

**Relatives For Justice report submission to the UN
Committee Against Torture, 66th Session on the Sixth
Periodic Report of the United Kingdom of Great Britain
and Northern Ireland in compliance with the UN
Convention Against Torture and Other Cruel, Inhuman
or Degrading Treatment or Punishment**



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1. INTRODUCTION

1.1. Relatives For Justice (RFJ) was established in 1991 by relatives of people killed in the conflict. We are a human rights' framed victim support NGO that provides holistic support services to the bereaved and injured of all the actors of the conflict on an inclusive and non-judgemental basis.

1.2. RFJ seeks to examine and develop transitional justice and truth recovery mechanisms assisting with individual healing, contributing to positive societal change, and ensuring the effective promotion and protection of human rights, social justice and reconciliation in the context of an emerging participative post-conflict democracy.

1.3. As part of our engagement with human rights bodies, RFJ presents this submission regarding the 66th Session of the UN Committee against Torture.

1.4. This report is structured in two substantive sections; the first follows RFJ's observations on the sixth periodic report submitted by the UK regarding transitional justice in the North of Ireland (paragraph 35), and the second raises a number of issues about the consequences of those observations and final conclusions.

2. OBSERVATIONS ON THE SIXTH PERIODIC REPORT OF THE UK (PARA. 35)

2.1.A. RFJ welcomed the commitment to implementation of the institutional architecture agreed by all parties and the UK and Irish governments around dealing with the past as part of the Stormont House Agreement (SHA). This included the establishment of the Historical Investigations Unit (HIU), which would be the key element in terms of the UK's international human rights obligations, and therefore would benefit the greater number of victims and survivors from across the community. However, the integrity and credibility of this Agreement is dependent on its effective and expeditious implementation, which has not yet occurred.

The delay in implementing the SHA and the mechanisms for dealing with the past exacerbates the human hurt and trauma all bereaved and injured carry, and it also leaves a continuing situation in which the UK remains in violation of its Article 2 ECHR legal obligations involving investigations into killings by the state and where collusion exists. Moreover, this deliberate delay and the general lack of response and action from the state could also constitute a breach of Article 3 ECHR, regarding the mental distress and anguish that causes in relatives and victims. The HIU architecture must be advanced and implemented, as technically and legally this would not require consultation. It would merely be a matter of the UK finally adhering to its international legal obligations.

2.1.B. If the SHA is to be implemented in the future, RFJ is concerned and disappointed that the legislation will establish a limit on the independence of the HIU director in respect of the “national security interest of the United Kingdom” (clause 7(2)). The effect of this will be to allow the British Secretary of State (SoS), on the advice of intelligence organisations, to inhibit a truthful account being given by the HIU to families of those bereaved during the conflict. Rather than establish a properly independent investigative body, the British officials and drafters of the legislation have instead undermined the promise of the SHA by inserting the SoS as a block on any information which might be embarrassing or shows the commission of criminal offences by state operatives.

The Committee may wish to: seek an update from the State Party on measures it has taken to advance and implement the SHA, as well as on its intentions and willingness to finally comply with ECHR Article 2, with no conditions or other interferences.

2.2.A. The Legacy Investigation Branch (LIB) of the PSNI is currently tasked with legacy investigations. It quotes a caseload of over 1,000 cases, but it is under-resourced, this causing delays and only serving to exacerbate the trauma and grief of bereaved families in addition to denying their fundamental rights.

2.2.B. Moreover, there has been clear evidence of the involvement of former RUC officers within the procedures of the LIB, and even judges have stated that the LIB lacks the requisite independence required by Article 2 of the ECHR.¹ These court cases have been unequivocal about the lack of independence of the LIB, stating that it is not possible for the LIB, as part of the PSNI, to effectively and independently investigate any conflict-related cases.²

The Committee may wish to: seek an update from the State Party on its plans to disband the LIB and to give all legacy cases to the new HIU, which should be human rights compliant.

2.2.C. The PSNI has failed to provide full disclosure to the Office of the Police Ombudsman of Northern Ireland (OPONI), and some reports outlining the findings of various investigations where Loyalist paramilitaries were involved have been delayed. The latest ongoing crisis emerged after the OPONI identified significant, sensitive

¹ NI High Court on the cases McQuillan’s (Margaret) Application [2017] NIQB 28; Barnard’s (Edward) Application [2017] NIQB 82; and McKenna’s (Mary) application [2017] NIQB 96.

