireland continues to play a vital role in investigating historical cases and giving answers to families; strongly encouraged the authorities to take all necessary measures, including the provision of resources, to ensure that the Police Ombudsman can effectively conduct legacy investigations in a timely manner in compliance with Article 2 [ECHR]."

645 Julian O'Neill, 'What Is Meant by Collusion and Collusive Behaviour?' *BBC News* (8 February 2022) <https://www.bbc.co.uk/news/uk-northern-ireland-60287905>.; 'Judge Grants Right to Challenge "Collusive Behaviour" Findings' BBC News (29 November 2022) <https://www.bbc.co.uk/news/uk-northern-ireland-63797720> accessed 14 February 2024.

646 Police Ombudsman for Northern Ireland, 'Statutory Report: Public Statement by the Police Ombudsman in Accordance with Section 62 of the Police (Northern Ireland) Act 1988. The Circumstances of the Murder Of Damien Walsh at the Dairy Farm Complex on 25 March 1993' (Police Ombudsman for Northern Ireland 2021).

647 Police Ombudsman for Northern Ireland, 'Police Ombudsman Makes Minor Amendments to Loughinisland Report - Police Ombudsman for Northern Ireland' www.policeombudsman.org (9 March 2018). <https://www.policeombudsman.org/Media-Releases/2018/Police-Ombudsman-makes-minor-amendments-to-Loughin> accessed 14 February 2024.

justice",[648] and at times resulted in "the failure to deal properly with information received from informants, so that informants were able to avoid investigation and detection for crime".[649]

In a meeting with panel members, former Police Ombudsman Michael Maguire said that

> "Elements within the RUC (primarily Special Branch) began to see their job as finding intelligence as opposed to protecting people or investigating … often the police were not told all the information [by other members of the police]. For example, they often investigated murders but didn't get intelligence, or received intelligence too late for it to be effective or to be able to see the wider picture."[650]

Maguire described the practice of one part of the RUC (Special Branch) withholding intelligence from other parts investigating crimes as "a slow waltz, creating an air gap in information so the investigation becomes less effective than had it been delivered in real time."[651]

Maguire has also complained that while his team discovered much evidence of collusion, his work was hamstrung because while active police officers were legally bound to submit to questioning, those retired were not, and nor were members of other security forces or paramilitaries.[652]

The Police Ombudsman's remit includes a provision where the Ombudsman must review their own powers every five years, with a view to identifying gaps and recommending remedial actions by the legislature to plug the gaps. However, where an Ombudsman has identified specific gaps – which in legacy cases have included the issue of not being able to compel the cooperation of retired officers or informants – and recommended change, these have not been implemented by the UK or devolved Northern Ireland governments. According to a December 2021 paper from the Department of Justice NI, there have been three previous reviews of the OPONI powers "but the recommendations have not been acted upon due to a lack of political consensus for the package put forward."[653]

Current Police Ombudsman Marie Anderson noted in her report into the police handling of loyalist attacks in 1990-1998 that her remit to investigate police conduct did not extend to the military, although she was of the view that

> "a significant number of serving and former UDR members had links with loyalist paramilitaries in the North West during the period in question. This included senior figures within the North West UDA/UFF. The infiltration of the regiment in this manner allowed paramilitaries access to weapons, training, intelligence, and uniforms which added to their effectiveness in carrying out sectarian attacks. As previously stated, I have no jurisdiction over the military but can consider the police response to these matters."[654]

To this end the Ombudsman states that "certain sections of the UDR were infiltrated by a number of loyalist paramilitaries during the Northern Ireland 'Troubles.'" and concludes "I am of the view that police did not adequately investigate a number of these instances".[655]

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648 OPONI: Investigation Into Police Handling Of Loyalist Paramilitary Murders and Attempted Murders in South Belfast in the Period 1990-1998' (n 600).

649 OPONI 'The Death of Raymond McCord Junior and Related Matters' (n 98).

650 Dr. Michael Maguire, interview with panel.

651 Interview with Panel [4 April 2023] See also OPONI Loughinisland Report (n 597), 5.11, & footnote 10.

652 Megan K Stack, 'He Was Shot 14 Times at the Dinner Table. His Children Want to Know If Britain Ordered the Hit' The New York Times (30 August 2023).

653 See Department of Justice NI, 'Stocktake of Policing Oversight and Accountability Arrangements and Review of Police Ombudsman's Powers, Consultation Paper' (Department of Justice NI 2021). par 59.

654 OPONI Investigation into Police Handling of Certain Loyalist Paramilitary Murders and Attempted Murders in the North West of Northern Ireland during the Period 1989 to 1993 (n 28) 8.33.

655 Ibid, para 8.36.

Despite these constraints on the Police Ombudsmen's jurisdiction, a survey of Statutory Reports and Official Statements from several Ombudsmen suggests that collusive behaviours by the police were not restricted to a narrow period or to just a few localities, but appear to have occurred throughout Northern Ireland and from at least the early 1970s to 1998. Thus, collusive behaviours were both widespread and institutionalised, and contributed to impunity.

Similarly, some of the Police Ombudsman reports reveal commonalities in terms of collusive behaviours, including

(a) the withholding of intelligence by Special Branch from investigating officers
(b) the absence and destruction of files
(c) the protection of informers
(d) involvement in weapons provision and failure to pursue investigations into weapons.

Some of these behaviours have also been exposed in the courts. They are explored below.

A. WITHHOLDING EVIDENCE

In August 1974, the body of Patrick ("Patsy") Kelly was recovered from Lough Eyes, near Lisbellaw, County Fermanagh. A post mortem examination established that he had been shot six times. In her April 2023 report on the police investigation into his murder, Police Ombudsman Marie Anderson concluded that "Mr Kelly was the innocent victim of a campaign of sectarian violence mounted against the nationalist community." She reported that "Loyalist extremists were responsible for Mr Kelly's murder", and that "Mr Kelly's family was failed by police".[656]

The Ombudsman determined that "the deliberate withholding of intelligence and other information by unidentified members of RUC Special Branch and Police Officer 2 from the murder investigation team was indicative of a 'collusive' behaviour". This, she explained, "removed the possibility of further lines of enquiry being developed and progressed, which may have led to the arrest and prosecution of offenders."[657]

Anderson also investigated a series of loyalist murders in the north west of Northern Ireland between 1989 and 1993. She concluded that collusive behaviours and collusive activity by the police contributed to impunity and identified failures by RUC Special Branch "to disseminate intelligence to the CID Teams investigating the murders".[658]

656 Police Ombudsman for Northern Ireland , 'Public Statement by the Police Ombudsman pursuant to Section 62 of the Police (Northern Ireland) Act 1998 Relating to a Public Complaint: Investigation into Police Conduct Relating to the Circumstances of the Murder of Patrick Kelly on 24-July 1974' (Police Ombudsman for Northern Ireland 2023).

657 Ibid.

658 Police Ombudsman for Northern Ireland, 'Police Ombudsman Media Releases, PSNI Ombudsman Press Releases - Police Ombudsman for Northern Ireland' (www.policeombudsman.org8 February 2022) <https://www.policeombudsman.org/Media-Releases/2022/Investigative-and-intelligence-failures-and-collus> accessed 14 February 2024. The investigation had begun under her predecessor, Michael Maguire. The attacks investigated included: the murders of Gerard Casey at Rasharkin, County Antrim, on 4 April 1989; of Eddie Fullerton at Buncrana, County Donegal, on 25 May 1991; of Patrick Shanaghan at Castlederg, County Tyrone, on 12 August 1991; of Thomas Donaghy, at Kilrea, County Derry, on 16 August 1991; of Bernard O'Hagan at Magherafelt, County Derry, on 16 September 1991; the attempted murder of James McCorriston at Coleraine, County Derry, on 14 February 1992; the murder of Daniel Cassidy at Kilrea, County Derry, on 2 April 1992; the attempted murder of Patrick McErlain at Dunloy, County Antrim, on 28 August 1992; the murder of Malachy Carey at Ballymoney, County Antrim - Mr. Carey was shot on 12 December 1992 and died the following day as a result of his injuries; the murders of Robert Dalrymple, James Kelly, James McKenna, and Noel O'Kane at Castlerock, County Derry, on 25 March1993.- a fifth man, Gerard McEldowney, was seriously injured in this attack; and the murders of John Burns, Moira Duddy, Josep McDermott, James Moore, John Moyne, Steven Mullan, and Karen Thompson at the Rising Sun Bar, Greysteel, County Derry, on 30 October 1993. An eighth victim, Samuel Montgomery, died on 14 April 1994 as a result of injuries sustained in the 30 October 1993 Greysteel attack.

In a February 2022 statement, the Ombudsman also publicly released the findings of another investigation into police collusion with loyalist paramilitaries in a series of south Belfast attacks between 1990 and 1998.[659] The investigations focused on 11 murders and one attempted murder between 1990 and 1998. All the victims were Catholic.[660] She acknowledged behaviour noted in previous Police Ombudsmen investigations "failures by Special Branch to disseminate intelligence to the murder investigation teams which could have been exploited."

Again, Anderson identified "collusive behaviours on the part of police", including that

> "Special Branch failed to share relevant intelligence which would have assisted the murder investigation team examining the circumstances of these attacks. In some instances, intelligence sharing was delayed. The impact of these failings was to undermine the effectiveness of these investigations and, in turn, impeded the ability of police to bring the perpetrators of these serious crimes to justice."[661]

Anderson produced a Statutory Report on the murder of seventeen-year-old Damien Walsh. Walsh was working on the Dairy Farm industrial complex in West Belfast when he was murdered on 15 March 1993 by loyalist gunmen believed to have been associated with the 'C' company of the UDA. The gunmen fled the scene of the attack in a stolen car later found abandoned in West Belfast. In early May 1993 police received information indicating that three individuals were involved in Damien's murder, including two gunmen and the driver of their vehicle. Only one of the three individuals identified was subsequently arrested and interviewed about Damien's murder. No one has ever been charged with Damien's murder, and Anderson concluded that "Damien and his family were failed by police due to a series of investigative failures and collusive behaviours".[662]

In her report, the Ombudsman identified several specific actions by the police which contributed to the failure of the investigations into Walsh's murder. She describes them as deliberate decisions indicative of collusive behaviours. These include the removal of surveillance prior to Damien being killed, and the failure to inform the Senior Investigating Officer (SIO) that a surveillance operation has been in place at Dairy Farm.[663] Anderson determined these failings were part of a wider pattern of behaviour, including that

> "key pieces of intelligence relevant to Damien's murder were either not shared with the SIO or their dissemination was delayed, diminishing their potential value. Lines of enquiry could have been developed and evidence gathered which may have resulted in arrests and convictions... I am of the view that the failure to share, or not share in a timely manner, these pieces of intelligence… arose from internal police policies designed to safeguard sources of information. The investigation of Damien's murder was, consequently, impeded."[664]

In 2007, Police Ombudsman Nuala O'Loan published the Operation Ballast report. This contained the findings of her investigation into a complaint about police conduct in relation to the murder of Raymond McCord Junior in November 1997. The initial investigation quickly expanded into investigating a series of similar complaints and culminated in focusing on seven main lines of inquiry, including several murders and attempted murders

659 Police Ombudsman for Northern Ireland, 'Historical Reports - Police Ombudsman for Northern Ireland - Police Ombudsman for Northern Ireland' *www.policeombudsman.org* (8 February 2022) <https://www.policeombudsman.org/Investigation-Reports/Historical-Reports/Investigative-and-intelligence-failures-and-collus> accessed 11 April 2024.

660 The attempted murder of Samuel Caskey on 9 October 1990; the murders of John O'Hara on 17 April 1991; of Harry Conlon on 14 October 1991; of Aidan Wallace on 22 December 1991; of Coleman Doherty, Jack Duffin, Peter Magee, William McManus and 15 year old James Kennedy on 5 February 1992; the murder of Michael Gilbride on 4 November 1992; of Martin Moran on 23 October 1993 (died 25 October 1993); of Mrs Theresa Clinton on 14 April 1994; and of Larry Brennan on 19 January 1998; OPONI, 'Investigation Into Police Handling of Loyalist Paramilitary Murders and Attempted Murders in South Belfast in the Period 1990-1998' (n 600).

661 OPONI, (n 659).

662 OPONI Report on Murder of Damien Walsh, (n 646).

663 Ibid.

664 Ibid.

and other crimes that occurred between 1991 and 2000.[665]

O'Loan listed examples of how members of the police (particularly certain officers within Special Branch) had colluded in various ways, including by:

- with holding information from CID that the UVF had sanctioned an attack
- concealing from CID intelligence that certain named persons, including an informant or informants, had been involved in particular crimes
- withholding information about the location to which a group of murder suspects had allegedly fled after a murder
- withholding intelligence from police colleagues including the names of alleged suspects.

B. ABSENCE AND DESTRUCTION OF RECORDS

In the context of collusion, a series of Police Ombudsman statutory reports into police conduct have recorded notably similar findings about a general absence of records. Failings have included missing files, lost files, a failure to keep proper records, and the deliberate destruction of records.

OPERATION GREENWICH - ANDERSON

The 2022 Ombudsman report on the Operation Greenwich investigation into a series of loyalist and other paramilitary murders in the north west of Northern Ireland between 1989 and 1993 concluded that, in certain respects, the

> "families' concerns about collusive activity are legitimate and justified", including "the deliberate destruction of files, specifically those relating to informants that police suspected of serious criminality, including murder, [which] is evidence of collusive behaviour. The absence of informant files and related documentation is particularly egregious, where there was suspicion on the part of handlers or others that informants may have engaged in the most serious criminal activity engaging Article 2 of the Convention."[666]

OPERATION ACHILLE - ANDERSON

The current Ombudsman noted specific failures contributing to impunity in the 2022 Operation Achille statement, following her investigation into police collusion with loyalist paramilitaries in a series of south Belfast attacks between 1990 and 1998. These included "the failure to retain records and the deliberate destruction of files in relation to the authorisation and implementation of covert investigatory measures following the attack at Sean Graham Bookmakers." She added that "The failure to maintain records of the deactivation of weapons was indicative of a desire to avoid accountability for these sensitive and contentious activities."[667]

OPERATION BALLAST - O'LOAN

The Operation Ballast 2007 investigation into the 1997 murder of Raymond McCord and other attacks listed how the police colluded in a number of areas, including by:

- giving instructions to junior officers that there should be no record of particular incidents
- routinely destroying all Tasking and Co-ordinating Group original documentary records so as to conceal an informant's involvement in crime
- destroying or losing forensic exhibits such as metal bars and tape lifts

665 OPONI 'The Death of Raymond McCord Junior and Related Matters' (n 98). These included two attempted murders in 1991; the murder of Sharon McKenna on 17 January 1993; the attempted bombing of the Sinn Féin office in Monaghan on 3 March 1997; the blocking by Special Branch of searches during a pre-planned CID operation intended to disrupt the activities of the UVF; the murder of John Harbinson on 18 May 1997; the murder of Raymond McCord Junior on 9 November 1997.

