



# NORTHERN IRELAND:

TIME TO DEAL WITH THE PAST

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*Cover photo:* Cross-community peace mural designed by schoolchildren in Derry/Londonderry, Northern Ireland  
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# GLOSSARY

**CJINI:** Criminal Justice Inspection Northern Ireland

**An Garda Síochána:** Irish police service

**FRU:** Force Research Unit, a military intelligence unit

**HET:** Historical Enquiries Team

**HMIC:** Her Majesty's Inspectorate of Constabulary

**IRA/PIRA:** Provisional Irish Republican Army

**MI5:** the Security Service, the UK's national security intelligence agency

**NIO:** the Northern Ireland Office

**OPONI:** Office of the Police Ombudsman for Northern Ireland

**PPS:** Public Prosecution Service

**PSNI:** Police Service of Northern Ireland

**RUC:** Royal Ulster Constabulary (the police force in Northern Ireland, replaced by the PSNI in 2001).

**SAS:** Special Air Service, a regiment of the UK armed forces

**Special Branch:** refers to the intelligence unit within the RUC

**UDA:** Ulster Defence Association

**UDR:** Ulster Defence Regiment

**UFF:** Ulster Freedom Fighters

**UVF:** Ulster Volunteer Force

# INTRODUCTION

**“It’s said they are waiting for us to die out. But the next generation will still keep asking questions about what happened. Look at me, it was my grandfather who was killed and I am still going to keep asking for the truth.”**

James Miller, whose grandfather David Miller was killed in a suspected IRA bomb attack in Claudy, County Londonderry/Derry, on 31 July 1972. Eight other people were killed and 30 people were injured. Interview with Amnesty International, 5 February 2013.

**“From my family’s point of view all we want to know is the truth. We would like a truth-seeking mechanism where people have to speak about what they were involved in, where there can finally be full acknowledgment of the things that were done here.”**

Alan Brecknell, whose father Trevor Brecknell was killed on 19 December 1975 in a gun and bomb attack on Donnelly’s Bar, Silverbridge, County Armagh, attributed to the UVF. Patrick Joseph Donnelly and Michael Francis Donnelly were also killed and six people were seriously injured. Interview with Amnesty International, 20 February 2013.

Decades after their relatives were killed, many families from across communities in Northern Ireland still ask how and why a family member fell victim to a deadly attack in one of post-war Europe’s most intense periods of political violence. Fifteen years after the signing of the Belfast/Good Friday Agreement, they – together with many victims of torture, ill-treatment, abductions and other human rights violations and abuses – are still waiting for truth, justice and reparation.

This report focuses on the search for truth in Northern Ireland. Truth is an essential element of the duty to investigate human rights violations and abuses, of a victim’s right to remedy, including reparation, and in combating impunity. It can help victims, families and communities understand what happened to them, allow those responsible to be identified, counter misinformation and misconceptions about the past, and allow lessons to be learnt to ensure that abuses are not repeated. This, in turn, may contribute towards the process of reconciliation between divided communities. Denial and silence increase mistrust and damage the social fabric, exacerbating existing divisions.

Obstacles to laying bare the truth have come in many forms in Northern Ireland. Since the negotiation of the Belfast/Good Friday Agreement, the UK government has failed to make dealing with the past a priority – in part, one suspects, because human rights violations by state actors would also come under scrutiny. Some former protagonists, their advocates and their associates, who have transitioned to peaceful, electoral politics, also appear to see little to gain from confronting the abuses that were committed by all sides – including, of course, their own. Politicians in Northern Ireland have so far failed conspicuously to come together and agree how to effectively address the legacy of the past. However, despite the political reluctance, many victims and their families yearn for a true account of the violations and abuses committed against them and consider it a prerequisite for moving forward with their lives and ensuring a lasting peace.

The signing of the Belfast/Good Friday Agreement on 10 April 1998 signalled a turning point in the history of Northern Ireland. In the 30 years preceding the 1998 Agreement, Northern Ireland had experienced a period of intense political violence, which left over 3,600 people

dead and over 40,000 others injured.<sup>1</sup> Human rights violations by state actors and abuses by armed groups were perpetrated by all sides, in many cases with impunity, leaving a devastating impact – felt to this day – on the population.<sup>2</sup>

Fifteen years on, remarkable progress has been made in moving towards a more peaceful future for Northern Ireland. Indeed, Northern Ireland is often presented as a success story and, in many respects, it is. However, this prevailing narrative of “success” has also been used by politicians – in both Belfast and London – to obscure and ignore the need to confront the legacy of the past and the demands of victims and their families.

Though several mechanisms do exist to examine various violations and abuses committed over three decades of political violence, their work has not been consistent or comprehensive. The narrow and specific remits of these mechanisms have resulted in a patchwork and piecemeal “system” of investigation in Northern Ireland that is not capable of delivering the full truth about the human rights violations and abuses that took place.

The international human rights framework stresses the importance of ensuring justice, truth and reparation in response to violations and abuses. Governments, including the UK, have a duty to investigate killings, suspicious deaths, life-threatening attacks, torture and other ill-treatment, and bring those responsible to justice in a fair trial. The authorities must ensure that victims have access to processes that allow them to find out the truth of what happened and victims must be provided with full and effective reparation to address the harm they have suffered and help them rebuild their lives. This is important in particular for communities emerging from protracted periods of violence and seeking to achieve sustainable peace.

The first part of the report provides an overview of the 30 years of political violence and charts some of the changes following the 1998 Agreement. This cannot and does not offer a comprehensive account of Northern Ireland’s history and all the changes that have occurred with peace; rather it provides the context for the report. The report goes on to set out the UK’s obligations to investigate human rights violations and abuses and ensure that victims have access to the truth and receive full and effective reparation to address the harm they have suffered. It argues for the importance of such measures, both to individuals and to society as a whole, particularly as Northern Ireland continues to face violence and division.

The second part of the report considers the work of the mechanisms to which victims and families have turned in order to try to establish the truth and secure justice and reparation. It assesses these mechanisms against relevant international human rights law and standards.

No single mechanism has been established in Northern Ireland with the mandate to examine the past systematically and comprehensively. Instead several separate, distinct mechanisms have been established or directed to investigate past violations and abuses. These mechanisms are:

- the Historical Enquiries Team (HET), which is part of the Police Service of Northern Ireland and reviews deaths arising from the violence;
- the Office of the Police Ombudsman for Northern Ireland (OPONI), an independent body that is able to investigate historical allegations of misconduct by the police;

- coroners' inquests, which have powers to establish who the deceased person was, when, where and how they died;
- public inquiries, which have been established in a small number of cases;
- the Police Service of Northern Ireland (PSNI), which carries out criminal investigations into historical cases, often as a result of evidence having been uncovered by one of the preceding mechanisms.

Although some of these mechanisms have the potential to work well – and some have done so in specific instances – by and large they either have fallen or are falling short of human rights standards because of their failure to conduct prompt, thorough and effective investigations in an independent and impartial manner. This has undermined confidence and trust in their ability to deliver the truth about the past.

