

**PFC’s submission to the United Nations Committee Against Torture to the follow up of the 66th Session of the 6th Periodic Review of the UK of Great Britain and Northern Ireland in compliance with the UN Convention against Torture and Other Cruel and Degrading Treatment or Punishment (CAT/C/GBR/CO/6) (CAT/C/SR.1740 and 1743) & (CAT/C/SR.1754)**

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**Introduction**

1. The Pat Finucane Centre (PFC) provides advocacy support to families and individuals bereaved and injured as a result of the conflict on the island of Ireland. We are funded by the Department of Foreign Affairs, the Victims and Survivors Service and the European Regional Development Fund- PEACE IV and are a registered charity. The PFC is a non-party political, anti-sectarian human rights group advocating a non-violent resolution of the conflict on the island of Ireland. We believe that all participants to the conflict have violated human rights.
2. The PFC asserts that the failure by the British state to uphold Article 7 of the Universal Declaration of Human Rights, “all are equal before the law and are entitled without any discrimination to equal protection of the law”, is the single most important explanation for the initiation and perpetuation of violent conflict.
3. We provide an advocacy, advice and support service to families, who wish to engage with statutory agencies including the Police Service of Northern Ireland(PSNI)/Legacy Investigations Branch (LIB); the Office for the Police Ombudsman of Northern Ireland (OPONI) in Northern Ireland, the Coroners Service for Northern Ireland (CSNI) and AnGarda Síochána in the Republic (through the Justice for the Forgotten (JFF) – a project of the PFC).
4. We currently provide this service to approximately 230 families across Ireland through four offices in Derry, Armagh, Belfast and Dublin (in partnership with Justice for the Forgotten). Many of these cases engage Article 2 European Court of Human Rights (“ECHR”) issues. The Centre currently employs 9 people at offices in Derry, Armagh, Belfast and Dublin (the latter through JFF).
5. The PFC is filing this submission to the Committee against Torture as part of the follow-up procedure on the 6th periodic report of the United Kingdom and Northern Ireland in compliance with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

**Re the Committee against Torture follow up from the UK on recommendations made to UK government in May 2019 to take specific action on *“accountability for the conflict-related violations in Northern Ireland (para. 41 a), d), e), and f))”***

1. A summary of our Submission to the UNCAT Committee in May 2019 for the UK Review highlights three main areas of concern:

* that existing legacy mechanisms and forward facing legacy mechanisms are article 2 compliant with regards to effective investigations (Articles 12-14);
* that victims and survivors who suffered abhorrent abuse including torture and waterboarding are considered in the new forward-facing legacy mechanisms under consideration by the UK Government; (Articles 4 & 14)
* and that UK Government details their plans for a full and effective article 2 complaint ‘public independent judicial inquiry’ into the murder of human rights lawyer Pat Finucane as directed as a ‘legitimate expectation’ for Mrs Finucane.

1. The CAT asked the UK to respond to all of these issues within one year as a matter of immediate concern. Devastatingly for the bereaved and injured families and friends still seeking answers regarding what happened to their loved ones, both living and deceased, throughout the course of the conflict in the north of Ireland, nothing has moved forward in respect of any of the three areas of concern mentioned above (para. 6). And indeed, as will be evidenced below, regressive legacy proposals have been put forward by the UK and need to be seriously considered by the Committee.