666 The procedural duties under Article 2 ECHR – to ensure that there are effective and independent investigations into killings, are further elaborated on in the 'State Killings' thematic chapter.

667 OPONI, 'Investigation Into Police Handling Of Loyalist Paramilitary Murders and Attempted Murders In South Belfast in the Period 1990-1998' (n 600).

- not requiring appropriate forensic analyses to be carried out on items submitted to the Forensic Science Service Laboratory.[668]

C. THE PROTECTION OF INFORMANTS

In addition to the above issues, the relationships between members/groups of the police and their informant networks have led to controversy, particularly in relation to the role of the Special Branch. Various investigations, including Police Ombudsman Anderson's investigation into paramilitary murders in the north west of Northern Ireland between 1989 and 1993, have described remarkably similar collusive behaviours in relation to the use of informants (aka informers or intelligence assets). [669] [670]

For example, they note specific failures relating to

- the use and handling by Special Branch of informants suspected of being involved in serious criminality, including murder
- the passive 'turning a blind eye' to apparent criminal activity – or failing to interfere where there was evidence of wrongdoing – on the part of an informant, in particular to the deliberate failure of informants to provide information on an intended attack.

Investigations also found similar evidence relating to

- a lack of management intervention to ensure that informants were registered properly
- a lack of review of officers' performance as handlers
- information being withheld by handlers
- instructions being given that matters relating to informants should not be recorded
- ineffective use of mechanisms by which senior police management could challenge the decisions of individual handlers.

OPERATION BALLAST INVESTIGATION - O'LOAN

The Operation Ballast report noted police intelligence reports which "linked informants, and in particular one man who was a police informant […to..] ten murders".[671] O'Loan concluded that certain police actions were "indicative of a pattern of collusion".[672] [673]

The report addressed many specific behaviours which it concluded were at the heart of informant-related police collusion, including

- concealing on a number of occasions intelligence indicating that up to three informants had been engaged together in murders and a particular crime or crimes
- blocking the searches of a police informant's home and of another location, including an alleged UVF arms dump
- not questioning informants about their activities and continuing to employ informants without risk assessing their continued use as informants
- finding munitions at an informant's home and releasing him without charge
- not using the available evidence and intelligence to detect a crime and to link the investigation

668 Police Ombudsman for Northern Ireland, 'Police Ombudsman Media Releases, PSNI Ombudsman Press Releases - Police Ombudsman for Northern Ireland' (www.policeombudsman.org8 February 2022) <https://www.policeombudsman.org/Media-Releases/2022/Investigative-and-intelligence-failures-and-collus> accessed 14 February 2024.

669 OPONI, 'Investigation into the Circumstances Surrounding the Death of Raymond McCord Jr and Related Matters' (n 98).

670 OPONI, 'Investigation Into Police Handling Of Loyalist Paramilitary Murders And Attempted Murders In South Belfast In The Period 1990-1998' (n 600); OPONI (n 659).

671 OPONI 'The Death of Raymond McCord Junior and Related Matters' (n 98) paragraph 9. The deaths of: Peter McTasney on 24 February 1991; Sharon McKenna, on 17 January 1993; Sean McParland who was attacked on 17 February 1994 and died on 25 February 1994; Gary Convie on 17 May 1994; Eamon Fox on 17 May 1994, in the same attack as Gary Convie; Gerald Brady on 17 June 1994; Thomas Sheppard on 21 March 1996; John Harbinson on 18 May 1997; Raymond McCord Junior on 09 November 1997; and Thomas English on 31 October 2000.

672 Ibid, para 17.

673 Ibid.

of crimes in which an informant was a suspect
- some Special Branch officers deliberately disregarding a very significant amount of intelligence about informant involvement in drug dealing in Larne and North Belfast and in punishment attacks linked to drug dealing from 1994 onwards
- continuing to employ as informants people suspected of involvement in the most serious crime
- without assessing the attendant risks or their suitability as informants
- not acting on witness and other evidence received about crimes where the suspect was an informant
- not considering or attempting to conduct identification processes when there was evidence from witnesses about a criminal's (an informant's) appearance
- providing at least four misleading and inaccurate confidential documents for possible consideration by the court in relation to four separate incidents and the cases resulting from them, where those documents had the effect of protecting an informant
- not informing the Director of Public Prosecutions that an informant was a suspect in a crime in respect of which an investigation file was submitted to the Director
- Special Branch officers not using and following the practice of authorisation of participating informants
- completing false and misleading authorisations and reviews of informants for the purposes of the Regulation of Investigatory Powers Act
- not recording in investigation papers the fact that an informant was suspected of a crime despite the fact that he had been arrested and interviewed for that crime
- arresting informants suspected of murder then subjecting them to lengthy sham interviews by their own handlers at which they were not challenged, and then releasing them on the authorisation of the handler.

The investigation also reported dozens of more general informant-related acts of collusion which fuelled impunity, including

- failing to arrest informants for crimes to which those informants had allegedly confessed, or to treat such informants as suspects for crime
- failing to deal properly with information received from informants, so that informants were able to avoid investigation and detection for crime
- creating interview notes which were deliberately misleading and failing to record and maintain original interview notes
- failing to record notes of meetings with informants.

Ombudsman O'Loan also determined that a lack of resources had played a part in police cancelling "the wanted status of murder suspects" and doing "nothing further about these suspects".[674]

COLLUSION IN MCPARLAND CASE

Of note, the Operation Ballast report was extensively cited by Justice Rooney in a March 2023 High Court judgement awarding £90,000 damages to Michael Monaghan Jr, who witnessed the sectarian assassination of his grandfather Sean McParland in an attack involving a protected police informant. Justice Rooney awarded the payout in a claim against the PSNI chief constable over the loyalist paramilitary murder of McParland in north Belfast almost 30 years before.[675] Justice Rooney said that police knew that a Special Branch agent (a UVF member referred to as Informant 1) had already confessed his role in other killings but were "recklessly indifferent" to the likelihood of further attacks. "The defendant not only turned a blind eye to Informant 1's serious criminality, it went further and took active measures to protect (him) from any effective investigation and from prosecution, despite the fact that (he) had admitted his involvement in previous murders and criminality," he said.[676]

674 Ibid.

675 Michael Monaghan and Chief Constable of the Police Service of Northern Ireland [2023] NIKB 49 - https://www.judiciaryni.uk/judicial-decisions/2023-nikb-49.

676 Ibid.

CIVIL LITIGATION AND 'NO LIABILITY' COMPENSATION

Civil litigation against the MoD and PSNI has resulted in 'no liability' compensation payouts in cases where loyalists were responsible for the murder but where families have argued that there was evidence of collusion by soldiers and/or police in the death.[677] For similar reasons a number of cases involving loyalist murders are before the courts where the plaintiffs are the MoD and/or the PSNI.

COLLUSION IN LOUGHINISLAND ATTACK

On 18 June 1994, six people were murdered and five injured by the UVF in the Heights Bar, in a case known as the Loughinisland attack. The victims were watching a World Cup football match when gunmen entered the small bar and indiscriminately opened fire with weapons including a VZ58 automatic rifle. In his investigation into the killings, Police Ombudsman Michael Maguire noted that "Within a relatively short period of time the police had reliable intelligence on who committed the murders, and recovered the getaway car, the murder weapons and the clothing believed to have been used by the killers, [but] not one person has been prosecuted for the killings."[678]

He further found, among other failings by the police, that there had been "a willingness to accept intelligence reporting, which was almost certainly designed to exculpate individuals, who may have been involved, and other information designed to distance individuals from the murders."[679] Dr Maguire concluded that "Despite having intelligence sources at all levels of the UVF, little intelligence apparently emerged which could have assisted in preventing the murders at Loughinisland. This was in my view, at least in part due to the value some Special Branch officers placed on gathering 'strategic' intelligence and the protection of the sources of such information rather than the prevention and detection of crime."[680]

Maguire stated that "In my view, police were content not to ask difficult questions of their sources at a senior level in order to avoid the individuals exposing their knowledge of criminal conspiracies by their own organisation."[681] He also concluded: "I have no hesitation in unambiguously determining that collusion [with informants] is a significant feature of the Loughinisland murders," and that "I can only conclude that the desire to protect informants may have influenced policing activity and undermined the police investigation into those who ordered and carried out the attack. When combined with a flawed investigation of the Loughinisland murders this has undermined the investigation into those responsible for these crimes and ultimately justice for the victims and survivors."[682]

D. WEAPONS AND COLLUSION

Involvement in the provision of weapons to loyalist paramilitaries and a failure to pursue investigations into weapons is a further area in terms of collusive behaviours that has been highlighted by various Police Ombudsman reports. Many also show a strong link to informants. The Police failure to track and seize all weapons and arrest those connected to them proved lethal to an unknown number of victims.

Official archival records obtained by the Pat Finucane Centre show that from at least from 1971 the term 'collusion' was officially used by the British Army in documents to explain weapons that disappeared from UDR barracks or officers and were likely in the hands of loyalist paramilitaries.[683] Similarly, there has been the question of state involvement in arms shipments for loyalist paramilitaries. The de Silva review examined an attempt by the UDA to purchase arms in apartheid South Africa and discounted the involvement of the security

677 Brendan McDaid , 'Widows Whose Husbands Were Murdered Settle Cases against MOD and PSNI' *Derry Journal* (26 February 2024) <https://www.derryjournal.com/news/people/widows-whose-husbands-were-murdered-settle-cases-against-mod-and-psni-4532927>.

678 OPONI, 'Police Ombudsman Makes Minor Amendments to Loughinisland Report, (n 647).

679 Ibid.

680 Ibid.

681 Ibid.

682 Ibid.

683 Pat Finucane Centre, 'Horrible Histories' at (Presentation at the Poisoned Legacies' conference, 13-14 June 2013)

and intelligence services, although the 2004 Cory report into the killing of Pat Finucane stated that "The [British] Army appears to have at least encouraged [British agent Brian] Nelson in his attempt to purchase arms in South Africa for the UDA. Nelson certainly went to South Africa in 1985 to meet an arms dealer. His expenses were paid by FRU."[684] And state collusion in such an arms shipment is noted in the Loughinisland report by Police Ombudsman Maguire.[685]

A number of the weapons received by loyalist paramilitaries in the 1987/88 arms shipment are reported to have been used in a range of attacks over many years. Police failure to track and seize all the weapons and those connected to them proved lethal to an unknown number of victims. See below.*Loughinisland attack (Maguire)*

In his review into the murders at Loughinisland, Police Ombudsman Maguire noted that by June 1987 the RUC had intelligence indicating that a number of loyalist armed groups had finalised collaborative plans for the importation of a large quantity of weapons into Northern Ireland. The consignment consisted primarily of VZ58 assault rifles ('AK47s') and Browning type 9mm semi-automatic pistols.[686] His report detailed that the RUC were aware on 7 January 1988 that paramilitaries had taken possession of weapons which included VZ58 assault rifles and 9mm pistols, and that in the following days the police had traced the distribution and concealment of the weapons.[687] In the following weeks, the RUC seized many but not all of the weapons, with some later being used in the Loughinisland and other murders.

Maguire's report clearly links police informants to the failure of police to act on intelligence about weapons. It states that

> "intelligence indicates that police informants were involved in the procurement, importation and distribution of these arms. The failure to stop or retrieve all the weapons, despite the involvement of informants in the arms importation, was a significant intelligence failure. This is particularly the case in relation to the failure to retrieve imported weapons from a farm owned by James Mitchell. The outcome of this failure was that not all the weapons were recovered by the police and many, including the VZ58 rifle used in Loughinisland, were subsequently used in a wide range of murders."[688]

The report continues

> "Despite being implicated by intelligence in the importation of these weapons, senior members of the UVF, UDA and Ulster Resistance were not subject of police investigation. This can be attributed to a decision by Special Branch not to disseminate the intelligence implicating these individuals, amongst whom, as I have observed, there were informants. Given the gravity of the conspiracy and the impact that the importation of these firearms has had on the lives of numerous citizens, this decision was in my view, indefensible."[689]

In relation to the Loughinisland attack, Maguire said

> "there were informants involved in the procurement and distribution of the weapons, including individuals at the most senior levels of the organisation(s) responsible for the importation. Intelligence relating to the roles performed by these paramilitary commanders was not disseminated to Detectives investigating the arms importation and consequently many were not subject of investigation."[690]

684 Cory Report, (n 110) para 1.53.

685 OPONI Loughinisland Report (n 597).

686 OPONI, 'Police Ombudsman Makes Minor Amendments to Loughinisland Report (n 647).

687 Ibid.

688 Ibid, 3.

689 Ibid, 64.

690 Ibid, 136.

INVESTIGATIONS BY POLICE OMBUDSMAN

Marie Anderson's 2021 investigation into the 1993 murder of 17-year-old Damien Walsh concluded that the handgun used had originated from a consignment of firearms imported to Northern Ireland by Loyalist paramilitaries in December 1987, and noted that "Weapons from this consignment have been linked with a number of other murders committed by loyalist paramilitaries," and that Detectives investigating seizures of weapons linked to the importation were not provided with relevant intelligence.[691]

In another report (Operation Achille) in February 2022 that reviewed a series of murders and attempted murders by the UDA/UFF in south Belfast in the 1990s, Ombudsman Anderson also addressed the failures to capture all the imported weapons. She noted

> "Despite police receiving accurate intelligence from within the 'higher echelons' of the UDA/UFF, mounting a significant covert surveillance operation against those involved in importing and distributing the weapons, recovering up to 60% of the weapons and making a number of arrests, at least 63 VZ58 assault rifles and 34 Browning pistols were secured by loyalist paramilitaries. These weapons were subsequently used to murder in excess of 80 people."[692]

COLLUSION IN THE IMPORTATION OF WEAPONS BY LOYALIST PARAMILITARIES

In October 2023, the High Court in Belfast heard a case brought by bereaved families of Brian Frizzell and Alan Lundy, both killed by loyalist paramilitaries in the 1990s, against the police and the MoD. It was claimed that the security forces knew that an arms shipment comprising hundreds of rifles, pistols, grenades, ammunition, and magazines from South Africa was being imported by loyalist paramilitary groups but did nothing to intercept it. Some of the weapons were disseminated and are believed to have been used in various attacks. Lawyers claimed that the police later warned the owner of a farm in Armagh where the rest of the weapons were stored that a police raid was imminent so that the weapons could be moved to safety. The details feature in an agreed summary of sensitive material held by the PSNI and Ministry of Defence (MoD). Other information remains confidential.[693]

ATTACKS IN THE REPUBLIC OF IRELAND

A series of attacks was carried out by loyalists in the Irish State in the 1970s, resulting in dozens of murders and injuries. The casualties arising from these incidents are often described as "forgotten", and with good reason. They have received little attention from the international community, governments or NGOs.[694]

One such attack occurred on May 17 1974, when 33 people, including a pregnant woman, died in bombings in Dublin and Monaghan in the greatest loss of life in a single day of the conflict. Many others were injured. There were also attacks

- in Dublin in December 1972 and January 1973
- at Dublin airport (in 1975)
- in Belturbet, County Cavan (December 1972)
- in Dundalk, County Louth (December 1975)
- in Castleblayney, County Monaghan (March 1976)
- in Dundalk in 1976 when Seamus Ludlow was murdered in a sectarian attack
- in Dublin (May 1994) when a loyalist gang planted a bomb at the entrance of Widow Scallan's pub, where a Republican function was taking place on the first floor of the premises. The security

691 OPONI Report on Murder of Damien Walsh, (n 646) 3 & 104.

692 OPONI, 'Investigation Into Police Handling of Loyalist Paramilitary Murders And Attempted Murders in South Belfast in the Period 1990-1998' (n 600).