Even if all these mechanisms worked perfectly, Amnesty International would remain of the view that the piecemeal approach to investigations adopted in Northern Ireland is too diffuse and too incomplete to provide a comprehensive picture of all the violations and abuses that occurred during the decades of political violence. Inherent limitations within the mechanisms, and their discrete, individualized nature, have meant that much of the truth remains hidden while those in positions of responsibility have remained shielded. It has also contributed to a failure to develop a shared public understanding and recognition of the abuses committed by all sides.

In the light of these shortcomings, the third part of the report, highlights the need for investigations that will effectively examine:

- all human rights violations and abuses, including those resulting in serious injury and cases of torture and other ill-treatment carried out by both state and non-state actors;
- patterns of abuse by armed groups and violations by the state and the examination of systemic issues that arise;
- the role and actions of particular state institutions such as the prosecution authorities, the civil service, and the government during the conflict, as well as the knowledge and responsibility of those in high-level positions of authority;
- state policy or state-sanctioned practices and whether they deliberately or indirectly gave rise to unlawful conduct; as well as the institutional culture of the security forces or other governmental apparatus or agencies and whether it fostered the perpetration of human rights violations and abuses and a climate of impunity;
- the degree and level of collusion between the state and armed groups;
- the institutional culture of the armed groups, their policies and practises, and the knowledge of and responsibility for human rights abuses of those in high-level positions of authority in those groups.

The fourth and final part of the report sets out the case for establishing a single comprehensive mechanism to deal with the past in Northern Ireland. Such a mechanism should provide victims and society as a whole with the truth to the fullest extent possible about violations and abuses and contribute to ensuring justice and reparation. It should be

victim-focused and be able to, among other things, investigate all outstanding cases and patterns of abuses and violations, have powers to compel witnesses and documents and be able to develop recommendations aimed at securing full reparation for victims and helping to bring an end to violence and division. Drawing on Amnesty International's past experience and research across the globe, the report outlines central principles to help guide the establishment of such a mechanism.

The lack of political will to address the past remains the greatest obstacle to establishing a single comprehensive mechanism in Northern Ireland. Without the truth, however, Northern Ireland's past will continue to cast a long, damaging shadow over its present and its future. The longer that truth is kept hidden, and as a result justice and reparation are denied, the greater the potential for damage. The longer each bereaved family or injured individual is left to stitch together facts and fragments of information from disparate, piecemeal processes, the greater their pain.

Amnesty International therefore calls on all political leaders to garner the will and courage to establish a single overarching mechanism capable of comprehensively addressing the past, ensuring that a future can be built that is genuinely shared and sustainable.

## METHODOLOGY

Amnesty International has carried out research across the three decades of violent political conflict in Northern Ireland and documented a range of human rights violations and abuses, including unlawful killings, torture and other ill-treatment, abductions and unfair trials.<sup>3</sup> A key part of the organization's work has been to campaign for effective investigations and for victims to be able to secure their right to remedy and reparation. This report draws from that research and builds on the organization's calls for truth, justice and reparation.

This report uses the term "conflict" in its ordinary and general sense, not as a legal term. As used in this report, the term "conflict" is not intended to convey the legal meaning that the term "armed conflict" has in international humanitarian law.

The three decades of violence had an impact beyond Northern Ireland, with attacks in other parts of the United Kingdom, the Republic of Ireland and Europe. This report, however, focuses on the mechanisms that currently exist in Northern Ireland for the investigation of historical cases. It is based on research conducted by Amnesty International during six visits to Northern Ireland between March 2012 and July 2013. During these visits Amnesty International delegates conducted a total of 47 detailed interviews with relatives of people who died in conflict-related killings in Northern Ireland. Some of those interviews were conducted individually and some in groups. Of these cases 17 incidents were attributed to republican armed groups, resulting in 68 deaths; 23 to loyalist armed groups resulting in 40 deaths, including some cases of collusion; and six incidents that resulted in 26 deaths were attributed directly to the security forces (including the Royal Ulster Constabulary (RUC), as the police force at the time was known, and the British Army).

Amnesty International sought out victims and families from different communities and conducted interviews across Northern Ireland, including in Armagh, Ballymena, Ballymoney, Belfast, Claudy, Downpatrick, Dungannon, Enniskillen, Londonderry/Derry, Lurgan, Magherafelt, and Omagh. Amnesty International also met with people from different communities who were seriously injured during the decades of political violence.

In some instances, individuals asked not to be identified by name, in order to protect their privacy or, in some



cases, in light of concerns of potential reprisals from non-state actors, who include both current and former members of armed groups and others sympathetic to their aims. Amnesty International has respected those wishes and does not provide names or other identifying features in certain cases. Where a decision has been taken to anonymize a case, this is indicated in the text.

Amnesty International met with representatives from the Police Service of Northern Ireland, the Office of the Police Ombudsman for Northern Ireland, the Historical Enquiries Team, the Criminal Justice Inspection Northern Ireland, the Commission for Victims and Survivors in Northern Ireland, the Public Prosecution Service for Northern Ireland, and members and staff of the Northern Ireland Policing Board. Delegates also met with representatives from political parties, including the Alliance Party, the Democratic Unionist Party, Sinn Féin, the Social Democratic and Labour Party and the Ulster Unionist Party, and with the Secretary of State for Northern Ireland, the Shadow Secretary of State for Northern Ireland and the Northern Ireland Justice Minister. Delegates also spoke with non-governmental organizations supporting victims and families, including British Irish Rights Watch (now Rights Watch UK), the Committee on the Administration of Justice, Help NI, Justice for the Forgotten, Northern Ireland Phoenix Project, the Pat Finucane Centre, Relatives for Justice and WAVE Trauma Centre. In addition, meetings were held with lawyers acting on behalf of some victims, the Northern Ireland Human Rights Commission, academics, and other professionals with expertise on issues relevant to the report. Research for the report also draws on court cases, legislation, policy documents, freedom of information requests, reports of investigations, media reports and other open source materials. To the best of Amnesty International's knowledge, the contents of this report were accurate as of 15 August 2013.

Amnesty International would like to thank everyone who agreed to be interviewed and for the assistance of a number of NGOs and lawyers in facilitating meetings with victims and bereaved families. The organization wishes to express its gratitude to the victims and families who agreed to share their stories with us – stories of injustice, pain and grief. Though only some of their cases are represented in detail in the report, it is the collective experience of those with whom we have spoken that informed the research and our conclusions. Amnesty International is further grateful to families and individuals gracious enough to allow us to quote their words even where we could not address their cases in detail in the report.

Without the voices of victims and families, their generosity and willingness to discuss their experiences, and their ongoing courage to speak about their loss or injury, this report could never have been written.

## NORTHERN IRELAND'S PAST, PRESENT AND FUTURE

**"It's a good thing there is peace. We suffered. Now we have to have peace for our children. But I still want to know the truth about what happened to my son; and I want the world to know what happened in Northern Ireland."**

Maria McShane, whose son Gavin McShane was killed by the UVF on 18 May 1994 in Armagh. Interview with Amnesty International, 12 September 2012.