**41. Recalling its previous concluding observations (CAT/C/GBR/CO/5, para. 23), the Committee recommends that the State party should:**

1. **In the absence of a functioning devolved government in Northern Ireland since January 2017, take urgent measures to advance and implement the Stormont House Agreement and the mechanisms it contemplates for investigating conflict-related violations*, particularly the Historical Investigations Unit (HIU);***

**Dealing with the Legacy of the Northern Ireland conflict (Articles 12-14)**

**Concerns regarding the Stormont House Agreement (SHA)**

1. In May 2018 the Northern Ireland Office issued a consultation document[[1]](#footnote-1) *Addressing the Legacy of Northern Ireland’s Past* based on the proposals of the Stormont House Agreement (SHA, 2014), to which PFC submitted a substantive response.[[2]](#footnote-2) The UK Government *claimed* it was trying to find the best way to meet the needs of victims and survivors and to help people address the impact of the Troubles in the areas of information, justice and acknowledgement to help Northern Ireland transition to long -term peace and stability. PFC raised in our March 2019 submission to CAT genuine concerns regarding the sincerity of the British government commitments to deal with the past in an open and honest way.
2. This consultation document proposed a number of over-arching measures recommended in the SHA for dealing with the past including a Historical Investigations Unit (HIU); Independent Commission of Information Retrieval (ICIR); Oral History Archive (OHA); and an Implementation and Reconciliation Group (IRG). The PFC welcomed this consultation but responded raising a number of concerns. It has become glaringly obvious now that these concerns were valid.
3. As recently as the new British Government’s Queen’s Speech in December 2019 and, again, in the 9th January 2020 document *‘New Decade New Approach’[[3]](#footnote-3)* deal, (which restored the NI government) the British government committed to putting in place legislation to enact the SHA. Including an agreement to, by April 2020, initiate a process with north of Ireland political parties and the Irish government to obtain a ‘broad consensus’ on any legislative changes required.
4. With this in mind we were very concerned when, on the 18th March 2020, the British Government set out its thinking on progressing legacy issues in the north of Ireland in the form of a Written Ministerial Statement (WMS).[[4]](#footnote-4) The provisions within this WMS are completely at odds with all previous commitments made by the British Government. Not only in terms of the rights and protections provided for in UNCAT but also to victims and survivors and the general public where the UK government made assurances that they were committed to the full implementation of the SHA.

**Concerns regarding the HIU**

1. The SHA proposed four separate bodies to deal with legacy issues; the Historical Investigations Unit (HIU); the Independent Commission on Information Retrieval (ICIR) (an international agreement signed between the Irish and British governments on 15 October 2015;[[5]](#footnote-5)); the Oral History Archive (OHA) and the Implementation and Reconciliation Group (IRG). The HIU was intended to investigate all cases which currently sit with the PSNI’s Legacy Investigations Branch and the Office of the Police Ombudsman for Northern Ireland. These investigations were to be Article 2 compliant and a report was to be given to each family concerned.
2. The government’s current proposals seem to roll the four proposed bodies into one and to limit the investigative scope to a mere desktop review unless new and compelling evidence can be found. PFC, and the families we work with, would argue the only way to find new and compelling evidence is to adequately investigate each case.
3. The proposal which would also abolish the ICIR appears to have been done without consulting the Irish government.[[6]](#footnote-6)
4. The proposals also suggest that, once this new legacy body has examined and reported on each case, that it will be closed forever even if new evidence was to be subsequently found. This is contrary to the government’s obligations under CAT, specifically articles 12-14.
5. It should be remembered that the SHA was arrived at only after long months of discussions and deliberations and was based on numerous other consultations and initiatives going back over many years, including the Haass-O’Sullivan negotiations (2013) and the Consultative Group on the Past (2009). The proposals in the SHA drew largely from these previous initiatives. We say it is therefore dishonest and devious of the government to attempt to deviate completely from its agreed position.
6. Within all of these legacy proposals there is no reference to gender or the needs of women, who experienced the conflict in very different ways. There is in fact a complete absence of engagement or even acknowledgement on how institutions and legacy pathways should effectively address the specific needs of women as part of any post-conflict transitional justice model. All mechanisms for dealing with the past must address gender if the UK is actually serious about addressing the legacy of conflict which affected all of society. In light of the indivisibility of human rights, and the UN Treaty mechanisms, it is completely unacceptable for the families of the bereaved and injured that we work with, mostly women seeking justice, that this is absent.[[7]](#footnote-7)