693 Alan Erwin, 'Loyalist Paramilitary Weapons "Were Moved from Armagh Farm after Police Warning"' Belfast Telegraph (10 October 2023) <https://www.belfasttelegraph.co.uk/news/courts/loyalist-paramilitary-weapons-were-moved-from-armagh-farm-after-police-warning/a471118506.html> accessed 14 February 2024.

694 See Justice for the Forgotten (JFF) https://www.patfinucanecentre.org/projects/justice-forgotten#: JFF is a project of the PFC supporting victims & relatives seeking justice for the Dublin & Monaghan Bombings of 17th May 1974; the Dublin Bombings of 1st December 1972 – 20th January 1973 and other cross border bombings of the 1970s.

guard, Martin Doherty, confronted the gang and was shot dead. [695]

Despite the relative lack of attention, a number of independent investigations were commissioned by the Irish Government in the early 2000s. The subject of collusion featured heavily in these inquiries.

CRITICISMS ABOUT LACK OF ENGAGEMENT FROM AUTHORITIES

A succession of Irish governments have failed survivors and victims families for decades. Despite a number of officially commissioned inquiries, adequate co-operation from the British authorities has not been secured. The Garda has also failed to properly meet its obligations to survivors and families. The Panel heard directly from many of those affected who are deeply frustrated by the lack of serious engagement by Irish authorities. This has been a common sentiment from survivors in the UK and Ireland.

INDEPENDENT COMMISSION OF INQUIRY INTO THE DUBLIN AND MONAGHAN BOMBINGS

In his report into the Dublin and Monaghan bombings (December 2003), Mr Justice Henry Barron criticised the Irish Garda for failing to make full use of the information it obtained. "Certain lines of inquiry that could have been pursued further in this jurisdiction were not pursued. There were other matters, including the questioning of suspects, in which the assistance of the RUC should have been requested, but was not."[696] He also noted that "Although the [Garda] investigation teams had in their opinion no evidence upon which to found a prosecution, there is no evidence that they sought the advice of the Attorney General, in whose name criminal prosecutions were at that time still being brought. Had the Attorney General reviewed the file, it is likely that advice would have been given as to what further direction the investigation might take."[697]

Barron said that "A number of those suspected for the bombings were reliably said to have had relationships with British Intelligence and/or RUC Special Branch officers. It is reasonable to assume that exchanges of information took place. It is therefore possible that the assistance provided to the Garda investigation team by the security forces in Northern Ireland was affected by a reluctance to compromise those relationships, in the interests of securing further information in the future." He did admit, however that "Any such conclusion would require very cogent evidence. No such evidence is in the possession of the Inquiry. There remains a deep suspicion that the investigation into the bombings was hampered by such factors, but it cannot be put further than that."[698]

Barron's inquiry concluded that "within a short time of the bombings taking place, the security forces in Northern Ireland had good intelligence to suggest who was responsible. An example of this could be the unknown information that led British Intelligence sources to tell their Irish Army counterparts that at least two of the bombers had been arrested on 26 May and detained. Unfortunately, the Inquiry has been unable to discover the nature of this and other intelligence available to the security forces in Northern Ireland at that time."[699] He criticised the Garda further, saying that "On several occasions, the investigation team sent requests for information to the police in Northern Ireland and mainland Britain, and appeared content with replies which on their face seem inadequate."[700]

Barron stated that the evidence of collusion was inconclusive, but that "there are grounds for suspecting that the bombers may have had assistance from members of the [British] security forces. The involvement of individual members in such an activity does not of itself mean the bombings were either officially or unofficially

695 Oireachtas Joint Committee on Justice, Equality, Defence and Women's Rights, 'Interim Report on the Report of the Independent Commission of Inquiry into the Dublin and Monaghan Bombings' (n 82); see also https://www.rte.ie/archives/2014/0521/618570-loyalist-attack-on-widow-scallans-pub-in-dublin-1994/

696 Ibid, (n 82).

697 Ibid. In this report, Justice Barron also complained of a lack of co-operation from the British Government in relation to the Dublin/Monaghan bombings.

698 Ibid.

699 Ibid.

700 Ibid.

state-sanctioned. If one accepts that some people were involved, they may well have been acting on their own initiative. Ultimately, a finding that there was collusion between the perpetrators and the authorities in Northern Ireland is a matter of inference."[701]

Barron criticised the lack of action by the Irish Government of the day, which he said "showed little interest in the bombings. When information was given to them suggesting that the British authorities had intelligence naming the bombers, this was not followed up."[702]

Independent Commission of Inquiry into the Dublin Bombings of 1972 and 1973

The 2005 report into the Dublin Bombings of 1972 and 1973 (also known as The Second Barron Report), expressed regret that "The British Government and Northern Ireland authorities provided the Sub-Committee with no meaningful co-operation. No information has been forthcoming from the British and Northern Irish authorities despite repeated requests by the Inquiry." Furthermore, they lamented that "This non co-operation exacerbates the difficulties experienced by all persons interested in establishing the truth."[703]

INDEPENDENT COMMISSION OF INQUIRY INTO THE MURDER OF SEAMUS LUDLOW

The 2006 Oireachtas (Irish Parliament) report into the murder of Seamus Ludlow in Dundalk in May 1976 noted the lack of co-operation from the British authorities, saying "The Sub-Committee is very concerned and is at a loss to understand why it took the RUC eighteen months to forward information it had gathered on the murder of Seamus Ludlow to the Gardaí. No explanation for this time lapse has been forthcoming and this issue alone raises enormous concerns. The Sub-Committee is also very concerned at the lack of co-operation with this Sub-Committee and with the Barron Inquiry, particularly the failure to provide information and documentation."[704]

The Sub-Committee also expressed "the gravest concerns about the role collusion played in the murder of Seamus Ludlow. It is undisputed that two of the suspects identified by the RUC were serving members of the UDR at the time of the murder," and noted "disturbing parallels between the suspicion of collusion in the murder of Seamus Ludlow and concern over collusion in the Dublin and Monaghan bombings."[705]

The failures relating to investigating the murder of Seamus Ludlow, did result in several apologies being offered to the Ludlow-Sharkey family. First, by the Garda Commissioner, Noel Conroy, who said that a failure to follow up information provided by the RUC in 1979 meant that "Thereafter the trail went dead … from a Gardai point of view, I regret this very much in so far as I can see it, it was a failure on the part of the Garda Síochána not to have had the crime thoroughly investigated and brought to a satisfactory conclusion." And second, by the Minister for Justice, Equality and Law Reform, Mr Michael McDowell, T.D., who stated that: "On this occasion I express deep regret to the family and next of kin of Mr Seamus Ludlow, on what by any standards was a deeply unsatisfactory and inexcusable experience in the holding of the first coroner's inquest."[706]

CONSEQUENCES OF IMPUNITY FOR COLLUSION

As noted above, the State has a duty to provide accountability, truth, reparations and guarantees of non-repetition in relation to all aspects of widespread human rights abuses.[707] However, the need of bereaved families, affected communities, and society as a whole for truth is particularly pronounced when it comes to collusion, where coverups and denials of the full nature and circumstances of attacks have been a defining feature of the issue. The failure of the United Kingdom to carry out proper inquiry in relation to collusion is a violation of the state's duty under international law and has resulted in de facto impunity for the perpetrators of serious human rights violations – both direct and indirect. But beyond these abstract standards, impunity for

701 Ibid.

702 Ibid.

703 Oireachtas Joint Committee on Justice, Equality, Defence and Women's Rights, 'Final Report on the Report of the Independent Commission of Inquiry into the Dublin and Monaghan Bombings' (n 115).

704 Ibid.

705 Ibid.

706 Ibid.

707 UNGA Res 60/147 (16 December 2005) UN Doc A/RES/60/147 .

collusion has had concrete negative consequences, affecting the lives of individuals, families, communities and society at large. Below the Panel conveys some of the effects on the families of those killed, and then reviews some of the broader consequences for communities and society.

HARMS TO VICTIMS AND FAMILIES

People whose loved-ones were killed as part of the conflict have a right and a need to know the full truth, and to receive public acknowledgement of wrong-doing. Suspicions that the State itself was involved in the attacks or their coverup – while formally declaring them to be the actions of illegal non-state actors – have made the experience of people who lost their loved ones even worse. John Finucane, who was a child when his father Pat, a Belfast solicitor, was murdered at their family home in 1989, explained to the panel:

> "We have suffered a terrible loss, but you can't move on from that in a way that you would move on in different circumstances, because there is still an enormous fight to be had in trying to make sure that all of the circumstances that led to this murder are out there and that people know."[708]

Over the years, many relatives who spoke publicly of their concerns regarding state collusion in the killings of their parents, siblings, or children have paid a price for speaking out. Some have been accused of being republican propagandists, fantasists, and more. In virtually all cases the State has fought against efforts to reveal the truth, placing obstacles and generating delays, often over decades. Many relatives have invested many years of their lives in efforts to force the State to reveal the truth about the causes of the attacks that killed their loved ones and the impunity enjoyed by those involved. For some, these efforts have become almost a full-time occupation, the defining aspect of their adult lives. The need to organise, mobilise, litigate and otherwise struggle to get a measure of truth, in addition to the pain of losing a parent or a partner, has been traumatising for many, and created further suffering. Niall Murphy, a lawyer representing many such victims, described to the Panel "burn-out and exhaustion" among families, and how

> "the next generation has to pick it up now; the lack of truth and justice is trans-generational … Victims have had to battle and spend the best part of their lives fighting the state, people growing up not knowing their relatives but living with the legacy."[709]

For many families the ongoing denial by the State and the efforts to block full truth-recovery have been highly damaging and re-traumatising. As John Finucane told the panel

> "It's hard to put into words. I just turned 43, the vast majority of my life has been this, and it's the same with my brother and sister. There's every aspect of that, there's the personal, there's the public element to something that should be quite private around grief. It's completely and permanently changed our lives. It's something which is just a constant that's there. If it had been dealt with after five years or 10 years, yes, there would have still been grieving, but all this side of life probably wouldn't have been present had this been examined at a much earlier stage. The family would rather not have to go to America, or sit and talk to NGOs and human rights groups, my mother doesn't want to have had to do the things that he's had to do for 34 years."[710]

John's mother Geraldine Finucane told the panel how all those years have been "very telling on our family. It has influenced the family day in and day out, travelling to places like the US to just garner support and doing things like that, and the costs involved. It has made the family something different than an ordinary family".[711]

In a similar vein, Setanta Marley, a lawyer representing relatives, described to the Panel how

> "Every step is fought, delayed and disrupted by the state […] There is chronic burnout and exhaustion for victims and relatives. Victims are dying out and the next generation are picking it up and [it is] creating inter-generational trauma."

708 Meeting with the Panel, Belfast, 3 April 2023.

709 Meeting with the Panel, Belfast, 4 April 2023.

710 Meeting with the Panel, Belfast, 3 April 2023.

711 Meeting with the Panel, Belfast, 3 April 2023.

As former Police Ombudsman Dr Maguire similarly described it:

> "There is conflict trauma and inter-generational trauma, and you can't say to those victims to draw a line and move on." [712]

It is important to stress again how the absence of proper investigations has often contributed to the spread of misinformation and rumours in relation to those killed, further exacerbating the suffering of their families. Without an accurate official narrative, victims have often been stigmatised as involved in paramilitary violence. Acknowledgment of the truth could put an end to many cases of victim-blaming that families have had to deal with, due to the assumption that because an individual was caught up in a bombing or a shooting, they must somehow have been directly 'involved' in the conflict.

Below are more detailed excerpts from three testimonies that the Panel heard from families still fighting for truth and justice. The first testimony emphasises the effects on the family of not knowing why their loved one was killed and their never-ending wait for an apology.

> "Fifty years later we're still fighting. I suffer from depression, anxiety, diagnosed with PTSD. I'm certainly a mess. I promised mum: if anything happens to you, I'll keep fighting. Mum always wanted to know who set him up, who put my dad's name in the hat. He was a good man, he would have helped anybody. She would like to know who set him up and why. Truth will help mum get peace of mind. If she has peace of mind, I'll have [it too]. She never got to do all her plans, she thinks we were robbed, missed out.
>
> We never got an apology or acknowledgment. That would have made a difference to mum. The civil case was not about money, we wanted them to acknowledge wrongdoing, but they didn't, she didn't get her apology. Knowing that someone was held to account would have helped. It would have helped my mum. She wouldn't have to carry the guilt. Time is not on her side, and I do hope she'll get some sort of peace of mind. We're not the only ones, there's more of us in the same boat. It should have been done and dusted and him in jail."[713]

The second testimony echoes many of these sentiments.

> "I've no interest in an 80-year-old man going to jail. I want to know who actually done the act, where they come from, the structures, who was behind the UVF and who was behind them. I want to be in the official story, my grandkids could see it in the library in black and white."
>
> "You do get some satisfaction. I started all that because they murdered my mother. This is how I get the bugbear desire to keep going. They were such easy targets, so innocent. Why [were they attacked]? Who said it should happen, what system? We didn't know what was coming toward us. Then, you just didn't know the danger you were in. I keep asking my mom why? Why, why? She loved the Queen, she didn't know anything, my da was in the territorial army, we had protestant friends. Could you imagine it now, recruiting UVF people to the security forces? That's mind boggling. We're still paying the consequence of it now. It kills me."
>
> "If I get the report, written-down paper – that's my life's goal. I've sat in courts, I went to meetings. If I get a file with a report of what happened, I will be at peace. Then I'll be able to go out, go down see my mother in the graveyard, that would be closure. I'm in my sixties now, I hope to do a wee bit of good now. I have that in front of me. But I have got my hopes up."[714]

The third testimony emphasises the need for accountability.