From the late 1960s to the signing of the 1998 Agreement, Northern Ireland experienced a period of political violence involving republican armed groups, loyalist armed groups, and the UK security forces. Republican armed groups, notably the Provisional Irish Republican Army

(PIRA/IRA), came mainly from the Catholic community, and were opposed to the fact that Northern Ireland was a part of the UK. Their stated aim was to fight for a united Ireland, including the counties of Northern Ireland that form part of the UK. Loyalist armed groups came mainly from the Protestant community and included the Ulster Volunteer Force (UVF) and the Ulster Defence Association (UDA) (which also acted under the name of the Ulster Freedom Fighters (UFF), but only itself became a proscribed organization on 10 August 1992). They were known as loyalists because they favoured Northern Ireland remaining a part of the UK.

More than 3,600 people were killed as a result of the violence in Northern Ireland and many of those cases remain unsolved. Nearly 60% of the victims were killed by republican armed groups, about 30% by loyalist armed groups and approximately 10% by security forces. These figures, however, do not reflect cases involving collusion between the state and armed groups. The majority of those killed were people who were not associated with the armed groups and who took no part in the violence. With over 40,000 people having sustained injuries in approximately 16,200 bombing and 37,000 shooting incidents the violence in Northern Ireland has had a profound impact on the lives of many people there.<sup>4</sup>

Human rights violations by state actors and abuses by armed groups were perpetrated by all sides. Republican and loyalist armed groups carried out unlawful killings, acts of torture and other ill-treatment, abductions and taking or holding people hostage. They engaged in "punishment" beatings, shootings and killings of members of their respective communities, as a matter of disciplining people for alleged "anti-social behaviour". In the majority of these cases no one was ever held accountable.

Members of the UK security forces were the declared prime target for republican armed groups. Others who have been victims of bombings and killings by republican armed groups include: members and suspected members of loyalist armed groups, informers and suspected informers, and individuals who provided services to the security forces. The general public in Northern Ireland, England and parts of Europe was also the victim of bombings in public places, with hundreds of people killed in such attacks and many more injured and permanently maimed. Republican armed groups were also responsible for 17 acknowledged abductions, killings and secret burials. As of August 2013, the bodies of 10 of those people have been recovered.<sup>5</sup> For the families of the other seven people, their wait continues and calls have recently been renewed for people to come forward with information to help assist in the location of the remains.<sup>6</sup>

The main victims of loyalist killings were individuals from nationalist/republican communities, with many killed or seriously injured in bomb and gun attacks. Loyalist armed groups also carried out bombings and killings of members and suspected members of republican armed groups. Attacks were also carried out in the Republic of Ireland. For example, on 17 May 1974 the UVF claimed responsibility for a series of car bombings in Dublin and Monaghan which killed 33 people and wounded almost 300 more.

Throughout the decades, Amnesty International and other bodies, including national and international NGOs and inter-governmental bodies, also documented a range of human rights violations committed by members of the security forces, including the RUC, the British armed forces, and the intelligence services.<sup>7</sup> Repeated failures by the UK government to hold

the security forces to account for these violations, and virtually no prosecutions, contributed to an environment of impunity and undermined the rule of law in Northern Ireland. These violations included unlawful killings, torture and other ill-treatment (both physical and psychological) of detainees, detention without charge or trial, unfair trials, repeated failures to investigate killings effectively, and harassment and intimidation of defence lawyers.

Collusion between the security forces and some armed groups has also been documented.<sup>8</sup> Revelations in some key cases of collusion have included evidence of direct involvement by members of the security forces in killings; the leaking of intelligence information by members of the security forces to loyalist armed groups, which was then used to target individuals; the failure to protect individuals known by the security forces to have been under threat of harm from armed groups; the failure to ensure that agents within various agencies operated lawfully; the concealment of intelligence indicating informants had been involved in murders and other serious crimes; the provision of, or facilitation of access to, weapons for use by armed groups; and repeated failures in investigation and attempts to cover-up acts of collusion in subsequent investigations.

**Rock Bar: a case with the “the potential to validate claims of widespread and routine collusion”<sup>9</sup>**

Between July 1972 and June 1978, in the area around the towns of Armagh, Portadown and Dungannon, a series of allegedly linked murders and gun and bomb attacks took place, resulting in the deaths of an estimated 120 people and the serious injury of countless others.<sup>10</sup> Known as the “Glenanne series” of cases, it has been alleged that security force personnel were involved with members of loyalist armed groups in the planning and carrying out of these attacks, giving rise to claims that there was widespread and routine collusion in the area at the time which would have been known at the highest political levels.

One case in the Glenanne series was a gun and bomb attack on Rock Bar in Keady, County Armagh, carried out by serving police officers on 5 June 1976. Although no one was killed in the attack as a result of the bomb not fully detonating, Michael McGrath was shot and seriously injured. The police investigation that followed was described by the HET as “*cursor*” and “*ineffective*”, noting that there was a failure to interview Michael McGrath, the only witness, and that “*the fact that the attack was part of a linked series [was] apparently ignored*”.<sup>11</sup> Furthermore, the HET stated that at least one of the officers involved in the attack was part of the criminal investigation, and other officers “*knew about the actions of their colleagues and did nothing*”<sup>12</sup>

As result of a second RUC investigation in 1978, a number of police officers were charged and brought to trial. However, with the exception of one officer – who had already been convicted of murder in a different case – everyone else in the case was either given a suspended sentence of imprisonment or acquitted.

The following detail of the sentencing remarks of the trial judge, Lord Chief Justice Lowry, is available: “*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, no matter whichever side, whose aim is to achieve their political ends by violence and to attack the very fabric of society [...]*”; that the motive for the attack “*sprang from a feeling of frustration that ordinary police methods had proved relatively ineffective in combating terrorism in County Armagh and elsewhere*”; and that “*it was a matter of admiration that the RUC had resisted the temptation to resort to violence when friends and colleagues and their families had been killed*.”<sup>13</sup>

In this case the actions of the court, notably the application by a judge of a differential standard for sentencing police officers played a key role in allowing the perpetrators of this attack to evade justice. With

respect to the sentencing remarks, the HET states, “it is simply staggering. It is difficult to conceive of a statement that could be more fundamentally flawed or calculated to destroy confidence of a large section of the community in the Courts’ independence and probity.” It further remarks, “a question arises as to whether political approaches were made to the Court, proposing a ‘low key’ response and minimizing public attention to the case.”

The limited mandates of the mechanisms currently in place to investigate this case and others in the “Glenanne series” have meant, however, that the full truth about the level and degree of state collusion across these cases has not yet been established (see page 50-51).<sup>14</sup> In particular, there has not been an effective investigation of the role and responsibility of those in government and at senior levels of the security forces about what they knew and what actions they took.