***The Committee may wish to urge the UK to implement the Stormont House Agreement mechanisms, including the Historical Investigations Unit, with an explicitly gendered lens, as a matter of urgency to discharge its international human rights obligations,.***

**(d) Ensure that effective and independent investigations are conducted into outstanding allegations of torture, ill-treatment and conflict related killings to establish the truth and identify, prosecute and punish perpetrators, including with respect to the killing of Patrick Finucane, following a recent decision by the Supreme Court that the State party has not carried out an effective investigation concerning this case;**

**Effective and independent investigations**

1. The Police Service of Northern Ireland (PSNI) Legacy Investigations Branch (LIB), the Office of the Police Ombudsman for Northern Ireland (OPONI) and legacy inquests are the *current* mechanisms utilised to address the British government’s procedural obligations arising from Article 2. PFC submits that these, even taken together, fail to fulfil this obligation as well as the obligations under the CAT.
2. We provided a detailed account of the failings and/or ongoing challenges facing these institutions, and our concerns, with regards to their ability to carry out effective and independent investigations in our UNCAT Submission of March 2019, and therefore provide some summary points and recent developments below.[[8]](#footnote-8)

* OPONI’s History Directorate has an outstanding caseload of over 400 cases, many concerning complex investigations;
* Chronic under-resourcing of OPONI has resulted in unacceptable delays, undermining the Office’s ability to function as an effective part of the British government’s ‘package of measures’, and fulfil their Article 2 procedural duties;
* PFC believe the under-resourcing is a deliberate political policy by those determined to obstruct investigations;
* The PSNI are failing in their statutory duties to provide OPONI with the materials they require. For example, the former Ombudsman, Dr Maguire, was forced to initiate a legal challenge against the PSNI following repeated failures to provide documentation[[9]](#footnote-9);

**Recent Developments**

1. Following a statement made by Dr. Maguire[[10]](#footnote-10) regarding this failure, the Inspector of Criminal Justice in Northern Ireland (CJINI) undertook an independent review of the methods of the PSNI use to disclose information in respect of historic cases to the OPONI.[[11]](#footnote-11) In their April 2020 report the Chief Inspector noted that

*… it is critical that effective arrangements for disclosure are a key part of the OPONI investigation process otherwise time and resources are wasted, legal challenge is inevitable and, critically, families are frustrated, angry and hurt further.[[12]](#footnote-12)*

1. The CJINI made a number of strategic recommendations including that;

* The PSNI should urgently put in place an effective system to provide corporate assurance that all material provided by the Liaison Office (LO) was that required in the original request from OPONI; and ensure the disclosure and discovery regimes were effective and consistent across all Departments;
* Within one year of the publication of this Review, the PSNI and the OPONI should revisit and revise the Memorandum of Understanding (MoU) to:

Re-examine the MoU procedures for requesting and responding to requests for disclosure to allow the PSNI to effectively resource the OPONI historic investigations;

Take account of the issues raised in the CJINI Review, and the developments in the PSNI to introduce the standardised model;

Ensure that the MoU satisfied each organisation’s obligations and enabled productive, effective and professional working relationships.

* The CJINI also made recommendations in relation to operational issues, including training of staff on a number of levels as well as recommending that the PSNI Op Turnel Team[[13]](#footnote-13) undertake proper inventory of all legacy systems and data sources,

1. The PFC agrees with CJI’s findings, but submits they should strengthen the argument that the PSNI is not the appropriate body to deal with legacy cases, either as investigators or gatekeepers of evidence/ information. The PSNI has repeatedly impeded the OPONI’s (and the Coroner’s) ability to fulfil its investigative duties through disclosure failures and/or delays. CJI’s findings, along with other issues raised in this submission, clearly demonstrate the need for an independent body with full policing powers and unfettered access to the body of potentially relevant material held by ALL departments (including PSNI/ RUC files and Ministry of Defence archives).
2. There also remain ongoing issues with the PSNI and the Minister of Defence (MoD) in disclosing material to the Legacy Inquest process, which has resulted in significant delays in inquests to date.[[14]](#footnote-14)