> "What are the effects of no one brought to account? As time goes on, it affects [you] more, you think about it more. As you get older you start thinking, you just need answers. It's all to do

712 Meeting with the Panel, Belfast, 3 April 2023.

713 Meeting with the Panel, Armagh, 7 April 2023.

714 Meeting with the Panel, Armagh, 7 April 2023

> with the British Government, they need to hold their hand out and say we done it. It's not just our family. It would bring a bit of peace to my life. You just need answers. It's not for money or anything. You just like to know, to see face to face in court. They need to be in court. It's out there [then] and one and everybody knows what it was like."[715]

SOME LEVEL OF CONFIRMATION

A few victims and survivors have secured some measure of truth recovery after years of campaigning, even if not the accountability they hoped for.[716] For them, the experience of seeing their concerns adequately investigated, recognised and validated is often a positive outcome, making them feel heard and respected. Some families have received forms of official acknowledgement or apologies, which in some conditions can give consolation to those who can feel they have at least done all they can to vindicate the rights of their loved ones.

Paddy McCreanor, for example, whose uncle Dan McCreanor was killed in the Loughinisland massacre, described the response to the 2016 OPONI report which confirmed collusion". "This is a good day for the Loughinisland justice group, a very good day […] Everything as regards the one famous word, collusion; collusion is no illusion and collusion happened. The truth has come out and that is all we ever wanted from day one. I don't know how we've coped with the situation. 'It's been a living nightmare."[717]

Similarly, when a 2022 OPONI report confirmed allegations of collusion in relation to killings in South Belfast in the early 1990s, the lawyer representing the families said the report made a huge difference to families". "The report is empowering … Their fears, their worst nightmares have been validated by an organ of the state […] this is a state-validated report, which confirms that the murder of their loved ones was afflicted by an overarching state policy of collusion".[718]

BROADER HARMS TO COMMUNITY AND SOCIETY

In addition to direct harms, impunity for collusion has broader social and political consequences for the wider community. Suspicions about collusion, and the State's deliberate failure to address them, has created long-term damage to the community's trust in the authorities and lasting damage to the State's reputation. This has had widespread effects on various aspects including policing, and arguably served to prolong the conflict.

As early as 1974 a local newspaper, the Fermanagh Herald, summed up the response of the nationalist community to suspicions of impunity: "People are not fools. They see Unionist terrorists doing pretty well what they please. Until the British Army takes stern and decisive action against the military organisations of the Unionists it may forget completely about being accepted as a reputable security force."[719]

Such views have persisted and deepened during the decades of conflict. As Judge Cory state": "There cannot be public confidence in any government agency that is guilty of collusion or connivance with regard to serious crimes."[720] Similarly, the ECtHR held that "[p]roper procedures for ensuring the accountability of agents of the State are indispensable in maintaining public confidence".[721]

Collusion and failure to account for it has harmed community relations, policing, and trust in institutions. It has made many in the nationalist community lose confidence in law enforcement and the administration of justice

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715 Meeting with the Panel, Armagh, 7 April 2023

716 For example, through being able to speak to Independent Commissions of Inquiry and seeing their views reflected in subsequent reports.

717 'Loughinisland: Reaction to NI Police Ombudsman Report' *BBC News* (9 June 2016) <https://www.bbc.co.uk/news/uk-northern-ireland-36490100> accessed 14 February 2024.

718 Tom Ambrose and Lisa O'Carroll, 'Evidence Police in Belfast Colluded with Loyalists in the Troubles, Report Finds' *The Guardian* (8 February 2022) <https://www.theguardian.com/uk-news/2022/feb/08/evidence-police-in-belfast-colluded-with-loyalists-in-the-troubles-report-finds#:~:text=%E2%80%9CThe%20report%20finds%20that%2011> accessed 14 February 2024.

719 "Information," Fermanagh Herald, April 6, 1974, cited in Edward Burke, 'Loyalist Mobilization and Cross-Border Violence in Rural Ulster, 1972-1974' (2020) 34 Terrorism and Political Violence 1070.

720 Judge Peter Cory, 'Cory Collusion Inquiry Report Patrick Finucane' (The Stationery Office 2004) 21.

721 *McKerr v. the UK* (n 237) para 160.

and continues to affect trust and confidence in policing. As former Police Ombudsman Michael Maguire told the Panel: "The legacy of collusion is that there is a lack of faith in the PSNI. […] Communities are distrustful of the police because of historical relationships, lack of credibility."[722]

The 2024 Operation Kenova report further noted the dire consequences of the failure to achieve truth and accountability.

> "Families seek information through every reasonable means available to them, including the police, elected representatives, coroners and civil courts, regulators and the media. When these efforts fail, conspiracy theories and conjecture fill the resulting vacuum and create further trauma and confusion for those most affected. Legacy families will not trust in public institutions unless and until the authorities have given them the truth, acknowledged their loss and mistreatment and provided them with an opportunity to tell their stories."[723]

DIFFICULTY IN MOVING ON

More broadly, the impunity for collusion and the state's refusal to pursue allegations undermines efforts to deal with the legacy of Northern Ireland's conflict and to know the full truth, which in turn impedes the ability to complete a process of transformation from conflict to peace. A report arising from public hearings conducted by CAJ, states "There was general agreement from participants that the people of Northern Ireland cannot move on, cannot find closure, until the government hold their hands up and accept responsibility for their role in the conflict; they need to tell the truth around the circumstances of the deaths of many people".[724]
Unless the nature of the past conflict and the State's role in it is known and can be analysed and discussed, achieving lasting peace and reconciliation will be beset with continuing and added problems. Without the truth about collusion during the conflict it will be difficult to move forward into a better future, and the past will continue to have a toxic presence within both politics and society. The Kenova report found that "there can be no meaningful reconciliation following the Northern Ireland Troubles unless and until victims and families know the truth of what happened, however uncomfortable that might be for those involved."[725]

UNKNOWN LEVEL OF RESPONSIBILITY AT ALL LEVELS

One of the central reference points in discussions about the conflict relates to the statistics on the responsibility of different actors for killings. The current statistics commonly attribute around 10 percent of those killed to the actions of state agencies, thus framing the paramilitaries as the main actors in the conflict while the State was attempting to maintain the rule of law. While it is undoubtedly true that the non-state armed groups were responsible for the majority of deaths, such statistics do not take collusion into account. A comprehensive and effective inquiry into collusion could change this picture and suggest the State bears some responsibility for a far larger proportion of the killings.

Judge Cory warned that failure to undertake independent public inquiries into collusion "could be seen as a cynical breach of faith which could have unfortunate consequences for the peace accord" and that "a large part of the Northern Ireland community will be frustrated. Myths and misconceptions will proliferate and hopes of peace and understanding will be eroded."[726] Judge Cory added: "Without proper scrutiny, doubts based solely on myth and suspicion will linger long, fester and spread their malignant infection throughout the Northern Ireland community."[727]

The Panel accepts that not all suspicions about state involvement are true; yet the only way to allay rumours and suspicions which can undermine the peace process and the rule of law is through a comprehensive, independent

722 Meeting with the Panel, Belfast, 3 April 2023.

723 Kenova Interim Report, (n 65) 7.

724 Committee on the Administration of Justice, 'War on Terror: Lessons from Northern Ireland ' (Committee on the Administration of Justice 2008) <https://caj.org.uk/wp-content/uploads/2017/03/No.-56-War-on-Terror-lessons-from-Northern-Ireland-January-2008.pdf> 97-98.

725 Kenova Interim Report, (n 65) 10.

726 'Cory Warned against Finucane Inquiry Postponement' *Irish Examiner* (1 April 2004) <https://www.irishexaminer.com/news/arid-30140925.html> accessed 14 February 2024.

727 'Cory Repeats Inquiry Call' *news.bbc.co.uk* (5 April 2004) <http://news.bbc.co.uk/1/hi/northern_ireland/3600459.stm> accessed 14 February 2024.

and effective inquiry into collusion, which will abide with human rights principles and thus gain the trust of the public.

The truth about the State's involvement in the conflict is important not just for the people of Northern Ireland, however. Also at issue is that many people in Britain do not know that such practices were carried out by its officials. Unlike paramilitaries – whether loyalist or republican – the British security forces acted in the name of all UK citizens. The British public has a right to know the full extent and exact nature of its Government's involvement in human rights abuses in Northern Ireland.

INTERNATIONAL IMPLICATIONS

Finally, the failure to expose the truth about collusion also has international implications beyond the jurisdiction. Following the peace process, there have been variations of policy transfer and even direct "exporting" of counter-terrorism methods and strategies from Northern Ireland to other places in the world, and indeed security personnel who were active in Northern Ireland went on to operate and work in other countries. This has been especially prominent in the contexts of the "War on Terror" and the conflicts in Iraq and Afghanistan. Counter-terrorist policing and the use of covert intelligence techniques were especially lauded by contemporary and former security personnel, and the British experience in Northern Ireland was often "sold" to other countries and contexts as a "success story" of counter-terrorism and counter-insurgency.[728]

The British Army's Special Reconnaissance Regiment was formed in 2005 around a core of the 14th Intelligence Unit which carried out covert intelligence operations in Northern Ireland, and has since carried out similar roles in Iraq, Afghanistan and elsewhere, suggesting that Northern Ireland has been treated as a prototype for such operations. Jeffrey Donaldson, the former leader of the DUP, has earlier responded to allegations of collusion by stating that officers of the RUC, and especially the Special Branch are "proud that the counter-terrorist techniques that they pioneered in Northern Ireland are helping to save the lives of many people in other parts of the world in communities that have growing terrorist problems."[729] A full accounting for collusion would help ensure that any techniques involving human rights abuses would not be replicated in other conflict zones around the world.

By way of illustration, Gordon Kerr, who was head of the NI-specific Force Research Unit, moved on to be Army Brigadier in the British Army in Iraq. It was reported that the British army unit tasked with running informers was essentially moved from Northern Ireland to Iraq, where it carried out similar activities.[730] There are also suggestions that sectarian counter gangs were also active in Basra, which was under British occupation and control.[731] It is conceivable that a full public record of problematic British practices in Northern Ireland could have limited the 'export' of such practices to Iraq and elsewhere.

Indeed, the State's refusal to fully account for collusion may be at least partly explained by the fact that such practices have continued in other contexts even after the Northern Ireland peace process took effect. A letter sent from the British Ambassador to the US Congress, explaining Britain's decision not to carry out a

728 Graham Ellison and Conor O'Reilly, 'From Empire to Iraq and the "War on Terror"' (2008) 11 Police Quarterly 395, 395– 426; Ron Dudai and Kevin Hearty, 'Informing, Intelligence, and Public Policy in Northern Ireland: Some Overlooked Negative Consequences of Deploying Informers against Political Violence' (Queen's University Belfast 2022).

729 HC Deb 21 March 2007, vol 458, col 314WH.

730 Michael Evans, 'Top Secret Intelligence Unit Will Quit Belfast for New Role in Iraq' *The Times* (14 February 2024) <https://www.thetimes.co.uk/article/top-secret-intelligence-unit-will-quit-belfast-for-new-role-in-iraq-pmn95wm867j> accessed 14 February 2024. Sean Rayment, 'Top Secret Army Cell Breaks Terrorists' (*The Telegraph* (4 February 2007) <https://www.telegraph.co.uk/news/uknews/1541542/Top-secret-army-cell-breaks-terrorists.html> accessed 14 February 2024.

731 Gisle Kvanvig, Norwegian Centre for Human Rights, University of Oslo, 'The 9/11 wars - impunity and the current legitimacy deficit' presentation to Impunity and the NI Legacy Bill 50 years on from the Pinochet coup, Queen's University Belfast (11 September 2023). There were also discussions of the "Salvador option in Iraq" in the media and public domain see: John Barry, '"The Salvador Option"' *Newsweek* (7 January 2005) <https://www.newsweek.com/pentagon-may-put-special-forces-led-assassination-or-kidnapping-teams-iraq-117209> accessed 14 February 2024. ; 'From El Salvador to Iraq: Washington's Man behind Brutal Police Squads' The Guardian (6 March 2013) <https://www.theguardian.com/world/2013/mar/06/el-salvador-iraq-police-squads-washington>.'US Special Forces Counterinsurgency Manual Analysis - WikiLeaks' (wikileaks.org) <https://wikileaks.org/wiki/US_Special_Forces_counterinsurgency_manual_analysis> accessed 14 February 2024. UK involvement specifically is covered in the following Redress report: Redress, 'UK Army in Iraq: Time to Come Clean on Civilian Torture' (Redress Trust 2007).

comprehensive inquiry into collusion, asserted that operational techniques from 1989 were relevant in the ongoing war against terror. This ongoing relevance meant that, in terms of national security, they must retain control to stop any information getting out.[732]

To sum up, impunity in relation to collusion appears to have facilitated the replication of similar practices elsewhere, at times directly by the same units and personnel. This is another consequence of the failure to adequately expose and address the Northern Ireland experience of collusion.

CASE STUDIES

PATRICK FINUCANE

Patrick Finucane, a 39-year-old human rights lawyer living in Belfast, was shot dead in his home by members of the Ulster Defence Association (UDA) on 12 February 1989. He was having dinner with his wife and three young children when the attack happened. Pat Finucane died at the scene. His wife, Geraldine, was also injured in the attack. Responsibility for the killing was claimed by the armed loyalist group, the Ulster Defence Association Ulster Freedom Fighters (UDA/UFF).[733]

The organisations stated that Pat Finucane had been a member of the IRA. This claim was denied by family and friends, as well as by official police statements; there has never been any evidence presented to substantiate this claim. Shortly after the murder, allegations began to emerge that there had been official collusion in connection with the murder.

The intelligence which led to Finucane's murder was coordinated by Brian Nelson, a UDA member and a British Army's Force Research Unit agent. Nelson is now deceased and was never convicted of any offence in connection with the murder.

Nelson was recruited (for a second time) in the 1980s while working in Germany and progressed within the UDA, at the behest of his handlers, to become Chief IO (Intelligence Officer) within the paramilitary group. In effect this meant that FRU, RUC Special Branch and the Security Service MI5 had an agent in the single most important position within the UDA – directly responsible for the targeting of individuals for assassination. The recent Operation Kenova report confirmed his role in targeting victims based on details supplied by FRU.