² See, for instance, paragraph 191 from Barnard’s (Edward) Application [2017] NIQB 82: “The ability of the LIB to continue the work of the HET is undermined by the fact that it has (i) less resources, (ii) significantly reduced scope and (iii) is not independent in the manner required by Article 2 and the package of measures.”

information, some of which relates to covert policing, which was held by the PSNI but was not made available to the OPONI investigating events of the conflict. RFJ endorses the call for an independent review of how the PSNI deal with their legal obligations regarding disclosure.

All these aspects have aggravated the trauma experienced and delay felt by victims and their relatives, as well as their confidence and trust in the PSNI and the UK government to establish the truth and identify, prosecute and punish perpetrators of human rights violations.

The Committee may wish to: seek an update from the State Party on its plans to ensure the PSNI adheres to its legal obligations to provide full disclosure.

2.3. The OPONI is under-resourced, and the funding issue has a remarkable impact on the investigations. This was also stated by a court following a legal challenge in 2017, when the relatives of a victim shot dead were told the OPONI's inquiry was not expected to be completed until 2025. The judge criticised the 'systemic and persistent' underfunding of the OPONI,³ and the situation remains the same according to the Office. In a meeting held in March 2019 the Police Ombudsman Dr. Michael Maguire informed RFJ that the OPONI has 430 historical complaints to be investigated, but less than 30 members of staff to carry out that job. The Office has continuously requested appropriate funding and resources to effectively accomplish its mandate to investigate legacy issues, but those petitions have been ignored by civil servants and politicians.

The Committee may wish to: seek an update from the State Party on measures it has taken to ensure the OPONI has all the necessary funding and resources to accomplish its mandate to investigate legacy issues.

2.4. The matter of funding for legacy inquests has been subject to political interference rather than the upholding of citizens' rights in accordance with the state's legal obligations, this constituting statutory prevarication and a violation of ECHR Article 2. RFJ welcomed the decision of the government on February 2019 to finally release funding for historical inquests, almost a year after the Hughes judgement⁴. However, that decision came after years of illegal delay and a series of court decisions finding the UK Government in default of its ECHR Article 2 obligation.

Victims and relatives are still waiting, and the (so far) deliberate failures to implement and fund the Lord Chief Justice's (LCJ) corporate plan for inquests make us fear more

³ Bell's (Patricia) Application [2017] NIQB 38.

⁴ Hughes (Brigid) Application [2018] NIQB 30.

unreasonable delay. Given this experience, there is also concern that even if the funding is released in the future, it may only be on a drip-feed basis with the decision having to be renewed every year.

The Committee may wish to: seek an update from the State Party on the plans to release the funding immediately for the full and effective implementation of the LCJ plan on legacy inquests.

2.5. The current State approach and increasing resistance to disclosure is also deeply problematic and it denies victims and their relatives their right to seek and receive information. The latest decision to suspend the release of certain files has been taken by the Public Records Office of Northern Ireland (PRONI) after the UK government stated the PRONI has no authority to release closed files due to Stormont's power-sharing crisis, but that is not the only issue. There are currently three judicial review cases against the PRONI and their unwillingness to release court and inquest papers relating to legacy cases. One of them challenges the difficulties and obstacles in the process prior to the release of records, which the Information Commissioner's Office (ICO) has agreed with RFJ about. According to the ICO, this was inappropriate and it did not meet the requirements under the Freedom of Information legislation, as PRONI were usurping the powers of the Minister by obstructing access to public documents. However, there is no Minister at present, and the North of Ireland is stuck at a political impasse. This is causing severe delays in victims' and relatives' legitimate search for truth and justice and hence exacerbates their pain.

The Committee may wish to: seek an update from the State Party on the reasons why it has impeded the disclosure of public records related to legacy issues, and on its plans to enable their effective release in order to respect and guarantee victims' and survivors' rights.

2.6.A. 'National security' is being used to close off investigations into criminal acts of state agents. However, there is no statutory definition of 'national security', and there has been a dramatic extension of 'national security' exemptions made to investigatory powers. The term is deliberately kept flexible. Indeed, the government uses it as a veto, trumping victims' rights to know the truth concerning the killing of their loved ones and allowing a de-facto form of state impunity.