***The Committee may wish to ask the UK government how it intends to make sure the above mechanisms are remedied in order to be ECHR article 2 compliant and also to correspond to the requirement of this Convention with regards to Article 12-14?***

**The killing of Pat Finucane**

1. The UK Supreme Court (UKSC) handed down its judgment in an application for judicial review brought by Geraldine Finucane on 27th February 2019 and declared that ‘*there has not been an article 2 compliant inquiry into the death of Patrick Finucane.[[15]](#footnote-15)”* The Court held that it was for the state to decide, not them, how they would meet the procedural requirement of article 2, and what form of investigation, if indeed any, is now feasible, is required in order to meet that requirement[[16]](#footnote-16).
2. Since then the Council of Europe’s Committee of Ministers agreed to reopen their supervision of the individual measures in respect of the Finucane case.[[17]](#footnote-17) To date the UK government has failed to respect the request by the Committee to provide concrete information on how they intend to conduct an Article 2 compliant investigation into Mr Finucane’s death in light of the findings of the Supreme Court judgment of 27 February 2019 by the deadline of 1 December 2019, and by another on the 31 March 2020.
3. Since then the UK government have done nothing in this regard, and once again the Finucane family have had to initiate a legal challenge against the UK government for its ongoing failure to provide an Article 2 compliant investigation into their father’s/ husband’s murder[[18]](#footnote-18)

***The Committee may wish to ask the UK when there is going to be a full and article 2 compliant inquiry held into the murder of Pat Finucane?***

**(e) Undertake other initiatives, including expanding the mandate of the historical investigations unit, to address allegations of torture, sexual violence and disappearances committed during the conflict, and ensure that victims of torture and ill-treatment obtain redress, including fair and adequate compensation, and as full a rehabilitation as possible;**

1. Issues in relation to the roll back on setting up a Historical Investigations Unit (HIU) and the current state of play with regards to the Stormont House Agreement mechanisms are dealt with in (a) and (f).
2. In our previous CAT submission in March 2019 we recommended that any legacy mechanisms should be expanded to ensure that victims of torture and ill-treatment are included. The Written Ministerial Statement (WMS) of March 2020[[19]](#footnote-19) completely ignores this and alarmingly reduces any legacy process to focus on ‘deaths’ alone. In the same March 2019 report the PFC outlined in detail evidence of the use of waterboarding as a form of torture, known about and condoned by the UK government at the time,[[20]](#footnote-20) and evidenced directly from victims and survivors.[[21]](#footnote-21)

1. Yet again we reiterate that, for the victims and survivors we work with, any cases relating to torture and ill-treatment are not historical cases for them but are continuing human rights violations. We work extensively with families who continue to suffer the long-term effects of their treatment and ongoing trauma. There is an absolute prohibition on torture and other cruel, inhuman or degrading punishment in international law, it is essential that families who have been tortured and ill-treated have avenues for effective remedy. The fact that water-boarding was covered up for decades has profound implications for upholding the rule of law, guarantees of non-recurrence, and the prevention of impunity.

**The Committee may wish to ask the UK Government how it is going to fulfil its requirements to investigate the incidences of waterboarding and other torture and inhuman and degrading treatment injuries?**

**The Committee may also wish to ask the UK Government if it will guarantee that the focus on legacy processes which might come out of the *Addressing the Legacy Consultation* will address victims and survivors injured through torture and inhuman and degrading treatment by state forces?**

**(f) Refrain from enacting amnesties or statutes of limitations for torture or ill-treatment, which the Committee has found to be inconsistent with States parties’ obligations under the Convention.**