The principal weapon used in the murder was supplied by a RUC Special Branch agent by the name of William Stobie. In 1999 he admitted to supplying a weapon used in the killing but denied involvement in the murder. The trial against him collapsed in 2001, and he was never convicted of any offence connected with the murder. He was shot dead the same year by members of a loyalist paramilitary group. Ken Barrett was also an RUC informer. He pleaded guilty to, and was convicted of, the murder in 2004. Barrett was freed under the terms of the Good Friday agreement, after serving three years in jail.[734]

There have been multiple inquiries and investigations into the murder, including three investigations: by the former Chief of the Metropolitan Police Lord John Stevens, an independent report by Judge Cory, and, most recently, a review conducted by Desmond de Silva.[735] Patrick Finucane's family have long campaigned for a public inquiry that specifically explores the issue of state collusion in his death. They have, however, been unwilling to have such an inquiry conducted under the terms of the Inquiries Act 2005.

732 The claim that disclosure of information from the 1970s, 1980s or 1990s might jeopardise current 'operational' methods is widely regarded with scepticism giving the changing nature of investigative processes.

733 Rory Carroll, 'Pat Finucane's Murder: A Pitiless Act and a Political Storm' *The Guardian* (30 November 2020) <https://www.theguardian.com/uk-news/2020/nov/30/pat-finucane-murder-a-pitiless-act-and-a-political-storm>.

734 Madden & Finucane Solicitors , 'Response to the Collapse of the Trial of William Stobie' *(Madden & Finucane Solicitors Belfast* (26 November 2001) <https://madden-finucane.com/2001/11/26/response-to-the-collapse-of-the-trial-of-william-stobie/> accessed 14 February 2024.

735 Stevens Inquiry, (n 591); Cory Report, (n 110).

In 2011 it looked like an accommodation with regard to the nature of such an inquiry, had been reached between the British Government and the Finucane family. In October that year they were invited to London by the British Prime Minister David Cameron.[736] During this meeting Cameron accepted that collusion had occurred in the Finucane murder and apologised to the family. However, they are also told that the process previously discussed would not come to fruition, and that a new review would be conducted by de Silva.

The 2012 de Silva report found there was collusion with the RUC Special Branch in the murder of Pat Finucane.[737] This was in line with the previous findings of Stevens and Cory. de Silva also concluded it was very probable that one or more police officers from the Royal Ulster Constabulary (RUC) proposed Mr Finucane as a UDA target" and passed information to his loyalist paramilitary killers. However, he found that there was no high-level ministerial collusion or "over-arching State conspiracy".[738]

In light of de Silva's findings about a degree of collusion, David Cameron once again repeated his apology to the Finucane family. Regardless, the Prime Minister rejected the calls for further inquiry. Geraldine Finucane has referred to de Silva's report as a "sham" and a "whitewash"; and the Finucane family continue their campaign for a full public independent inquiry to establish the scope of state collusion in connection with his murder.[739]

In 2019, the UK Supreme Court declared that previous investigations into the killing failed to meet standards required by Article 2 of the ECHR. In December 2022 High Court judge Mr Justice Scoffield ruled that the Government remains in breach of Article 2 through the hold up in completing an investigation which meets those requirements. Geraldine Finucane is now seeking damages against the UK Government for remaining in breach of its legal obligation to carry out an investigation into the murder.[740]

ROCK BAR ATTACKS

The Rock Bar, a small rural public house in Granemore, Co Armagh, was attacked at 10.30pm on Saturday 5 June 1976. A nitroglycerine bomb packed in a tin with nails and other shrapnel was placed at the front door of the bar, but failed to properly explode. Automatic gunfire was fired through the window of the bar. A customer was shot at close range in the abdomen and hip as he left the bar, and survived. All of the attackers were serving RUC police officers.

The Historical Enquiries Team concluded that the RUC investigation in 1976 was "flawed, cursory and ineffective," and "deliberately sabotaged by serving officers who had been amongst the perpetrators".[741] The guns used in the attack were directly linked to various attacks including five murders in the area. The HET noted that "Given…the clear links to a continuing series of similar events, one might expect to see the matter investigated as part of a linked series and overseen by a senior detective".[742] The HET found that only one officer, William McCaughey, was asked about the origin of the weapons used at The Rock Bar, and he refused to answer.

736 'Finucane Family "Lured to Downing Street under False Pretences"' *BBC News* (14 October 2011) <https://www.bbc.co.uk/news/uk-northern-ireland-15303600> accessed 14 February 2024.

737 de Silva Report, (n 13).

738 Kieran McEvoy, 'Dealing with the Past? An Overview of Legal and Political Approaches Relating to the Conflict in and about Northern Ireland' (Queen's University Belfast 2013) 27.

739 Owen Bowcott and legal affairs correspondent, 'Pat Finucane's Family Denounce Report as a "Sham"' *The Guardian* (12 December 2012) <https://www.theguardian.com/uk/2012/dec/12/pat-finucane-family-report-sham> accessed 14 February 2024.

740 Finucane's (Geraldine) Application and in the matter of a decision of The Secretary of State for Northern Ireland [2022] Neutral Citation No. [2022] NIKB 37.

741 HET Report – Michael McGrath, 37.

742 Ibid, 18.

Nine serving and former members of the RUC were arrested in relation to the attack, and four were eventually convicted on a range of charges including wounding with intent, causing an explosion, possession of firearms and ammunition with intent, and concealment of an offence. Sentences ranged from one year in prison (suspended) to seven years in prison. Three of the four men were given suspended sentences. Only one of those convicted, William McCaughey, was given a custodial sentence, having already been convicted of a previous murder.

The sentences were relatively light because the trial Judge, the Lord Chief Justice Lord Lowry, said he did not view those before him as loyalist terrorists, but as police officers, and said: "I must remember that whatever sentence is just it would follow that it would be imposed on a different and lower scale from that appropriate to terrorists,"[743] and stated that the officers believed they were "ridding the land of pestilence".[744]

THE 2024 OPERATION KENOVA REPORT - IMPUNITY FOR MURDER AND TORTURE BY BRITISH AGENTS

The long-anticipated interim report by the Kenova team into the activities of the British agent codenamed Stakeknife – who operated at a senior level of the IRA from the late 1970s until around the early 1990s – was finally published in March 2024.[745] It was written by former Chief Constable of Bedfordshire Police Jon Boutcher. After completing the report, Boutcher became Head of the PSNI in 2023.

The Kenova investigation states explicitly that it "established that agents were involved in murder. There is no evidence to suggest that the authorities considered holding these agents liable for their criminal acts. In some instances, the RUC was not even informed of the involvement of [British] Army agents in criminality."[746] The investigation found, among other matters, that "very serious criminal offences, including murder, were not prevented or investigated when they could and should have been";[747] and that "agents were allowed to continue to be involved in serious criminality including murder. There was no intervention from the leadership of any of the security forces."[748]

Stakeknife is widely understood to be Freddie Scappaticci who died in 2023. The Kenova investigation examined 101 murders and abductions linked to the IRA unit Stakeknife is believed to have headed, which was responsible for interrogating and torturing people suspected of passing information to the British security forces.

Boutcher's team of experienced investigators sent files to the PPS believed to relate to 32 suspects including retired military personnel and people alleged to have been IRA members.[749] He said in the March 2024 report that "When my team have examined agent related cases, they have often found a rich and actionable evidential picture, with many naming those involved, and yet there have been no convictions in connection with these murders." In a BBC interview after the publication of the report Boutcher, speaking now as the Chief Constable of the PSNI, said that the evidence provided to the PPS was "very compelling."[750]

Sir Iain Livingstone, his successor as head of Operation Kenova, also said the investigation team had built "a strong and compelling case" for prosecutions. Yet the PPS concluded there was "insufficient evidence to

743 Ibid, 41.

744 Lord Chief Justice Lowry sentencing remarks, 57.

745 Kenova Interim Report (n 65).

746 Ibid, 71.8.

747 Ibid, 7.

748 Ibid, 31

749 Julian O'Neill and Enda McClafferty, 'Stakeknife: NI Secretary Chris Heaton-Harris Doesn't Rule out Apology' *BBC News* (12 March 2024) <https://www.bbc.co.uk/news/uk-northern-ireland-68548233> accessed 2 April 2024.

750 BBC, Interview with Jon Boutcher, 'Kenova Report Author Jon Boutcher Said the Evidence Provided to PPS Was "Very Compelling"' (12 March 2024) <https://www.bbc.co.uk/sounds/play/p0hj48ms>.

provide a reasonable prospect of conviction" for those named by Kenova, much to the disappointment of those leading the project and many families affected by the actions of the British agents and their handlers.

Boutcher also complained in the report of a "difficulty in accessing information and attempts to undermine me and the investigation," and noted "It is abundantly clear that agencies of the state involved in dealing with the Troubles have made decisions not to disclose information that should have been passed to legacy investigations, and have permitted a culture of delay and obstruction. Those leading previous legacy investigations have evidenced these actions."[751]

The Kenova report clearly presents evidence of large-scale collusion and impunity for agents of the British security forces. It details how British agents were enabled to act with impunity for serious crimes over many years. The report notes that "It is undoubtedly the case that some FRU and RUC Special Branch agents disclosed their involvement in criminality to their handlers (both before and after the event) and were assured that their anonymity and status would always be protected and they would never stand trial or spend time in jail. In some cases, the commission of offences by agents was not only condoned by their handlers, it was impliedly and even expressly encouraged."[752]

The report notes too that despite the assurances given to agents, "the security forces had no power to authorise the commission of crimes or confer prospective or retrospective immunity on offenders and any assurances given to the contrary were themselves unlawful."[753] Yet the agents have not been held accountable, and if the past is anything to go on, will not be.

The report presents various examples where security forces appear more interested in protecting sources of information than protecting life. Examples of wrongdoing include where the IRA "murdered a man on suspicion of being an agent. Detectives investigating the murder identified a highly significant address through their inquiries, but RUC Special Branch prevented them from conducting a search. Unknown to the detectives, the victim had been under surveillance by the security forces shortly before his murder and they had observed him enter and leave the relevant address before being stood down. Decisions of this kind, preventing searches and other investigative steps from taking place, were made to protect and maintain sources of intelligence at the expense of recovering evidence which could have allowed the prosecution of those responsible for murder."[754]

Kenova reports too on another case where the IRA "held and interrogated a man at an address for a number of days before shooting him dead. Before he was murdered, the [British] Army passed intelligence to RUC Special Branch giving the location where he was being held and the identities of those responsible. Special Branch did not act on this or pass it on to investigators in an apparent attempt to protect the source of the information."[755] And in another case, where the IRA abducted a man whose family then spent years searching for him, the report says "The security forces had intelligence that the victim had been murdered within days of his disappearance. They did not inform his family. They made no efforts to find him. The RUC did not carry out a murder investigation."[756]

Seamus Kearney's brother Michael was murdered by the IRA in 1979 for "being an informer". In 2003 the IRA announced that Michael Kearney had not, after all, been an informer. This was confirmed by the Kenova investigation, which found that the killing could have been prevented by the British security forces. Seamus Kearney said he was grateful to the Kenova team for their approach, and for information they gave him in a private meeting about Michael's killing.[757] Seamus said he "got closure, there is such a thing as closure, and I

751 Kenova Interim Report, (n 65) 37.2.

752 Ibid, 68.9.

753 Ibid, 68.9.

754 Ibid, 75.2.

755 Ibid, 75.3.

756 Kenova Interim Report, (n 65) 75.4.

757 'Operation Kenova: "Michael Was Only a Kid", Says Brother of Man Killed by IRA' *The Irish Times* (9 March 2024) <https://www.irishtimes.com/crime-law/2024/03/08/operation-kenova-michael-was-only-a-kid-says-brother-of-man-killed-by-ira/> accessed 2 April 2024.

got it this week. My brother Sean felt the same. I went home and phoned my daughter in Australia and told her it was good news, that we'd finally got closure."[758]

Kenova's approach of regular consultation and transparency is widely appreciated, and demonstrates that providing victims with an authoritative account of the past can, at least in some cases, contribute to their well-being. Kenova exposed and confirmed allegations of astounding forms of collusion, including security forces' complicity in the murder of uninvolved civilians by their agents, as well as in agents killing other agents. The report confirmed what appears to be near-total impunity for these actions during the conflict.

This includes the finding that not a single prosecution was brought in connection with a victim who was murdered because they were accused or suspected of being an agent. Kenova further specifies that "In the vast majority of these cases, intelligence exists about those responsible and yet PSNI has informed me that it knows of no cases (outside of Kenova) where a full police investigation file was submitted to it in connection with such a murder [...] [These cases] were not properly worked or pursued when they undoubtedly could and should have been."[759]

While the Kenova report did much to expose the truth about these issues, it has failed in achieving accountability, given the prosecution service's decisions not to bring prosecutions in relation to any of the files submitted to it by the investigation.

758 Ibid.

759 Kenova Interim Report, (n 65) 174.

CHAPTER SIX FINDINGS AND RECOMMENDATIONS

INTRODUCTION

This chapter synthesises and sets out findings from each of the three thematic chapters as follows.

- Section One: State killings
- Section Two: Torture and ill-treatment
- Section Three: Collusion

The assessment of the extent of impunity in each thematic area focuses on three chronological phases of assessment, namely

- Impunity during the conflict at the time human rights violations were taking place
- Impunity and legacy investigations to date
- Impunity and the impact of the UK Legacy Act 2023.

The first phase of each section assesses whether there were effective investigations, accountability and remedies in place at the time when human rights violations were taking place. This may differ during different phases of the conflict when the architecture changed. For example, in relation to state killings there may be a difference during the period of the early 1970s where inquiries into military killings were the purview of the internal Royal Military Police (RMP) rather than the RUC, the then police service. In relation to torture there may be differences in relation to the periods pre- and post the Inter-state litigation and inquiries. There may also be differences in different periods concerning practices of collusion and the more formalised informant-based system in the 1980s.

The second phase of each section will explore the extent to which post-GFA legacy investigations – mostly under the 'Package of Measures' the UK agreed before the Council of Europe – have managed to remedy the extent to which there was an assessed 'impunity gap' during the conflict. This includes Police Ombudsman reports, Inquests, civil litigation, public inquiries and the six 2003 collusion reports by Justice Cory, the work of the PSNI Historical Enquiry team (HET) and Legacy Investigations Branch (LIB), and 'called in' police investigations, including Operation Kenova. This assessment will also involve different phases of effectiveness of such legacy mechanisms in relation to the extent to which they have delivered.

The third phase will involve an assessment of the extent to which progress in legacy investigations in combatting past impunity will be affected by the implementation of the UK 2023 Legacy Act. This includes the impact of the closing down of 'package of measures' mechanisms, including legacy inquests, civil litigation, police investigations and the Police Ombudsman's office, and their replacement with the Independent Commission for Reconciliation and Information Recovery (ICRIR).