2.6.B. Secret courts provide another mechanism to conceal human rights violations. The world of 'Closed Material Procedures' (CMPs) excludes civilian parties and their legal representatives from hearing any evidence designated as national security related. The Justice and Security Act 2013 extended this system to civil proceedings

and there has been an increasing reliance on them to prevent transparent scrutiny of conflict-related actions. 36% of the total number of CMPs have taken place in relation to the British Government's intelligence interests regarding their role in the conflict in Ireland, a disproportionately high figure. Many civil society actors have denounced the CMP as a 'carve out from basic principles of equality of arms and open justice'⁵ by allowing secret courts only to consider any material, the disclosure of which would be "damaging to the interests of national security". The reality is that these repressive measures are invoked immediately in this jurisdiction to preserve the interests of the State in concealing their involvement in murder and other crimes.

The Committee may wish to: seek an update from the State Party on its plans to fight impunity by applying 'national security grounds' when an agent or employee of the state has been involved in a criminal act, and to finally comply with its international legal obligations in good faith.

2.8. In 2001 the British and Irish Governments agreed to the establishment of inquiries concerning collusion. Only one of these, the public inquiry into the killing of human rights solicitor Pat Finucane in 1989 has not been held. In February 2019 the Supreme Court ruled that investigations into his murder have not been effective and therefore that there has not been an ECHR Article 2 compliant inquiry into the case. Indeed, this matter is one repeatedly commented on as a most grave matter that remains outstanding by all of those concerned with implementation of previous peace agreements and the application of human rights standards. RFJ demands a full independent international public inquiry into the case.

The Committee may wish to: seek an update from the State Party on the plans to conduct an effective public inquiry into the murder of Patrick Finucane and thus adhere to its international legal obligations.

3. FINAL OBSERVATIONS

3.1. This report brings together relevant evidence about deficiencies in the current mechanisms tasked with uncovering the truth about human rights violations in the North of Ireland. The evidence does not support a conclusion that a 'package of measures' is being deployed in good faith by the UK Government, only held back by the complexity of the issues, cost and lack of consensus among politicians. Rather, it points to a common purpose between the UK Government and elements within the

⁵ Hickman, Tom; 'Turning out the lights? The Justice and Security Act 2013' <http://ukconstitutionallaw.org/2013/06/11/tom-hickman-turning-out-the-lights-the-justice-and-securityact-2013/>

security establishment to prevent access to the truth and maintain a cover of impunity for state agents. Examining each mechanism or phenomenon on its own may create an impression that obstructionist activities are institution specific or aberrational. Yet the emergence of patterns across a number of mechanisms suggests a concerted effort by some to prevent damaging facts about state involvement in human rights abuses coming to light and those who were responsible for such abuses (or for covering them up) being held accountable.

3.2. In addition to all that, families seeking accountability for the killings of their loved ones are being regularly vilified by sections of the press and former state combatants, with the governmental cover for it. So too are the lawyers and NGOs supporting them. For families this appears to be a combined and convenient strategy to undermine their legitimate attempt to seek accountability by the very people responsible for the taking of lives.

These attacks have also been directed to journalists investigating past events and police collusion, posing a direct threat to the right of freedom of expression and the right of the public to be informed. Two journalists were arrested on the 31st of August 2018 -and their documents and computer equipment seized- over the alleged theft of documents that were used in the documentary 'No Stone Unturned', an investigative work about the Loughinisland Massacre and police collusion.⁶ The film exposed the failure of police to properly investigate the killings of six people in 1994 and bring suspected killers to account, but the only police response was the arrest of the journalists and they both are still on (pre-charge) bail.⁷

3.3. The draft document of the SHA possessed potential for investigating serious injuries, but this did not make its way into the final Agreement. The content of the SHA is restricted to investigations of deaths, and only Article 2 ECHR is mentioned to this end. However, if the mechanisms are to be human rights compliant, there are multiple obligations to investigate the most serious of conflict violations. Ignoring the rights of the most seriously injured has obscured their right to fair and impartial investigation for the violations which caused their injury.⁸ Article 3 ECHR and the rights codified under the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment have not been addressed, and require remedy.

3.4. All in all, presenting killings or other human rights violations perpetrated by British soldiers or former RUC officers –the vast majority of the victims being unarmed

⁶ The OPONI admitted there was 'evidence of collusion' in this case. See <https://www.bbc.co.uk/news/uk-northern-ireland-36486779>

⁷ See <https://www.nuj.org.uk/campaigns/no-stone-unturned/> and <http://www.irishnews.com/news/northernirelandnews/2018/11/09/news/journalist-arrests-called-into-questions-after-ombudsman-says-no-theft-was-reported-1481109/>, among others.