Indeed in its report on the Rock Bar case, the HET itself recognized the lack of justice so far for the victims and the need to uncover the wider truth:

*“It is difficult to believe, when judged in concert with other cases emerging around that time that such widespread evidence of collusion was not a significant concern at the highest levels of the security forces or government. It may indeed be that there were fears that to confirm suspicions of collusion and involvement of RUC and security forces personnel in these terrorist crimes would have fatally undermined the credibility of the organization and possibly compromised overall political stability. It may have been viewed as seriously as that. If so the ethical nature of such a judgment must be considered against a wider set of issues than concerns this HET review [...] With the passage of time since these shocking, shameful and disgraceful crimes the opportunity should exist for an honest disclosure of all relevant matters and considerations, without risk to individuals or of prejudice to the reputation and standing of new law enforcement arrangements. The families of those affected in this case – and in the linked cases – have received no justice to date.”<sup>15</sup>*

## THE 1998 PEACE AGREEMENT

**“It’s been 15 years now since the Good Friday Agreement; since clenched fists gave way to outstretched hands. [...] But as all of you know all too well, for all the strides that you’ve made, there’s still much work to do. There are still people who haven’t reaped the rewards of peace. There are those who aren’t convinced that the effort is worth it. There are still wounds that haven’t healed, and communities where tensions and mistrust hangs in the air. There are walls that still stand; there are still many miles to go.”**

US President Barack Obama, speech in Belfast, 17 June 2013.

The Multi-Party (Belfast/Good Friday) Agreement signed on 10 April 1998 has been the foundation for peace in Northern Ireland. The Agreement provided for the establishment of an Assembly and Executive in Northern Ireland to exercise devolved legislative powers over broad areas of policy; as well as institutions to develop cooperation between Ireland and Northern Ireland, and to promote British-Irish relations.<sup>16</sup> The Agreement recognized the legitimacy of a freely exercised choice by the majority of people in Northern Ireland as to whether they wish to remain part of the UK, or be a part of Ireland. In subsequent years, additional agreements were reached bolstering the commitments made in 1998.<sup>17</sup>

Substantial changes in Northern Ireland have followed, and levels of violence have been greatly reduced; in large measure armed groups have carried out decommissioning (the

handing over or verified disposal of weapon stocks): the IRA in 2005, the UVF in 2009, and the UDA in 2010.<sup>18</sup>

The Agreement recognized human rights as being at the very heart of the society that needed to be forged in order to move together out of conflict, resulting in a number of human rights driven reforms.<sup>19</sup> Significantly, the establishment of an Independent Commission on Policing for Northern Ireland (the Patten Commission), led to substantial policing reforms. The Patten Commission set out a comprehensive programme to establish a rights-based approach throughout policing noting that: *“the fundamental purpose of policing should be, in the words of the Agreement, the protection and vindication of the human rights of all”*.<sup>20</sup> These reforms were crucial: policing was at the heart of the sense of security and identity of both communities and was one of the most divisive issues of the conflict in Northern Ireland. Among nationalist/republican communities, there was a pervasive mistrust of the RUC; many in these communities perceived it as an inherently biased, largely Protestant, defender of the status quo and held it responsible for human rights violations perpetrated against their communities. By contrast, for many in unionist/loyalist communities the RUC was seen as upholding the law and its officers were viewed as placing themselves at great risk in order to protect society from acts of terrorism.<sup>21</sup>

Policing reforms have included: the introduction of a Code of Conduct committing all officers to uphold human rights; changes to training and the human rights auditing of all policing policies and practices; changes to recruitment processes to bring about a more balanced representation of police officers; the establishment of numerous accountability mechanisms including OPONI and the Northern Ireland Policing Board; the incorporation of the RUC into the PSNI in 2001; and the devolution of most policing and justice powers to the power-sharing Executive and Assembly in Belfast in 2010.

Other promised reforms have not materialized. Indeed, many NGOs and members of civil society in Northern Ireland are deeply concerned that political complacency and neglect has led to a “roll-back” on the human rights commitments and obligations set out in the 1998 and subsequent agreements and the stalling on the implementation of others.

One crucial building block for peace identified in the 1998 Agreement that has not been delivered is the creation of a Bill of Rights. In the words of the 1998 Agreement, the Bill should *“reflect the particular circumstances of Northern Ireland”* and provide *“additional rights to reflect the principles of mutual respect for the identity and ethos of both communities”*. A Bill of Rights for Northern Ireland that builds on the already existing human rights safeguards could set out a broad range of protections and guarantees required to ensure equal opportunity and respect for all persons in Northern Ireland or subject to its jurisdiction. Such principles, enshrined in a Bill of Rights for Northern Ireland, would have been useful to draw on recently when there were several instances of serious public disorder in Northern Ireland regarding the display of flags and disputes around contentious community parades.

A recent working paper by the Committee on the Administration of Justice, a domestic human rights NGO, has mapped out further human rights commitments in the 1998 and subsequent agreements that have either not been implemented or are subject to roll-back.<sup>22</sup> For example, commitments to equality were a central part of the 1998 Agreement and while

this did lead to the introduction of a statutory equality duty, concerns remain that the duty has never been fully implemented and risks further regression. Similarly, there has been a failure to deliver the promised Single Equality Bill for Northern Ireland, contrary to calls from international treaty bodies for it to do so.<sup>23</sup> There has also been a failure to deliver a genuinely effective anti-poverty strategy, despite the recognition in the Joint Declaration signed in 2003 by the UK and Irish governments that *“many disadvantaged areas, including areas which are predominantly loyalist or nationalist, which have suffered the worst impact of the violence and alienation of the past, have not experienced a proportionate peace dividend”* and that *“unless the economic and social profile of these communities is positively transformed, the reality of a fully peaceful and healthy society will not be complete”*.<sup>24</sup>

The one outstanding issue that continues to permeate all others in Northern Ireland, however, is how to deal with the legacy of the past.

## THE LEGACY OF THE PAST

**“How to deal with the past was the biggest omission from the political agreements that have brought the real prospect of stability. Our past was a result of a political problem which our politicians too often failed to address and resolve – this prolonged the stalemate and division. If we are to have a future not overshadowed by the past we will require political leadership from the Assembly. Many of them lived through the violence and are only too aware what it would mean were we to return to those dark days. They now have the power to make sure that it does not happen again.”**

Shared speech given by Lord Robin Eames and Denis Bradley, 29 May 2008.

The 1998 Agreement's preamble stated that it was precisely to honour those affected by the past that Northern Ireland would dedicate itself to the ongoing protection and vindication of the rights of all, and to a future marked by reconciliation. The Agreement thus made clear the essential links between the past, the present, and the future. However, the negotiators clearly found it easier to focus on how to move forward together rather than how to address Northern Ireland's shared, but difficult, past, and there is no reference at all to how – even in future – the legacy of the past ought to be dealt with.

In 2007, the then Secretary of State for Northern Ireland established an independent Consultative Group on the Past (the Group), whose terms were *“to make recommendations, as appropriate, on any steps that might be taken to support Northern Ireland society in building a shared future that is not overshadowed by the events of the past.”* Following a period of extensive consultation across communities in Northern Ireland, the Group, chaired by Lord Robin Eames and Denis Bradley, published a series of proposals in 2009 (see page 56). However, the response to the report, particularly in relation to the recommendation for a one-off recognition payment to the nearest relative of everyone who died as a result of the conflict, served to politicize the debate and prevented any meaningful discussion of the wider proposals of the Group from being taken forward. Since then no government has taken adequate steps to develop or even meaningfully engage with the ideas put forward by the Group.