In undertaking this exercise the Panel draws on the definition and indicators of impunity set out in Chapter One of this report. These include the core dimensions of the UN Principles on Impunity which establish that impunity arises when States fail to meet their obligations to

- investigate violations
- take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that those suspected of criminal responsibility are prosecuted, tried and, if found guilty, duly punished
- provide victims with effective remedies and to ensure that they receive reparation for the injuries suffered
- ensure the inalienable right to know the truth about violations
- take other necessary steps to prevent a recurrence of violations.

These can be summarised as the: duty to effectively investigate; right to justice; right to effective remedies, including reparation; right to truth; and guarantees of non-recurrence.

As also set out in Chapter One, this report has adopted the concept of 'serious violations of human rights' (also referred to as grave, gross, flagrant, or manifest) to place the assessment within the realm of international human rights law rather than that of international criminal law (with the former being the law applicable during the Northern Ireland conflict).

Serious violations are those committed within the context of an internal armed conflict, a dictatorship, or a widespread or systematic pattern of abuses that affect the most fundamental human rights.[760] Council of Europe Guidelines *Eradicating impunity for serious human rights violations* provide that 'serious human rights violations' concern those acts in respect of which states have an obligation under the ECHR, and in the light of the Court's case-law, to enact criminal law provisions. This includes obligations in the context of the right to life (Article 2 ECHR), and the prohibition of torture and inhuman or degrading treatment or punishment (Article 3 ECHR).[761] Not all violations of these articles will necessarily reach this threshold.[762]

In addition, the Panel's assessment considers the extent to which identified impunity was *widespread*, *systematic* or *systemic* drawing on related international law concepts, as detailed in Chapter One.

Related concepts include that of *institutional failure (*typically referring to a failure of a state/government entity to carry out its functions); patterns of abuse, crime, violence etc (the aggregate of multiple incidents that share common features and non-accidental repetition of similar conduct on a regular basis); *inherent failures* (the failure of a system, institution, state to function properly because a central element of that system is flawed); and *co-ordinated abuse* (where abuse is part of a coordinated policy that has the backing of state institutions). This chapter then ends by setting out the Panel's recommendations.

SECTION ONE - STATE KILLINGS

1. IMPUNITY DURING THE CONFLICT AT THE TIME STATE KILLINGS WERE TAKING PLACE

The Panel's overall finding in relation to Chapter 3 on state killings is that the State failed to comply with its obligations under Article 2 of the ECHR to investigate serious violations fairly and effectively. The chapter has three parts. First it features perspectives from relatives of the people killed; second it examines state conduct; and third it assesses to what extent 54 specific killings were investigated in accordance with Article 2.

Investigations conducted prior to 1974 were subject to an agreement between the RUC and military, which replaced police investigations into military killings with 'presentational' inquiries conducted by the Royal Military Police (RMP), also known as the 'tea and sandwiches' approach. Interviews were informal and interviewees were not cautioned, which means that their statements have no legal evidential value. Cases from 1974 and into the 1980s, generally demonstrate poor execution and/or omission of key investigative steps. The consequences were that important lines of enquiry were not followed up, which resulted in large gaps in the findings and conclusions reached by investigations.

Overall, the investigations failed the relatives' rights to truth, justice and reparation. Interviews with family members illustrate numerous failures on the part of the State, including disregard for legal standards meant to uphold the rights and dignity of victims and their families. State authorities hindered meaningful participation

760 See M. Cherif Bassiouni, Searching for Peace and Achieving Justice (n 20) 10.

761 'Eradicating impunity for serious human rights violations Guidelines' (n 19).

762 The European Court of Human Rights has used elements of a qualitative and quantitative nature, as well as those concerning the existence of a state obligation to investigate, judge, and punish regarding certain rights outlined in the ECHR. Accordingly, it has emphasised in various rulings on the resolution of individual cases that in forced disappearances, torture, inhuman and degrading treatment, and special detention conditions, the threshold of gravity has been exceeded. For example, regarding the failure to pursue and punish, in the *Case of Timus and Tarus v. the Republic of Moldova*, the ECtHR determined that the failure to carry out a proper investigation in terms of the Convention in a case of extrajudicial execution implies a particularly serious violation of human rights.

in investigations by withholding information and delaying processes. Families suffered further from the State's failure to accept responsibility, issue apologies, or provide adequate compensation. No guarantees of non-recurrence were issued.

2. IMPUNITY AND LEGACY INVESTIGATIONS TO DATE

Legacy investigations have failed to cover all state killings and the majority have been inadequate. Accordingly, the rights to truth, punishment, and reparations have not been upheld for many victims and their families. The legacy investigations that are considered successful, including from the relatives' perspective, give pause for thought. They illustrate that when interviews and investigations are carried out professionally and with modern day methods and technology they can deliver satisfactory results. They can, for example, provide detailed, accurate and reliable information to relatives, they can eliminate or implicate suspects, and they can deliver evidence that stands the test of trial.

The Panel also found that the complexity of the legislation governing legacy investigations has hampered the efforts of both the PSNI – including the Historical Enquiries Team – and the Police Ombudsman. Neither the Ombudsman, nor other bodies, can conduct investigations into RUC killings, subject to certain exemptions for new evidence. The Ombudsman is not mandated to investigate the military, and there are independence issues with the PSNI doing so.

Regarding inquests initiated by families only some have been completed. Any inquests which have not completed their proceedings before 1 May 2024 will not be permitted to issue their findings. The Legacy Act will therefore prevent these and other outstanding legacy inquests from being heard.

The Panel found no evidence of mechanisms having been set up during the conflict that would meet the state's obligation to guarantee non-recurrence of human rights abuses. Such guarantees, if they were forthcoming at all, would have little meaning as long as past impunities are not acknowledged and addressed.

3. IMPUNITY AND IMPACT OF THE UK LEGACY ACT 2023

There are good reasons to doubt that Article 2 compliant investigations into state killings will be delivered by the Legacy Act. On Wednesday 28 February 2024, the High Court in Belfast ruled that the conditional immunity in the Legacy Act is in breach of Articles 2 and 3 of the ECHR. The decision will be subject to appeal and may make its way to the Supreme Court. Even if the immunity provisions of the Act are removed, or the Act itself is repealed under a future government, severe delays are likely. PSNI chief constable Jon Boutcher who formerly led Operation Kenova stated that the victims had not been sufficiently heard in the debates prior to the legislation being enacted. He further stated that he remains committed to giving information to the families affected through the Operation Kenova report because they have been let down.[763]

It is not immediately clear how the body established by the Legacy Act, the Independent Commission for Reconciliation and Information (ICRIR), can deliver Article 2 compliant investigations. Mr Justice Colton, who delivered the High Court ruling on 28 February, has stated that he is satisfied that the ICRIR can deliver human rights compliant investigations due to its wide powers and discretion. The reasoning, however, appears to be that he was unable to find that the ICRIR cannot deliver human rights compliant investigations. This lack of clarity is likely to further exacerbate the lack of trust among the immediate and ageing relatives who, once again, may have to resign themselves to the fact that justice will not be delivered in their lifetime.

SECTION TWO - TORTURE / ILL-TREATMENT

1. IMPUNITY DURING THE CONFLICT

In terms of effectively investigating complaints of torture and ill-treatment committed by members of the

763 Julian O'Neill, 'NI Troubles: Legacy Act Immunity Clause "Breaches" Human Rights' *BBC News* (28 February 2024) <https://www.bbc.co.uk/news/uk-northern-ireland-68419238> accessed 28 February 2024.

security forces during the conflict, The Panel found that the duty to investigate via criminal processes remains unfulfilled (see Chapter Four). Even in the high profile "Hooded Men" interstate case where the European Court of Human Rights found the UK to be in breach of Article 3 regarding the interrogation operation characterised by the combined use of five techniques, and that there was no criminal investigation that could have led to the identification and prosecution of perpetrators. This may, in part, have been due to immunity assurances that the RUC received prior to their involvement in torture deploying the five techniques. Specificity about ministerial authorisation was not disclosed to the Compton Committee or in the ECtHR proceedings.

The report's chapter on torture and ill-treatment also analysed the complaints pipeline and the systems in place at the time to deal with thousands of complaints and allegations of abuse and ill-treatment, mainly arising from interrogation sites. Typically, perfunctory investigations were launched by the Complaints and Discipline branch of the RUC. Of the files sent to the DPP, only a small percentage of cases were prosecuted and fewer still convictions secured. The Panel was able to identify only one custodial sentence handed out because of security force actions (the British Army Parachute Regiment) that would fall under Article 3.

The Panel found that the lack of effective investigations has detrimentally affected victims' right to justice and the proper functioning of the rule of law that would hold perpetrators to account. At the same time, the Panel identified different patterns in civil cases: the same cases which faced obstruction in criminal law were often settled in favour of the complainant. These patterns – which saw investigations failing to lead to prosecution but succeeding in civil litigation – serve to highlight impunity in the criminal justice system because the surviving paper trails of evidence (including medical reports) in many cases are more than suggestive of torture and ill-treatment.

In these instances, Crown Counsel and lawyers working on behalf of the State accepted that, on the balance of probabilities, a civil court would find in favour of the complainant – the key rationalisation running through the instructions to settle. Other reasons for settlement were that it was a means of avoiding adverse publicity and paying less than if the court found for the complainant. It also allowed the State to attach non-liability statements, and later, non-disclosure clauses.

There were no associated criminal, administrative or disciplinary sanctions designed to stop the abuses from happening again, or to root out offenders at source. Thus, in the absence of truth, justice, or meaningful commitment to non-repetition, civil compensation cannot be considered an effective remedy.

During the conflict, the mechanism that perhaps came closest to fulfilling the right to truth and the right to know the full circumstances in which violations were occurring was the Compton Inquiry (1971), mandated to investigate allegations of "physical brutality" arising from internment arrests on 9 August 1971. While the Compton Inquiry found some evidence of ill-treatment, it concluded that torture or physical brutality had not occurred, and so was widely regarded as a whitewash by those adversely affected.

Guarantees of non-repetition and the introduction of procedures and processes that would lead to a reduction in interrogation violence came too late for many. Such reforms only came after years, often decades, of sustained campaigning by survivors, families, priests, politicians, solicitors, civil society organisations, and other groups. The Panel notes that while the implementation of Bennett reforms in 1980 did result in a reduction in the absolute number of complaints emerging from police holding centres, the nature of those allegations changed and forms of physical abuse, verbal abuse, threatening language and threats to solicitors continued (see Appendix D).

2. IMPUNITY AND LEGACY INVESTIGATIONS TO DATE

The Panel found, regrettably, that post-1998 legacy efforts have largely failed to address historic impunity for torture and ill-treatment. Certainly, the duty to effectively investigate, prosecute and punish remains unfulfilled. Following sustained pressure by survivors and their representatives, a small number of cases have been addressed (such as in the Police Ombudsman's inquiry into the Derry 4 case). Some individuals who were abused when they were incarcerated as minors (often alongside adults) have been able to seek compensation through the Historical Institutional Abuse Redress scheme.

One avenue pursued by some of those convicted on the basis of coerced "confession" evidence has involved having their convictions reviewed by the UK Criminal Cases Review Commission. Civil actions pursued by Liam Holden, for example, resulted in compensation at the statutory limit (for wrongful conviction), and specific determinations on the torture techniques used by the security forces to make him confess to a murder he had not committed.

As far as the Panel is aware, the act of lustration – which in transitional justice signifies weeding out at the time of regime change the old guard responsible for human rights violations – never took place in Northern Ireland. Instead, former RUC investigators were incorporated into new legacy mechanisms such as the HET and LIB. Opportunities to break from past impunity with fair, independent and impartial investigations into historic violations were missed.

The degree to which the new police service, the PSNI, guarantees non-recurrence of the types of Article 3 violations experienced in places of detention in the 1970s and 1980s is beyond the scope of this Panel's remit. However, it is possible to say with clarity that no overarching legacy mechanism has been developed that is capable of identifying reliable and complete patterns in relation to the occurrence of torture, number of offenders (individually and collectively), chain of command authorisations, impacts on families and communities, and the longitudinal effects on survivors.

Despite this, an emerging albeit incomplete picture of some individuals successfully overturning their convictions, some receiving compensation, or finding out elements about the circumstances of what happened, has been fuelled by sustained campaigning by many families and their representatives. They have maintained the momentum for accountability through legacy initiatives, even though often frustrated by delaying tactics and obstruction by the British and Irish governments and official bodies. This is no substitute for the State's international law obligations and political commitment to settle these matters. The Stormont House Agreement (SHA) provided for independent effective investigations into conflict-related deaths through an Historical Investigations Unit (HIU), in order to comply with duties under Article 2 ECHR. However, neither the remit of the HIU, nor indeed the SHA Independent Commission for Information Retrieval (ICIR), extended beyond deaths to also cover Article 3 violations, despite parallel duties under the ECHR. Should legal challenges and a change of UK Government lead to the repeal of the current Legacy Act, and a return to the SHA, a key area for discussion would be the extension of its investigative remit to also cover Article 3 obligations relating to torture, as has been advocated by NGOs.

In terms of acknowledgment and apology, the Panel found one case where a government minister apologised to a man who had been subjected to Article 3 treatment (this was where a perpetrator from the British Parachute Regiment received a six month custodial sentence). In addition, the PSNI (but not the UK Government) recently apologised on behalf of its predecessor organisation, the RUC, for its role in the "Hooded Men" operation. However, no acknowledgment or apology for Article 3 harms committed by members of the security forces against wider groups of victims (running into hundreds, if not thousands) has yet happened.

Though not the focus of the Panel, it is important to note that there may also exist a justice deficit in relation to Article 3 harms committed by paramilitary groups. Though these are non-state actors and are not directly bound by international human rights law, the UK Government would still have procedural obligations regarding the effective investigation of such cases. An overarching fact-finding body would be able to take a holistic approach to Article 3 violations that occurred in the region during the conflict.

3. IMPUNITY AND THE IMPACT OF THE LEGACY ACT 2023

The Panel's assessment is that the UK Government's Legacy Act 2023 will not address historic or contemporary impunity for Article 3 violations committed by the security forces in Northern Ireland. In fact, it will strengthen the climate of impunity by removing avenues of redress (limited as they were) that were open to some survivors, as well as criminal investigations and civil litigation, and replacing them with a limited new legacy body for a time-limited period. Most shockingly, the amnesty provision – in the form of a conditional immunities scheme – provides no exemption for and hence will cover acts of torture. This is despite the UN Committee Against Torture having directly warned the UK, in December 2019, that "*amnesties or statutes of limitations for torture*

or ill-treatment" have been found to be incompatible with the UN Convention Against Torture.[764] Whilst at the time of writing the domestic courts have declared the amnesty incompatible with the ECHR, the UK Government intends to appeal.