1. The Written Ministerial Statement (WMS)[[22]](#footnote-22) discussed above was made on the same day that the Overseas Operations (Service Personnel and Veterans) Bill was announced,[[23]](#footnote-23) a Bill that would introduce a qualified presumption against prosecution of members of the British armed forces after a five year period.
2. This Bill is an attempt to ensure a level of impunity for British personnel serving ‘overseas’. It is significant that this Bill and the Written Ministerial Statement (WMS) were both announced on the same day and that in the opening paragraph it is acknowledged that one purpose of the WMS was “ensuring equal treatment of Northern Ireland veterans and those who served overseas.”[[24]](#footnote-24) Again this should be seen in the context of the government’s attempts to ‘protect’ veterans who served in Northern Ireland as part of ‘Operation Banner’ from being investigated for their involvement in disputed killings.[[25]](#footnote-25)
3. The government has repeatedly claimed that these disputed killings have already been investigated and should not be re-investigated. However there are court rulings which prove that many of these disputed killings were never properly investigated. See for instance the 2003 High Court ruling by Justice Kerr in respect of the British Army killing of Kathleen Thompson in November 1971[[26]](#footnote-26):

*“In my view it was not open to them to delegate that critical responsibility to another agency such as the Royal Military Police…….I am satisfied that in 1971 one of the procedural safeguards which was necessary to vindicate and which underpinned the substantive right under article 2 of the European Convention on Human Rights was that there be an effective investigation. By any standard it is clear that the investigation into the death of Mrs Thompson was not effective.”*

1. More recently Her Majesty's Inspectorate of Constabulary found that the Historical Enquires Team’s approach to reviewing cases where the military were involved in killings was not Article 2 compliant.[[27]](#footnote-27) We believe the SHA is the best mechanism to deal with the legacy of the conflict and that anything less than its full implementation will not only sell victims and survivors short but will not allow the government to live up to its international commitments to Article 2.
2. The PFC is very concerned that this Bill will also be amended in order to extend its provisions to cover Northern Ireland legacy cases, and thereby provide a statute of limitations provision on criminal cases, including cases related to torture.

***The Committee may wish to urge the UK government to refrain from introducing a statute of limitations in respect of the military or other state actors in contravention of the provisions of the Convention.***

1. <https://www.gov.uk/government/consultations/addressing-the-legacy-of-northern-irelands-past> [↑](#footnote-ref-1)
2. PFC submission to the NIO Consultation on *Addressing the Legacy of Northern Ireland’s Past* at <http://www.patfinucanecentre.org/truth-recovery/pfcs-response-consultation-deal-legacy-past> [↑](#footnote-ref-2)
3. <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade__a_new_approach.pdf> [↑](#footnote-ref-3)
4. <https://www.gov.uk/government/news/addressing-northern-ireland-legacy-issues> <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Lords/2020-03-18/HLWS163/> [↑](#footnote-ref-4)
5. Agreement signed by Irish and British governments to implement the ICIR. <https://ptfs-oireachtas.s3.amazonaws.com/DriveH/AWData/Library3/FATRdoclaid210116_100026.pdf> [↑](#footnote-ref-5)
6. Statement from Tánaiste Simon Coveney to British government’s proposals. <https://merrionstreet.ie/en/News-Room/News/Statement_by_Tanaiste_on_UK_Government_Legacy_Announcement.html>

   Given the response of the Tánaiste, Simon Coveney, who said in response to the proposals:

   The need for agreement by both Governments to any changes of approach applies importantly and specifically to the legislation that would implement the Independent Commission on Information Retrieval on foot of the Treaty between our two Governments signed in 2015. Any approach has to be coherent across both jurisdictions. [↑](#footnote-ref-6)
7. <https://s3-eu-west-1.amazonaws.com/caj.org.uk/2017/07/17135912/Gender-Principle-Report-Sept-2015_Final-Version.pdf> [↑](#footnote-ref-7)
8. PFC recently made a submission to the Council of Europe Committee of Ministers concerning the McKerr group of cases and the ongoing failure of the UK state regarding their investigatory duties see <https://www.patfinucanecentre.org/pfcs-latest-submission-committee-ministers> [↑](#footnote-ref-8)
9. <https://www.bbc.co.uk/news/uk-northern-ireland-29034151> & Police Ombudsman Media Release 14.02.19 <https://www.policeombudsman.org/Media-Releases/2019/Police-did-not-disclose-sensitive-information> [↑](#footnote-ref-9)
10. Police Ombudsman Media Release 14.02.19 <https://www.policeombudsman.org/Media-Releases/2019/Police-did-not-disclose-sensitive-information> Police Ombudsman Media Release 30.10.19 <https://www.policeombudsman.org/Media-Releases/2019/Police-Ombudsman-statement-on-identification-of-ad>

    [↑](#footnote-ref-10)
11. Available at: <http://www.cjini.org/getattachment/f10ddb54-8eda-40e3-951d-9e75855e2c24/report.aspx> [↑](#footnote-ref-11)
12. Executive Summary, ibid, page 6 [↑](#footnote-ref-12)
13. Op Turnel was the name of the work undertaken within the PSNI in response to the failure to disclose the information to the OPONI. [↑](#footnote-ref-13)
14. <https://www.bbc.co.uk/news/uk-northern-ireland-foyle-west-44406200> & Morris, A., PSNI did not disclose military database files to Troubles inquests, 31 January 2018. Available at:

    http://www.irishnews.com/news/northernirelandnews/2018/01/31/news/military-intelligence-database-inpsni-

    possession-for-decade-was-not-searched-for-inquests-1245648/ (Accessed 10 August 2018) [↑](#footnote-ref-14)
15. In the matter of an application by Geraldine Finucane for Judicial Review (Northern Ireland) [2019] UKSC 7 [↑](#footnote-ref-15)
16. Ibid para 153 [↑](#footnote-ref-16)
17. <https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016809cc97c> [↑](#footnote-ref-17)
18. <https://www.bbc.co.uk/news/uk-northern-ireland-51329141> [↑](#footnote-ref-18)
19. Supra note. 4. [↑](#footnote-ref-19)
20. Minutes of meeting between British Prime Minister Edward Heath MP and Taoiseach Jack Lynch on 24 November 1972; Information in statement provided in statements to the Association of Legal Justice (ALJ) regarding an incident of waterboarding that occurred on August 1st 1972, 30 September 1972; 11th September 1972; a further statement of 2 October 1972 after an arrest on 30September 1972 where paratroopers water-boarded a young man [↑](#footnote-ref-20)
21. See BBC report <http://news.bbc.co.uk/1/hi/northern_ireland/558850.stm>

    <https://www.theguardian.com/uk/2010/oct/11/inside-castlereagh-confessions-torture> [↑](#footnote-ref-21)
22. Supra note. 4. [↑](#footnote-ref-22)
23. <https://services.parliament.uk/bills/2019-21/overseasoperationsservicepersonnelandveterans.html> [↑](#footnote-ref-23)
24. <https://www.gov.uk/government/news/addressing-northern-ireland-legacy-issues> [↑](#footnote-ref-24)
25. Boris Johnson will end 'unfair' trials of Northern Ireland veterans: PM will change law to protect soldiers from prosecution over Troubles<https://www.dailymail.co.uk/news/article-7670901/Boris-Johnson-vows-change-human-rights-law-protect-soldiers-served-Northern-Ireland.html> [↑](#footnote-ref-25)
26. Thompson, Re Judicial Review [2003] NIQB 80 Available at: <https://judiciaryni.uk/judicial-decisions/2003-niqb-80> [↑](#footnote-ref-26)
27. <https://www.justiceinspectorates.gov.uk/hmicfrs/publications/hmic-inspection-of-the-historical-enquiries-team/> [↑](#footnote-ref-27)