The failure to deal with the past has ongoing consequences for individuals and society. At the individual level, the majority of people with whom Amnesty International spoke during the course of its research were still consumed with the search for the truth. Many expressed anger and frustration at being told to “move on” or “draw a line in the sand”, believing

instead that after 15 years of relative peace they should now finally be able to address the harm that they and their families have suffered. People explained the importance of knowing the truth about what happened to them, their relatives, friends and communities, as well as a desire for recognition and acknowledgment of the abuses and violations perpetrated by all sides. As one person, whose sister was killed by an IRA bomb, told Amnesty International:

*“The images of that day when my sister was killed will always be there, they will be with me forever because I was there, I saw it. But I just want people to know that if they want to know the truth it can change their lives forever. If they don't want to know then that's their decision, but the truth changed me. You should be able to get to the truth if you want it, and you should be able to get help to find that truth because it can help settle your mind, it can put things to rest.”<sup>25</sup>*

The legacy of the past, however, affects not just individual victims, but society as a whole. Many of those interviewed by Amnesty International stressed that it was essential to establish the truth about the past so that lessons could be learnt; making it less likely that past violations and abuses would be repeated. This is particularly important given that Northern Ireland is still marked by deep divisions and incidents of violence still occur. “Dissident” republican groups continue to carry out sporadic attacks.<sup>26</sup> The UDA and UVF also continue to operate and, in recent years, have had increased visibility during incidents of serious public disorder in Northern Ireland.<sup>27</sup> There have also been ongoing reports of “punishment” attacks, including shootings and expulsions from the community, as such “disciplinary” measures continue at the hands of some in both republican and loyalist communities.<sup>28</sup>

One visible symbol of ongoing division in Northern Ireland are the so-called “peace walls”, which have increased in number since the signing of the 1998 Agreement. A peace wall is a structure – such as a wall, fence or gate – that divides a predominantly Protestant area from a predominantly Catholic area for the purpose of preventing violent hostilities between communities. The first peace wall was erected in August 1969. Originally a makeshift, temporary structure, it has been in place in one form or another for almost 44 years.<sup>29</sup>

The protests, and accompanying violence, that followed the decision by Belfast City Council on 3 December 2012 to restrict the flying of the union flag to certain designated days are a further clear manifestation of ongoing division in Northern Ireland. Similarly, the summer of 2013 saw riots, serious incidents of public disorder and violence linked to contentious community parades, resulting in the injury of a reported 350 police officers, and injuries to members of the public.<sup>30</sup> Tensions remain easily inflamed. In response to these most recent events, and amid concerns that tensions have been increasing in recent years, the USA – the broker of the 1998 Agreement – has stated that it would be “upping” its support for the peace process due to fears that peace “wasn't as solid as we hoped”.<sup>31</sup>

These divisions are consolidated by the perpetuation of conflicting and partial narratives about the past, as different communities have their own distinct ways of framing both historical and current events. As the Consultative Group on the Past in Northern Ireland stated in its report *“Divided communities carry different experiences and understandings of the past in their minds and indeed it is this that divides them. Their accounts of the past differ deeply. They are used as a marker to determine and make positive, but more frequently negative, moral judgements on each other and so continuing the legacy of suspicion, mistrust*

*and hatred.*"<sup>32</sup> Without the opportunity for people to hear and understand narratives and experiences from other communities – and the potential for reassessment of parts of their own – the divisions between them will continue to have the potential to dominate the present in Northern Ireland and will undermine progress towards a shared future.

A fundamental lack of political will has held back efforts to establish a comprehensive approach to the past that is capable of addressing the needs of victims, as well as the wider need to heal division and learn lessons of the past. The UK and Irish governments have stepped back from Northern Ireland affairs generally, indicating that it is for the Northern Ireland Assembly and Executive to come to consensus as to the best way to deal with the past. Yet both governments were guarantors of the 1998 Agreement and both need to play a role in driving discussions forward on this issue. The UK government, in particular, has obligations under international law to investigate those abuses and violations that occurred in Northern Ireland and should take effective measures towards establishing the truth. Politicians in Northern Ireland have often preferred to tout Northern Ireland as a post-conflict "success story", focusing on economic and other gains. While the 1998 Agreement was a major advance in political and human rights terms, it failed signally to address the past. Politicians have also failed to re-visit this question and such a narrow conception of what constitutes "success" threatens to derail the commitments to human rights and reconciliation enshrined in the Agreement.

Ultimately, across the political spectrum, it is those in power who may fear that they have little politically to gain – and possibly much to lose – from any careful examination of Northern Ireland's past. For individual victims and society as a whole in Northern Ireland, however, there is the potential to gain a great deal through the existence of an effective process to deal with the past, which enables the truth about violations and abuses to emerge.

#### THE OBLIGATION TO ESTABLISH THE TRUTH

**"My father's life was taken; you have to understand that it affects the whole of your life, this single story. So, we have a right to know, I have a right to tell my children what happened. All the different stories that were said at the time, it is so important to hear what really happened."**

Danny Toland whose father, John Toland, was killed by loyalist gunmen in Eglinton, Country Londonderry/Derry, on 22 November 1976. Interview with Amnesty International, 14 September 2012.

Most victims and relatives that Amnesty International met with expressed a strong desire for the truth. For some families there was also a continued desire to see those responsible brought to justice. This is common in situations where large-scale violations and abuses have been committed. Victims, their families and communities want the violations and abuses to be recognized; the reasons for them to be identified; to understand the circumstances in which they occurred; to identify those responsible and to locate or discover the fate of the missing. This can assist in the healing process and restore personal dignity. The truth is particularly important where violations and abuses have not been adequately investigated and where the facts have previously been hidden or misrepresented. It can counter misinformation, safeguard against public denial and put unfounded rumours to rest. It can highlight factors – such as discrimination or collusion – that led to the violations and abuses. Societies that understand past violations and abuses and the reasons they occurred can use that information to ensure they are never repeated. Four judges of the European Court of Human Rights recently emphasized the importance of both the collective and individual



dimensions of truth in the *el-Masri v Macedonia* judgment:

*“The right to the truth is not a novel concept in our case-law, and nor is it a new right...For society in general, the desire to ascertain the truth plays a part in strengthening confidence in public institutions and hence the rule of law. For those concerned – the victims’ families and close friends – establishing the true facts and securing an acknowledgment of serious breaches of human rights and humanitarian law constitute forms of redress that are just as important as compensation, and sometimes even more so. Ultimately, the wall of silence and the cloak of secrecy prevent these people from making any sense of what they have experienced and are the greatest obstacles to their recovery.”<sup>33</sup>*

#### **The Claudy bombings: “We want to know who played what role and who is responsible”**

On 31 July 1972 in Claudy, a small village in County Londonderry/Derry, three car bombs exploded in a suspected IRA attack that killed nine people and injured 30. Over 40 years on, no one has been charged and convicted for the bombings, nor has anyone admitted responsibility.