As it currently stands, the only exemption from the amnesty provides that immunity cannot be granted for rape and other sexual offences. It is notable that even this – which engages acts prohibited by Article 3 – was pressed upon the UK Government by an opposition amendment. However, whilst a formal amnesty cannot be granted, perpetrators of conflict-related sexual violence may still benefit from a de facto amnesty by virtue that the same acts will be statute-barred from police and police ombudsman investigations, and victims will be unable to take civil cases; the only option would be a 'review' by the new legacy body during the temporary period of its operation.

SECTION THREE - COLLUSION

1. IMPUNITY DURING THE CONFLICT

The Panel found that the duty to investigate allegations of collusion, via criminal processes, remained largely unfulfilled during the conflict (see Chapter Five). Collusion was regarded by the British State as a useful tactic in the conflict, and any impetus to prosecute criminal acts arising from collusion was typically outweighed by considerations of gaining intelligence.

Individual public inquiries and official investigations have found striking similarities in relation to failures that have led to findings of collusion by agents of the security forces. In many cases collusion has included direct involvement by members of the security forces in killings

- the leaking of intelligence by members of the security forces to loyalist armed groups, which was then used to target individuals
- the failure to warn and protect individuals known by the security forces to have been under threat from armed groups
- the failure to ensure that agents operated lawfully
- the concealment of intelligence indicating informers had been involved in serious crimes
- the provision of weapons to armed groups or not disseminating intelligence about weapons being imported by paramilitary groups.

The Panel notes that, based on documentary evidence, including reports by the Police Ombudsman, collusion has been identified across time periods, from the very early days of the conflict until the 1990s. It also occurred across geographical regions in Northern Ireland, from Belfast to rural areas, and extended beyond the border into the south of Ireland.

The Panel also notes that collusion was not the case of a few bad apples, and that failing to investigate these issues is unlikely to have been a case of temporary, isolated lapses. Given the scope, duration and nature of the collusive activities, it is hard to argue that political and law enforcement leadership had no suspicion of a pattern of behaviours meriting investigation.

The Panel's assessment found that police investigations of relevant violent incidents likely to have involved collusion were obstructed by a lack of cooperation by Special Branch, including holding back intelligence, "losing" evidence, and destroying documents. Information was routinely withheld by parts of the police force (e.g. Special Branch) from other parts investigating murders and other crimes (e.g. the CID). The chapter on collusion provides details of many cases during the conflict where police investigations were obstructed or

764 In December 2019 the UN Committee Against Torture (CAT) raised concerns at: "*…recent statements by high-level officials that they are contemplating measures to shield former public officials from liability." CAT recommended that the UK: "… refrains from enacting amnesties or statutes of limitations for torture or ill-treatment, which the Committee has found to be inconsistent with the States parties' obligations under the Convention*". CAT/C/GBR/CO/6, para 40 & para 41(f).

"slow waltzed," and where evidence was withheld or destroyed. This in effect amounted to a cover-up of acts of collusion.

In the Irish State, cases where collusion was suspected that date from as early as the early 1970s, were not properly investigated by the Dublin government during the conflict.

This lack of effective investigations into possible collusion seriously damaged victims' right to justice, truth and reparations. Subsequent post-conflict attempts to discover the truth and hold perpetrators to account were invariably hampered by evidence being out-of-date, incomplete, and sometimes lost forever. An effective system of accountability, properly pursued at the time, would have increased the likelihood of obtaining justice for victims as well as deterring and preventing at least some of the abuses. If perpetrators had been apprehended and held accountable at the time, they would not have gone on to commit further crimes.

Surviving paper trails suggest that in many cases there was more than enough evidence at the time to bring charges against perpetrators. An unknown number of lives would have been saved if proper processes had been followed during the conflict. But a reluctance by the British state to prosecute, or even investigate, its own agents, meant that victims did not achieve the accountability to which they were entitled.

This impunity failed to prevent non-repetition during the conflict. It is also unclear whether lessons have been learned since, or whether a mindset still exists of the primacy of intelligence, i.e. that crimes committed by agents of the state should be ignored in the interests of protecting the identity of informants and potentially gaining further intelligence from them.

2. IMPUNITY AND LEGACY INVESTIGATIONS TO DATE

The Panel found that since 1998 there have certainly been several investigatory efforts in relation to collusion. As Chapter Five detailed, they include among others several public inquiries and several reports by the Office of the Police Ombudsman for Northern Ireland (OPONI). These reports (backed up more recently by the interim report on Operation Kenova) have revealed a much wider picture of the scale and nature of collusion than was previously understood. As elaborated in Chapter Five, in several cases allegations of collusion by victims, bereaved families and NGOs, which were denied and dismissed during the conflict have, post-1998, been confirmed as accurate by formal investigations. At least for a few victims this has resulted in some measure of satisfaction.

Nevertheless, the duty to effectively investigate, prosecute and punish remains unfulfilled. Where cases have been investigated by one of the state mechanisms, this has happened as a result of years, often decades, of pressure and campaigning by survivors and the families of victims. These exhausting efforts should not have been necessary, and – as confirmed by personal testimonies given to the Panel – often exacted an enormous emotional and sometimes financial cost to survivors' families.

While there were some convictions of those involved in collusion, and some victims have received compensation and more facts about what happened in their cases, many others remain in the dark about who perpetrated the crime, and why, and about whether the British State had knowledge beforehand that an attack was planned, and if so, why it failed to prevent it. To give but one, notable example, the Finucane family (see Chapter Five) are still waiting for the promised public inquiry into the 1989 murder of Pat Finucane.

While the findings of individual OPONI reports and other mechanisms may have brought a measure of vindication and comfort to some of the bereaved, they rarely led to further judicial inquiries and criminal investigations, and the overall process remained partial, weak and limited. First, mechanisms have limited mandates and powers. For example, the Police Ombudsman has no jurisdiction over the military or MI5, or indeed the government or civil service. Given that collusion involved a variety of state agencies and actors, this is a key limitation. Moreover, OPONI does not have power to compel former RUC officers to be interviewed or to produce documents that might still be in their possession – a further significant limitation. The Historical Enquiries Team was held to be biased in favour of the security forces, and in any event focused on individual cases, generally leaving aside the wider policies, practices, and actions of the government and other state

agencies that may have led to or involved collusion.

Though some of the mechanisms do have the potential to work well, the inherent limitations of their mandates and powers have meant that even their combined efforts could not have provided a comprehensive account of collusion and identified who has been responsible for them. The piecemeal system of dealing with the past, which characterised the government response to demands for truth and accountability, simply cannot deliver the full truth in relation to collusion, and thus ultimately reinforces impunity.

While a series of investigations (e.g. Stalker, Cory, de Silva) revealed shocking levels of collusion, as far as the Panel is aware, there were no vetting procedures introduced after changes arising from the Good Friday Agreement that would have resulted in the weeding out of members of the security forces who were considered to have been responsible for human rights violations during the conflict. As astonishing as this seems, it never happened.

The Panel found that there has been no broad admission from the British Government in relation to collusion. Thus, the Government has also failed in terms of acknowledgment and apology. Such acknowledgment, as well as apologies, are among the duties of governments to victims in the aftermath of conflicts and human rights violations. They are important because they can be seen as a form of symbolic reparation, and could assist in the recovery of victims, communities, and society at large. The fact that collusion has been denied for so long makes formal public acknowledgement highly significant. The truth is particularly important where violations and abuses have not been adequately investigated and where the facts have previously been hidden or denied. However, this has not been forthcoming. The UK Government, unionist parties, retired RUC officers, UDR soldiers and others have resisted accepting that collusion between state security forces and loyalist paramilitaries was routine and systemic. Theresa Villiers, secretary of state for Northern Ireland, stated that claims of state collusion with paramilitaries having been rife were "pernicious" and a "deliberate distortion."[765] John Major, who was Prime Minister from 1990-1997, denied that there was a policy of collusion with loyalist paramilitaries.[766] More broadly, the Secretary for State for Northern Ireland, Brandon Lewis, claimed that the "vast majority" of killings by security forces during the conflict were "lawful".[767]

There have been some partial apologies in response to findings of collusion. Following the de Silva report into the murder of Pat Finucane, Matt Baggot, then Chief Constable of the PSNI, offered a "complete, absolute and unconditional" apology to the Finucane family, saying they had been "abjectly failed". Similarly, Prime Minister David Cameron said that on behalf of the Government and the whole country he wanted to say to the Finucane family that he was "deeply sorry". Cameron acknowledged there had been "shocking levels of collusion" in the murder of Finucane. However, given Cameron's refusal to establish a full public inquiry or take any other judicial action, his apology was perceived as hollow by the Finucane family and many others, and Finucane's widow Geraldine dismissed Cameron's statement as a "confidence trick" and a sham.[768]

In short, the investigatory mechanisms which have operated though this period did not – and could not – effectively address allegations of collusion, due to their limited mandates, resources and powers, and the lack of political will. Very few prosecutions were brought against state actors, and substantial questions remain not only in relation to specific incidents but as to the broad underlying degree and level of collusion, and the responsibility of various state agencies, including what those in senior levels of government knew about allegations of collusion and what – if any – actions they took.

765 Theresa Villiers, 'A Way Forward for Legacy of the Past in Northern Ireland' (11 February 2016) <https://www.gov.uk/government/speeches/villiers-a-way-forward-for-legacy-of-the-past-in-northern-ireland>.

766 Rebecca Black, 'Collusion with Loyalist Paramilitaries Not a UK Government Policy – John Major' *BreakingNews.ie* (26 January 2023) <https://www.breakingnews.ie/ireland/collusion-with-loyalist-paramilitaries-not-a-government-policy-sir-john-major-1424562.html> accessed 2 April 2024.

767 "Northern Ireland Office, 'Addressing the Legacy of Northern Ireland's Past' (UK government 2021) <https://assets.publishing.service.gov.uk/media/60eed6e18fa8f50c797792c1/CP_498_Addressing_the_Legacy_of_Northern_Ireland's_Past.pdf> 20.

768 Henry McDonald and Owen Bowcott, 'David Cameron Admits "Shocking Levels of Collusion" in Pat Finucane Murder' *The Guardian* (12 December 2012) <https://www.theguardian.com/uk/2012/dec/12/david-cameron-pat-finucane-murder>; 'Pat Finucane Murder: "Shocking State Collusion", Says PM' *BBC News* (12 December 2012) <https://www.bbc.co.uk/news/uk-northern-ireland-20662412> accessed 20 December 2020.

3. IMPUNITY AND THE IMPACT OF THE 2023 LEGACY ACT

The Panel is clear that the UK Government's Legacy Act 2023 will not adequately address cases of impunity during the conflict. Indeed, it promises to fuel further impunity by removing the mechanisms which have started to bring some degree of justice and truth (notably through Police Ombudsman inquiries and Operation Kenova). The Act offers immunity for all crimes committed during the conflict, including murder, which arose from collusion. This will deny survivors and victims' families, their rights to truth and accountability. At best, even if the immunity provisions of the Act are not enforced, or the Act is eventually repealed, it will have meant years of further delays. Years during which more relatives of those attacked, and survivors of attacks, will die without ever seeing the justice they deserve. Without an inquiry or investigation considered reliable by affected communities, misinformation, rumours, and a lack of trust will continue, and the duty to ensure non-repetition will be impossible. The Legacy Act will prevent the possibility of determining the "big picture" of collusion, which is necessary in order to break the cycle of impunity.

A proper inquiry should provide the full picture of collusion, its scope and forms, the circumstances and causes, and identify individuals and organisations responsible. Given the nature of allegations regarding patterns of serious human rights violations, inquiries should be expansive enough and mandated with clear powers so they can examine broad questions of responsibility, the chain of command within relevant organisations, institutional cultures, the policies that gave rise to abuses, what was known or should have been known at the time to political and police leaders, and what mechanisms were at place in order to hide and deny collusion. It appears that under the terms of the Legacy Act such an official inquiry would be unlikely, and therefore patterns of impunity – with all their negative consequences on individuals and communities – will continue.

IMPUNITY - WIDESPREAD, SYSTEMATIC AND SYSTEMIC

The Panel concludes that state impunity in the conflict in Northern Ireland is widespread, systematic and systemic. Use of the present tense "is" is a deliberate choice: first, the Legacy Act represents a continuation of impunity, not just something that existed during the conflict, and second, because the State has demonstrated that it has the resources and competency to fulfil its Article 2 and 3 ECHR obligations, and the Panel calls for these to be applied to allegations arising from the conflict.

State impunity is regarded as widespread, systematic and systemic because the evidence presented in this report shows that responsibility for the human rights violations committed by state agents during the conflict cannot be laid at the feet of "a few bad apples". Impunity in Northern Ireland is a product of institutional failure on behalf of the State. States operating under the democratic rule of law have numerous mechanisms to ensure Article 2 and 3 compliance. They have domestic and international law, oversight and complaints mechanisms, standard operating procedures, rules of engagement, codes of conduct, training and education, and various types of decision making hierarchies to ensure that cultures of impunity do not develop, and mandates to address violations when they occur.

The Panel found evidence of state impunity in Northern Ireland in relation to the three thematic areas covered in this report.

- State impunity is widespread in that state killings, torture and inhuman treatment, and collusion involved a large number of victims.

- State impunity is systematic because the State failed in its responsibility to investigate all cases of state killings, torture and inhuman treatment, and collusion, in official, thorough, and transparent ways. This is evident in the State's institutional failure to act upon complaints, adequately resource investigations and prosecutions, correct investigative failings, and provide oversight – parliamentary or otherwise – of state security forces (the police, military and intelligence services).

- State impunity is systemic because the assessment of state killings, torture and inhuman treatment, and collusion reveals patterns that demonstrate that they took place in multiple locations, over several decades, and occurred in multiple state agencies.

The extent to which the State's impunity is deliberate (e.g. arose by design and with intent), or accidental (e.g. arose through omissions, incompetence and neglect) is unclear. Whatever the cause, the evidence produced in this report is indicative of institutional failure on a scale that has unquestionably produced patterns of widespread, systematic and systemic impunity. The Panel is perplexed as to why the massive body of evidence it has outlined in this report has not already resulted in perpetrators of violations being held to account. The State must put matters right.

RECOMMENDATIONS

The Panel recommends that:

1. The United Kingdom

- repeals the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 in its entirety, including permanently reopening legacy inquests and civil proceedings;
- in an interim period before new institutions are brought into place, allows the broader existing 'Package of Measures' to continue to function, and
- discharges its commitment and ECHR obligations to hold a full independent public inquiry into the death of Pat Finucane.