⁸ In particular, it obscures the experience and rights of civilians, political prisoners, victims of torture in state institutions, and those shot by non-state actors for "anti-social behaviours".

civilians- as ‘not crimes’ but as ‘people acting under orders and under instruction and fulfilling their duty in a dignified and appropriate way’, as the SoS Karen Bradley said on the 6 of March 2019,⁹ for instance, is unacceptable and devastating for victims and survivors. Notwithstanding her attempts to draw back these remarks –even her apologies for them,¹⁰ the suspicion is that the initial words represent the real views of the British establishment, and that they represent a consistent mindset within the British cabinet that is all pervasive and accepted when it comes to protect ‘their own’. This is a political attempt at direct interference in due process and the rule of law concerning any future prosecutions in cases of state killings, and it should not be accepted under any circumstances. The primacy of the rule of law must be applied concerning every aspect of the legacy of the past, no matter who the perpetrator was.

The commitment to prevention or ending of impunity is the single greatest signal to victims and survivors that society and the state are committed to upholding their rights and willing to address their suffering. For decades family members of people killed and those who have suffered gross violations have lived with the impunity of the actors who caused them harm and systemic cover-up of those crimes. The UK government has signed and ratified human rights conventions and treaties and it has legal obligations. It is therefore incumbent that the UK government adheres to the rule of law, and it gets openly and honestly involved in the development and implementation of comprehensive transitional justice mechanisms in the North of Ireland.

3.5. All the above mentioned has a huge impact on victims and survivors, not only regarding their rights for truth and justice, but also on their suffering and health. It is said that ‘justice delayed is justice denied’, but also, the legacy of the interminable failure to deliver rights to those who suffered harm serves only to compound and exacerbate their trauma. As an NGO providing holistic support services to victims and survivors of the conflict, RFJ constantly witnesses the mental distress and anguish the bereaved and injured suffer as a consequence of this extreme delay and frustration in effectively dealing with the past.

The Human Rights Committee, the European Court of Human Rights (ECtHR) and the Inter-American system have all recognised that mental anguish can be as distressing as physical pain, and they have considered mental anguish suffered by relatives of victims of human rights abuses can result in the relatives themselves suffering ill-treatment at the hands of the state, in violation of human rights provisions prohibiting torture and cruel, inhuman or degrading treatment.¹¹ According to the ECtHR,

⁹ See, for instance, BBC News 06/03/2019: <https://www.bbc.co.uk/news/av/uk-northern-ireland-47473732/security-force-killings-were-not-crimes-bradley>

¹⁰ BBC News 07/03/2019: <https://www.bbc.co.uk/news/uk-northern-ireland-47481477>

¹¹ See Human Rights Committee, Communication No. 107/1981, Views of 21 July 1983; *Kurt v. Turkey*, European Court of Human Rights, Application No. 24276/94, Judgement of 25 May 1998; *Urrutia v. Guatemala*, Inter-American Court of Human Rights, Judgment of November 27, 2003; *Laureano v. Peru*,

‘whether a family member is such a victim will depend on the existence of special factors which gives the suffering of the applicant a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation. Relevant elements will include (...) the involvement of the family member in the attempts to obtain information (...) and the way in which the authorities responded to those enquiries. The Court would further emphasise that the essence of such a violation does not so much lie in the fact of the “disappearance” of the family member but rather concerns the authorities’ reactions and attitudes to the situation when it is brought to their attention. It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities’ conduct.’¹²

This report cannot offer an elaborate and detailed analysis on this subject, but in light of all of the above mentioned, there is sufficient and solid ground to state the UK Government is in breach of both Articles 2 and 3 of the ECHR, and therefore ICCPR Article 7 and the Convention against Torture itself. This is a matter of absolute human rights, and its relevance and the gravity of the situation require a shift on the UK Government towards an unconditional, immediate and honest commitment to human rights and transitional justice, to adhere to its international legal obligations and the rule of law.

Inter-American Court of Human Rights, Communication No. 540/1993, Views of 25 March 1996; *Villagrán Morales et al. v. Guatemala* (the ‘Street Children’ Case), Inter-American Court of Human Rights, Series C No. 77, Judgement of 19 November 1999; *Bámaca Velásquez v. Guatemala*, Series C No. 70, Judgement of 25 November 2000; *Humberto Sánchez v. Honduras*, Series C No. 99, Judgement of 7 June 2003.

¹² *Çakici v. Turkey*, Application No. 23657/94, Judgement of 8 July 1999, paragraph 98.