Thirty years after the attack, on 31 July 2002, the PSNI began to review the original RUC investigation of the case with a view to identifying new evidence. Later that year the PSNI transferred the case to the Police Ombudsman for Northern Ireland to investigate how the RUC dealt with their suspicions that a Catholic priest was allegedly involved in the bombing of Claudy.

The Police Ombudsman released its report eight years later, in 2010.<sup>34</sup> The report concluded that the police had received extensive intelligence after the bombings, including allegations that Father James Chesney, a Catholic priest who was allegedly involved in the IRA, was “involved in acts of terrorism, including the bombing of Claudy”.<sup>35</sup> Rather than acting on this intelligence by investigating Chesney, the RUC instead sought the government’s assistance to engage with the Roman Catholic Church hierarchy to neutralize Chesney; in the words of one senior RUC officer to ‘render harmless a dangerous priest’.<sup>36</sup> On 6 December 1972 the Northern Ireland Office wrote to the police and stated:

*“You will be relieved to hear that Secretary of State saw the Cardinal privately on 5 December and gave him a full account of his disgust at Chesney’s behaviour. The Cardinal said that he knew that the priest was a very bad man and would see what could be done. The Cardinal mentioned the possibility of transferring him to Donegal.”<sup>37</sup>*

This correspondence was then shared with and accepted by the then RUC Chief Constable who, on 11 December 1972, recorded the note; “Seen. I would prefer transfer to Tipperary.”<sup>38</sup>

Father Chesney was eventually assigned to a parish in Donegal in 1973. According to the Police Ombudsman report, he was known to have regularly travelled across the border until his death in 1980, but was never arrested, questioned or further investigated by the RUC. The Police Ombudsman found that the actions of the RUC with respect to Father Chesney amounted to collusion.

In line with its remit, the Police Ombudsman can only investigate the conduct of the police, and not other state authorities or non-state actors, or indeed what the Irish authorities may have known about Father Chesney. It therefore can only give a partial account of what happened in Claudy (see page 50). Despite the actions of the

Roman Catholic Church and the UK government being outside of OPONI's investigatory remit, the report nonetheless noted that there was "no evidence of criminal intent" on the part of officials in either institution. The conclusions of the Police Ombudsman report appear to diminish the responsibility of both the Roman Catholic Church and the government. In September 2010, Deputy Prime Minister Nick Clegg issued a government apology for the failure to investigate the allegations against Father Chesney. Though the government's apology is welcome, the need remains for a thorough investigation into the Roman Catholic Church and the UK government's full role and responsibilities. By acting to cover up the actions of Father Chesney and allowing him to evade justice, the UK government – along with the RUC – was responsible for a human rights violation, regardless of whether evidence of criminal intent were found.

Several unanswered questions also remain about the armed group whose actions were directly responsible for the human rights abuses on that day, including who was involved in carrying out the attack and who was responsible for planning and ordering it.

The Claudy case was referred back to the PSNI for criminal investigation in October 2010. Progress has, however, been slow; as of August 2013 no new information or substantive updates had been provided to the victims of the Claudy bombings (see page 40).<sup>39</sup>

For the families of those killed in Claudy on that day the process has been deeply frustrating. As James Miller, whose grandfather David Miller died in the Claudy bombings, said to Amnesty International:

*"We just want a proper investigation, answers to our questions. We want to know the responsibility of the government, of the Catholic Church. Why instead of arresting Father Chesney did they just decide to just move him, let him continue, who monitored him? What did the Irish government know and say about it? What about the planning of the bomb, there was an element of sophistication there with three bombs brought in together placed in strategic places – that wasn't just Father Chesney, there were other people involved, were they interviewed? We want to know who was in command, who planned it and who ordered it. We want to know who played what role and who is responsible. We want to get at the truth. Then we want an apology, we want recognition for what happened. In the end it's just basic decency to investigate a case properly."*<sup>40</sup>

Knowing the truth is not just a desire of those affected by the violence, the obligation to establish the truth is grounded in international human rights law and standards.<sup>41</sup> It forms part of the state's duty to conduct prompt, thorough, effective, independent and impartial investigations into certain human rights violations and abuses, including, killings,<sup>42</sup> suspicious deaths,<sup>43</sup> life-threatening attacks,<sup>44</sup> and torture and other ill-treatment.<sup>45</sup> The duty to investigate applies to all such acts, regardless of whether they are committed by state or non-state actors.<sup>46</sup>

Victims of human rights violations and abuses also have the right to an effective remedy, including reparation, which can include verifying the facts and full and public disclosure of the truth. Reparation is the term for the concrete measures that should be taken to address the suffering of the survivors and victims and to help them rebuild their lives.<sup>47</sup> The aim of reparation measures is to *"as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed."*<sup>48</sup> There are five recognized forms of reparation which include a broad range of measures aimed at repairing the harm caused to survivors and victims:<sup>49</sup>

- Restitution aims to re-establish, as much as possible, the situation that existed before

the violation happened, including restoration of liberty, return to one's place of residence, restoration of employment and return of property.

- Compensation involves monetary payment for any economically assessable loss.
- Rehabilitation aims to address any physical or psychological harm caused to victims including medical and psychological care as well as legal and social services.
- Satisfaction includes measures such as: verification of the facts and full and public disclosure of the truth; prosecution of the perpetrators; an official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; public apology, including acknowledgement of the facts and acceptance of responsibility; and commemorations, memorials and tributes to the victims.
- Guarantees of non-repetition or non-recurrence includes: institutional reforms and other measures necessary to ensure respect for the rule of law, foster and sustain a culture of respect for human rights, and restore or establish public trust in government institutions.<sup>50</sup>

## EXISTING MECHANISMS IN PLACE TO INVESTIGATE THE PAST

**"The state is not dealing with the legacy of the past adequately here. The mechanisms that exist, they have in-built deficiencies and an inability to get at the crux of the issue."**

Niall Murphy, solicitor at Kevin R Winters & Co. Interview with Amnesty International 10 September 2012.

Between 2001 and 2003, the European Court of Human Rights delivered a series of landmark judgments (known as the McKerr group of cases) that found that the system for investigating killings during the conflict in Northern Ireland had failed to meet the standards set out under Article 2 (right to life) of the European Convention on Human Rights (ECHR).<sup>51</sup> Four of the cases concerned killings by security forces and the other two killings by loyalist armed groups with the alleged collusion of the security forces. In these cases, the Court criticized the lack of independence of the investigations; the lack of public scrutiny and the lack of information provided to the victims' families by the prosecution authorities about decisions not to bring prosecutions. The Court further criticized the inquest procedure in Northern Ireland and the investigative delays that arose in each case.

The UN Human Rights Committee and the Committee against Torture have likewise repeatedly raised concerns regarding investigations into these and other legacy cases in Northern Ireland. In 2001 and 2008 the Human Rights Committee repeated its recommendation that the UK should implement *"measures required to ensure a full, transparent and credible accounting of the circumstances surrounding violations of the right to life in Northern Ireland in these and other cases."*<sup>52</sup>

The UK has responded by highlighting a "package of measures" which it argues discharges

its obligations under the ECHR and other international human rights treaties. These measures include investigations by the PSNI, the HET and the OPONI, who in turn have also referred cases to the public prosecution service (PPS) for consideration.<sup>53</sup> In addition, reforms have taken place to the coroners' inquests system and a small number of public inquiries have been established into historical cases.