2.The United Kingdom and Ireland

- return to the existing bilateral Stormont House Agreement 2014 and its 2015 implementation treaty, and legislate to bring into effect the Historical Investigations Unit (HIU) and Independent Commission for Information Retrieval (ICIR) in a fully ECHR compatible manner and in accordance with modern day investigative practices and standards; and in addition,
- as "Stormont House+", extend the remit of the HIU and ICIR beyond deaths to also deal with ECHR Article 3 violations, and for the Irish Government to also legislate to establish an HIU for its jurisdiction.

3. The United Kingdom and Ireland

- seek to establish, with the assistance of the United Nations and Council of Europe human rights mechanisms, an independent international commission to thematically examine patterns of human rights violations and impunity during the Northern Ireland conflict, including torture and collusion, with legislation to provide full powers of disclosure.

AFTERWORD

Yasmin Sooka

Over the past three decades, I have been involved in numerous transitional justice mechanisms, serving as a commissioner in the South African Truth and Reconciliation Commission and that of Sierra Leone. Through these roles, I've witnessed first-hand the transformative impact of transitional justice mechanisms in providing a platform for victims and their families to voice their experiences of violations and enduring pain. However, alongside these positive outcomes, I have also encountered the deep trauma inherent in reliving these narratives and witnessed the disappointment stemming from unmet expectations regarding accountability and reparations. In addition to the trauma caused by the violations themselves and the emotional toll of recounting one's story, there is also the enduring trauma of decades-long uncertainty, anger, frustration and distrust. These arise when the promises of justice, truth, and reparations made by democratic governments fail to materialise. Much like in my own country South Africa, where the government has failed to fulfil its promise of justice even 30 years after the establishment of democracy and the Truth Commission, victims' families and survivors in Northern Ireland have recently endured another setback in the quest for justice with the adoption of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023.

Juan Mendez in his foreword notes that the Panel has centralised impunity in a transitional justice framework. The Panel has defined impunity, which is essentially about the wielding of power without facing any consequences for the commission of crimes, and which over time becomes deeply ingrained within political systems, culture and institutions if not addressed. The Panel goes beyond exploring individual responsibility and emphasises the widespread, systematic and systemic nature of impunity in Northern Ireland. In this context, addressing impunity goes beyond mere legislation and norms given the flouting by powerful states like the UK of international norms and standards that have been built up over decades, in order to evade accountability. In this regard, the panel has found the UK government is in violation of Article 2 of the European Convention on Human Rights (ECHR), which imposes on the state a duty to hold effective investigations into suspected killings, and to reveal the truth about crimes committed, acknowledging the right of victims to know the fate of their loved ones.

The UK government's denial of collusion in the commission of past human rights abuses during the conflict in Northern Ireland includes the failure to acknowledge their role in the violations and to provide for the recognition of survivors and their families. The former Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence Pablo De Greiff, has argued that recognition like trust is not something that is merely desirable; it is also both a condition and a consequence of justice.

The panel's report notes that although there has been the increase in awareness and information regarding human rights abuses related to the conflict since 1998, this has primarily stemmed from sporadic ad-hoc inquiries, mechanisms with restricted mandates and capabilities, inquests, civil actions, and driven by the personal determination of victims' and civil society organizations to recover the truth. The report nevertheless has amplified the voices of survivors and their families enabling them to place their experiences on record, and serving as a crucial instrument in recovering and preserving collective memory. Additionally, it stands as an authoritative narrative to counter denial.

The report describes poignantly, how trauma has also had an intergenerational impact, with the next generation having to live with the legacy of the past, as is eloquently described by Niall Murphy in this report, a lawyer representing many victims.

Elizabeth Lira, an expert on memory has noted that "the most important material for the reconstruction of truth was the memory of the survivors, and that while truth is insufficient, it is an essential aspect of the social and political process implying a public acknowledgment of the victims' suffering. If this process does not take place, societies are doomed to repeat the past and the victims doomed to private heartaches".[769]

The report's conclusion resonates deeply with me, emphasizing that regardless of the state's intentions or the means it employs to perpetuate impunity, the existence of such patterns indicates institutional failure. These

769 Elizabeth Lira, 'RECONCILIATION, MEMORY and FORGETTING: POLITICAL and ETHICAL DILEMMAS. THE CASE of CHILE' (2009) 30 Psyke & Logos 9.

failures contribute to a cycle wherein accountability lapses lay the groundwork for further instances of impunity. There is little doubt that if the structural and institutional underpinnings of systematic and systemic impunity are not addressed, these will continue to reproduce patterns of impunity. Examples include the corrupting of state institutions and government for personal gain recognised collectively as 'State Capture' in South Africa, and the "war on terror" with respect to the UK's activities in Iraq and Afghanistan.

Sadly, the Legacy Act passed by the UK, is a setback for victims as it takes the struggle for justice and accountability backwards. It includes the provision of immunity for the crimes perpetrated and the removal of mechanisms which have provided some degree of justice and truth for victims further fuelling impunity. The legislation has been criticised by both the Council of Europe and the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, whose predecessor noted an "impunity gap" in Northern Ireland. UN experts, Fabián Salvioli, and Morris Tidball-Binz,[770] have described the law as "a flagrant breach of the UK's international obligations".[771]

The issue of immunity or amnesties remain controversial and even where like in South Africa it was constitutionally mandated and conditional upon a voluntary full disclosure, it also provided that the law would follow its course if amnesty was denied or not been applied for. The South African government however compromised the rights of victims to criminal accountability, by failing over the last three decades to institute either investigations or prosecutions, an issue which victims in South Africa are continuing to grapple with. Much like in the Northern Ireland, a handful of inquests established which have resulted in the findings of the apartheid courts being set aside have largely been driven by the victims' families and civil society.[772] However, While the South African government has recently taken some steps to address the 30-year impunity regarding apartheid-era gross violations, with the Legacy Act the UK government has undermined any progress made with respect to state violence in recent years and entrenched impunity further. What little accountability existed has been replaced with complete impunity.

While, the Panel's report honours the memory of victims, and provides a solid basis to continue the pursuit of justice and accountability, it will require that the UK repeals the Legacy and Reconciliation Act 2023, in its entirety.

The report makes an important point: that impunity for collusion has broader social and political consequences for the wider community, and that suspicions about collusion, and the State's deliberate failure to address them, has created long-term damage to the community's trust in the authorities and lasting damage to the State's reputation.

Ensuring non-recurrence also requires the vetting of institutions and public officials implicated in these crimes, as well as implementing institutional reforms, to prevent future violations.

The Panel's recommendation of the establishment of an independent international commission to thematically examine patterns of human rights violations and impunity during the Northern Ireland conflict, must be carried out with the full support of the UN and the Council of Europe, if it is to be effective. The establishment of such a commission must be accompanied with full powers to conduct investigations, to call witnesses and to obtain a full disclosure as well as have unfettered access to all archives and records.

The authors of this report must be congratulated for ensuring that a record has been compiled of past abuses to counter the narrative of impunity and to honour the memory of those who have been killed and tortured. It also provides an enduring archive on which future accountability initiatives can be based.

770 The experts: Mr. Fabián Salvioli, Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; Mr. Morris Tidball-Binz, Special Rapporteur on extrajudicial, summary or arbitrary executions.

771 United Nations, 'UK: Flawed Northern Ireland "Troubles" Bill Flagrantly Contravenes Rights Obligations, Say UN Experts' (*OHCHR15* December 2022) <https://www.ohchr.org/en/press-releases/2022/12/uk-flawed-northern-ireland-troubles-bill-flagrantly-contravenes-rights>.

772 'The Truth and Reconciliation Commission – a Repository of Information on the Victims of Apartheid-Era Atrocities and Their Families' Struggle for Justice, Truth, and Reparations.' *(Foundation for Human Rights)* <https://unfinishedtrc.co.za/>.

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APPENDIX 'A'

THE PANEL- BIOGRAPHIES, SUPPORT AND ACKNOWLEDGEMENTS

The International Expert Panel on State Impunity and the Northern Ireland Conflict was formerly established in June 2022. The Panel was convened by the Norwegian Center for Human Rights at the University of Oslo at the request of the Committee on the Administration of Justice (CAJ) and the Pat Finucane Centre (PFC).

The five original panel members were Dr Brian Dooley, Yasmin Sooka, Dr Aoife Duffy, Maria Jose Guembe and Ivar Husbay. Due to changes in personal circumstances Yasmin Sooka and Ivar Husbay had to stand down from the panel and were replaced by Ron Dudai and Kjell Erik Eriksen.

BIOGRAPHIES

PANEL CONVENER

GISLE KVANVIG is Director of multilateral cooperation in the international department at the Norwegian Center for Human Rights, Faculty of Law, University of Oslo. The programme works with developing practices, standards and curriculum for UN and other multilateral agencies' police missions. He has previously worked for the United Nations Office on Drugs and Crime (UNODC) and NGOs with issues pertaining to human rights, emergency aid, peace & conflict resolution, good governance, the rule of law, criminal justice reform, organized crime and politically motivated violence. He has worked in and with countries in North Africa and the Middle East, Latin America, South and Southeast Asia.

PANEL MEMBERS

DR BRIAN DOOLEY is Senior Advisor at Human Rights First, a Washington DC-based NGO, an Honorary Professor of Practice at Queen's University, Belfast, and a Visiting Scholar at University College London. For over a decade he has worked to support Human Rights Defenders in a range of contexts, including those in Ukraine, Bahrain, Poland, Hong Kong, Northern Ireland and Egypt. For 16 years prior to joining Human Rights First, he worked at Amnesty International. He has written and spoken extensively on human rights issues and the Northern Ireland conflict.

DR AOIFE DUFFY is a senior lecturer in international human rights law affiliated with University of Essex's Human Rights Centre. Dr. Duffy also held positions at the Irish Centre for Human Rights, University of Galway and Dublin City University. Dr. Duffy specialises in interdisciplinary human rights scholarship, transitional justice, post-colonial studies, and has published several outputs on elements of the Northern Ireland conflict.

MARIA JOSE GUEMBE is an Argentinian human rights lawyer. Currently she is a researcher and curator at the ESMA Museum and Site of Memory – Former Clandestine Center of Detention, Torture and Extermination. She is a board member at CELS -Center for Legal and Social Studies, the most important human rights organisation in Argentina. She has been appointed expert by the Interamerican Court of Human Rights in cases discussing accountability for gross human rights violations. Maria played a central role in successfully challenging the impunity laws that were enacted after the military dictatorship.

KJELL ERIK ERIKSEN is a retired detective superintendent. He has 36 years of professional experience with the Norwegian police. For 25 years, he worked as a detective investigating multiple kinds of crime including organised crime and conducted undercover work. He is a specialist in interviewing and investigation methodologies and held several leadership positions within the police such as being head of the criminal investigations department. In terms of international police experience, Eriksen was the team leader for the United Nations Police police contingent responsible for investigating sexual and gender based violence in Haiti from 2016 to 2017. In 2018, he became responsible for research, development and training of police interviewing trainers at the Norwegian police University college. Eriksen also holds a degree in business administration and has studied management and pedagogics. Since 2021 Eriksen has been affiliated with the Norwegian Center for Human Rights at the

University of Oslo where he works for the rule of law programme. The work involves lecturing and conducting training for senior investigators and prosecutors in countries such as Thailand and Indonesia.

PROF. RON DUDAI teaches at the Department of Sociology & Anthropology, Ben Gurion University, and is a research associate at the Centre for Criminology, Oxford University. His research is in the fields of human rights, political violence, and the sociology of punishment. His work was published in leading academic journals, and he served as co-editor of the Journal of Human Rights Practice. His book *Penality in the Underground: The IRA's Pursuit of Informers* was published by Oxford University Press in 2022. He previously worked at the policy team of Amnesty International, was chair of the board of the Human Rights Defenders Fund, and currently serves on the boards of several human rights organisations.

ADVISORS TO THE PANEL

YASMIN SOOKA is a South African human rights lawyer working in the field of transitional justice and international criminal law with a special focus on gender and conflict-related sexual violence. Yasmin currently chairs the Commission on Human Rights in South Sudan for the Human Rights Council in Geneva, which investigates war crimes, collecting and preserving evidence for future accountability mechanisms. Yasmin Sooka served as a member of the South African Truth and Reconciliation Commission, from 1995 to 2001. She also served as one of three independent Commissioners to the Truth and Reconciliation Commission in Sierra Leone. In July 2010, Ms Sooka served on a panel advising the UN Secretary-General on the credibility of allegations of war crimes, and crimes against humanity committed during the final phase of the war in Sri Lanka, and in 2015 served as an advisor to the UN Secretary-General on the Independent Review Panel investigating allegations of sexual abuse involving children regarding French Peacekeepers in the Central African Republic.
Ivar Husby is a Norwegian former Asst. Chief of Police. From 2009 – 2019 he was Head of Section for post graduate studies in investigation at The Norwegian Police University College. From 2001 he served as Deputy Head of Organised Crime Section at The National Police Directorate. This followed five years at The National Authority for Investigation and Prosecution of Economic and Environmental Crime. Prior to that he served 15 years as Detective Inspector at The National Criminal Investigation Service (NCIS), both at Homicide Investigation Dept. and Forensic Science Dept. Since 2013 Husby has cooperated with the Norwegian Center for Human Rights presenting the investigation interviewing technique, today also known as the Méndez Principles (UN), to various countries and institutions around the World.

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SUPPORT TO THE PANEL

The CAJ and PFC acted as a secretariat to the Panel who were assisted by a number of student teams. The Panel met in plenary but were also organised into thematic subgroups relating to torture, collusion and direct state killings.

CAJ AND PFC

The Committee on the Administration of Justice (CAJ) is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the Government complies with its obligations under international human rights law.

The Pat Finucane Centre (PFC) is a non-party political, anti-sectarian human rights group advocating a non-violent resolution of the conflict on the island of Ireland. The PFC has offices in Derry, Armagh, Belfast and Dublin. Justice for the Forgotten is a project of the PFC formed in 1996 with the aim of campaigning for truth and justice for the victims of the Dublin and Monaghan bombings of 17 May 1974.

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- Two other students, Harvard Intern Alexandra Kersley, and Zoha Siddiqui of Queen's University Belfast, also researched and provided material to support the Panel's work.
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REPORT OF THE INTERNATIONAL EXPERT PANEL

This report assesses the extent to which there has been impunity in relation to serious human rights violations that occurred during the 30-year period of the Northern Ireland conflict. In particular, the report examines whether the UK Government has met its international legal obligations to take effective action to combat impunity.

Impunity means the impossibility, de jure or de facto, of bringing the perpetrators of violations to account – whether in criminal, civil, administrative, or disciplinary proceedings – since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.

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