Victims and families who have engaged with these mechanisms have reported a range of experiences. In a smaller set of cases, they have received some resolution and have been satisfied with their engagement with a particular mechanism. In the main, however, victims and families – from nationalist, unionist, and cross-community backgrounds alike – and the non-governmental and civil society organizations assisting them, have criticized the way the mechanisms work in practice. In large part, the problems are inherent in the piecemeal and incremental approach the UK has taken, which has resulted in the creation of a diffuse, fragmented “system” that is not capable of establishing the full truth about past human rights violations and abuses, including the broader context in which they were committed. To a variable degree depending on the investigative mechanism, this overarching and critical flaw is exacerbated by serious delays in investigations, concerns about the thoroughness and effectiveness of investigations in some cases, and the independence and impartiality of certain mechanisms.

#### **Human rights standards of investigation**

For an investigation to be compliant with international human rights standards it must meet the following criteria:

- **Prompt:** an investigation should begin promptly and proceed with reasonable expedition.<sup>54</sup>
- **Thorough:** wide-ranging and rigorous.<sup>55</sup> The authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions.<sup>56</sup> This should include: taking reasonable steps to secure evidence concerning the incidents under investigation, including forensic evidence and testimony of eyewitnesses and other key witnesses; being capable of resolving uncertainties and ambiguities in accounts of key witnesses and physical evidence; securing the evidence of a forensic specialist where one is reasonably required; and making efforts to locate and secure key evidence (including not simply accepting allegations of facts by state authorities, but rather investigating whether there is actually any evidence in support of them).<sup>57</sup>
- **Effective:** the obligation to investigate effectively is one of means and not of results.<sup>58</sup> The authorities must take all reasonable steps available to them to secure evidence concerning the incident.<sup>59</sup> The investigations should be capable of establishing the circumstances of the case and identifying the person(s) responsible.<sup>60</sup> Any deficiency in the investigation which undermines its capability of establishing the circumstances of the case or the person responsible is liable to fall foul of the required measure of effectiveness.<sup>61</sup> Investigations should serve 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 and, in cases involving state agents or bodies, to ensure their accountability for deaths occurring under their responsibility.<sup>62</sup>
- **Independent and impartial:** The persons responsible for carrying out the investigation must be independent from those implicated in the events, genuinely impartial and must not harbour preconceptions about the matter they are investigating or the identity of those responsible.<sup>63</sup> They should be demonstrably free

of undue influence.<sup>64</sup> An independent investigation “means not only a lack of hierarchical or institutional connection but also a practical independence” of the investigating authority.<sup>65</sup>

■ Complainants must be afforded effective access to the investigatory procedure.<sup>66</sup> In cases involving killings, it is imperative that the next-of-kin of the victim be involved in the procedure to the extent necessary to safeguard their legitimate interests.<sup>67</sup> Victims and their families should be kept informed of the proceedings and the outcome.<sup>68</sup>

■ In order to maintain public confidence in the state’s adherence to the rule of law and to prevent any appearance of its ongoing collusion in or tolerance of unlawful acts investigations and their results must be open to public scrutiny,<sup>69</sup> in particular when serious issues of public interest are at stake.<sup>70</sup>

## THE HISTORICAL ENQUIRIES TEAM

**“Inconsistencies and shortcomings in policies, systems and practices threaten the legitimacy of the Historical Enquiries Team’s work, and risk undermining the confidence of the families of those who died during ‘the troubles’ in its effectiveness and impartiality.”**

Her Majesty’s Inspectorate of Constabulary, press release , July 2013.

The Historical Enquiries Team (HET) is a unit within the PSNI tasked with reviewing the circumstances and investigations of deaths attributable to the violence between 1968 and the signing of the Agreement in 1998. It began its work in January 2006 and, as of 15 April 2013, had completed 1835 reviews.<sup>71</sup> According to the HET, its key objectives are to identify potential evidential opportunities for criminal investigation and to try and bring a measure of resolution to families.<sup>72</sup> The HET’s architect, Sir Hugh Orde, made clear to Amnesty International that as *“the police service’s contribution to dealing with the past in Northern Ireland”*, the HET was *“never meant to be the end game”*, but that *“in the end there was a political failure to deliver anything different”*.<sup>73</sup> However, as one of the components of the UK’s “package of measures”, and the most active mechanism examining past killings, HET reviews must be conducted in a manner that is in conformity with human rights standards.

## THE VALUE OF A HET REVIEW

HET reviews have provided a measure of satisfaction to some families of those killed during the political violence in Northern Ireland. Families engaged in the HET process are provided with a “review summary report” of their case, which includes an outline of the circumstances of the death, a summary of the original investigation(s), an explanation of the steps undertaken by the HET in the review and an assessment of the case. For many families these reports are the first time they have been told the basic facts about what happened to their relative. HET investigating officers have, in some cases, uncovered new information. In some cases the HET process has also led to the restoration of the reputation of a relative, official recognition of the abuse or violation committed, the initiation of further criminal investigations allowing the possibility for prosecution and, in a very small number of cases, an apology issued by the government.<sup>74</sup>

Families are also able to put questions directly to HET investigators. This includes questions that would fall outside of a normal criminal investigation, but may nonetheless be important to the family, such as whether last rites were given or whether the person was alone when she or he died. An example is the case of Marian Bowen, who was killed in a bomb explosion, attributed to the UVF, when she was eight months pregnant. Her family sought information

from the HET about allegations that soldiers had applauded and laughed as the coffin of the unborn baby girl was placed inside a hearse.<sup>75</sup> The HET spoke with the undertaker and followed up investigations about the soldiers' behaviour, stating that a number of soldiers had been laughing when the coffin was placed into the hearse, something the HET said could not be excused. As Marian Bowen's sister-in-law, Maura Martin, explained to Amnesty International: *"it was important to the family to have that. The HET said it was unjustifiable behaviour. That's what the HET can do, they can do that."*<sup>76</sup> For some families, the HET process has provided a degree of resolution about the past and assisted the healing process.

Information revealed during the HET review has also allowed families – often through their own initiative and perseverance – to seek truth, justice and reparation through the other mechanisms featured in this report. The HET serving as a springboard in such a way is exemplified by the case of Daniel Hegarty, who was 15 years old when he was shot by the British Army during Operation Motorman, on 31 July 1972.<sup>77</sup> Following the shooting, the British Army put out reports describing him as a gunman, an allegation repeated by a member of the House of Lords.<sup>78</sup> The HET concluded, however, that Daniel Hegarty and his cousins – who were with him when he was killed – posed no threat to the soldiers, that they were not armed, and that Daniel Hegarty was shot at close range, with no warnings given before the shots were fired.<sup>79</sup> Subsequently, via the work of the family's solicitor who was able to use information contained in the HET report, as well as information about failures in the investigation at the time of Daniel Hegarty's death, the family was able to secure a fresh coroner's inquest.<sup>80</sup> In December 2011, a jury found unanimously that Daniel Hegarty posed no risk to soldiers when he was killed.<sup>81</sup> In light of the jury's findings the coroner requested that the PPS examine the case.

Amnesty International spoke with Daniel Hegarty's family on 14 September 2012. His sister, Margaret Brady, said:

*"The HET could have gone further in Daniel's case, that's why I wouldn't say it was a great report - they didn't find soldier A who had seen what happened, even though his name had been handed to the first inquest so they did have his identity. The HET was also handed everything on a platter by the NGOs who helped us, they didn't go and find the information. It was provided to them. So the HET could have done more. But partly by using the HET report and undertaking further research our solicitor was able to get the Attorney General to open a new inquest and that inquest cleared Daniel of any wrongdoing. The Coroner then said that the case should go back to the Public Prosecution Service. Never say never, we might get justice, we have our determination and own belief in what is right. [...] People say you should move on, but our future was altered the morning my brother was killed. We can't move on until there is accountability. People can't keep running away from the past."*<sup>82</sup>

The HET has, therefore, in some cases facilitated people's access to the truth about what happened to their relative, which has created opportunities for justice. However, for other families, the experience with the HET has been far from positive.

#### CONCERNS RELATING TO THE IMPARTIALITY OF HET'S REVIEWS

A report by Her Royal Majesty's Inspectorate of Constabulary (HMIC), published in July 2013 following an inspection of the HET, found that as a "matter of policy" the HET treated cases

with state involvement differently to those without state involvement.<sup>83</sup> The HMIC concluded that, as a result, cases involving the state were being reviewed with less rigour in some areas than non-state cases and that this “*may seriously undermine the capability of the HET’s processes to determine whether the force used in killings during ‘the troubles’ was justified in state involvement cases, therefore potentially preventing the identification and punishment of those responsible.*”<sup>84</sup> Though the HMIC inspection focused primarily on cases involving the British Army between 1970 and 1973, its report highlighted a 2012 HET Operational Guide applicable across the spectrum of HET cases involving the military that stated:

*“HET maintains it is not appropriate to compare the review processes in military cases with reviews of murders committed by terrorists. Soldiers were deployed on the streets of Northern Ireland in an official and lawful capacity, bound by the laws of the UK and military Standard Operating Procedures of that time.”*<sup>85</sup>

The findings of the HMIC reflected and confirmed concerns raised previously by NGOs, lawyers and academics to Amnesty International that there were apparent anomalies and inconsistencies in the HET investigation process between cases where the military was involved and cases where non-state actors were the perpetrators.<sup>86</sup> For example, in some cases the HET would employ a “pragmatic approach” to the interviewing of soldiers, whereby soldiers who were suspects in killings were not interviewed under caution. This approach was apparently adopted “*to give the HET maximum opportunity to obtain as much information as possible for the benefit of [the family]. People who are interviewed under caution as ‘suspects’ are typically either extremely guarded in what they say, or exercise their right not to say anything at all.*”<sup>87</sup> However, this approach was not applied in any case involving non-state actors. In addition, in those cases where an interview under caution was conducted with a soldier, the HET would provide the soldier and his legal team with pre-interview disclosure consisting of all existing evidential documentation and other material that was relevant to the case. In contrast, non-state actors interviewed under caution would usually be provided with a paragraph or just a few lines informing them of the crime they were suspected to have committed.<sup>88</sup> The HMIC report further noted that of the 39 cases referred to the PSNI for further criminal investigation, not one of them was a case that involved the state.

Amnesty International is concerned that these reports of HET treating cases involving state actors differently to cases involving non-state actors form part of a broader institutional approach which reinforces impunity for human rights violations committed by state actors.

#### **Alleged prosecution failures in cases concerning the army**

The British Army was responsible for 297 deaths during the conflict and allegations of mistreatment were also made. However, of the cases concerning shootings or assaults by soldiers referred to the public prosecution services a reported 10% resulted in charges being brought and only a handful of soldiers have ever been convicted of murder.<sup>89</sup> Archive documents found by the Pat Finucane Centre appear to indicate that in the 1970s senior members of the armed forces made representations to the Attorney General warning of the dangers to morale if soldiers were to be prosecuted; a view to which the Attorney General was reported to be sympathetic.<sup>90</sup> These figures, combined with a number of cases of soldiers shooting unarmed members of the public, have raised allegations that the army was allowed to operate with impunity in Northern Ireland.<sup>91</sup>

One of these cases was the killing of William McGreaney, who was shot dead in Londonderry/Derry on 15

September 1971 by a British soldier. The HET report in his case confirmed that: *"He was not involved with any paramilitary organisation; he was not carrying a firearm of any description, and he posed no threat to the soldiers at the observation post."* At the time of his death the RUC recommended that the soldier who shot William McGreaney be prosecuted. However, the Attorney General decided not to bring any charges, stating: *"whether he [the soldier] acted wrongly or not, he was at all times acting in the course of his duty and I cannot see how the malice, express or implied, necessary to constitute murder could be applied to his conduct".*<sup>92</sup>

However, reviewing or questioning past decisions by prosecution authorities is considered to be outside of the HET's remit.<sup>93</sup> Amnesty International is concerned that there is no independent mechanism to review past prosecutorial decisions and examine whether there was a pattern of prosecutorial failures by the authorities in deciding whether to initiate prosecutions against state actors.

#### CONCERNS REGARDING THE THOROUGHNESS OF HET'S REVIEWS

Amnesty International is concerned by apparent inconsistencies in the thoroughness of the reviews carried out by the HET. Some cases reviewed by the HET appear to be little more than reviews of the case files, with little information as to the evidence relied upon when certain conclusions were reached. For example, in some reviews the HET has concluded a particular incident was just a "coincidence", or that destruction of evidence was "a mistake" or "poor practice", without a thorough explanation as to how these conclusions were reached. NGOs and lawyers repeated these concerns, saying that in some of the cases in which they were involved, the HET had failed to diligently follow-up lines of inquiry, actively seek interviews with witnesses, and secure all the relevant evidence. The HMIC report also highlighted a number of factors leading to inconsistencies in the review processes, including: an absence of coherent and prescriptive policies as to how HET reviews would be carried out; a lack of consistency as to how the progress of reviews and decisions that were taken were recorded; different teams adopting different working practices; and no quality assurances or review process of HET's work. These concerns have been further aggravated by the absence of an independent complaints process to which families can turn if they have a complaint in relation to any aspect of the HET process.

Relatives of people killed have also raised concerns about thoroughness. One example involves the HET review of a UFF attack on the Sean Graham Bookmakers on the Ormeau Rd in Belfast, on 5 February 1992, which left five people dead and seven injured. In September 2012, Amnesty International met with Thomas Duffin, whose father was killed in the attack, and Mark Sykes, whose brother-in-law was killed and who was himself injured. Mark Sykes discussed their experience with the HET with Amnesty International:

*"When we got the HET report, on the surface it seemed fine, but then it's what goes on underneath that's the problem, the questions they don't answer, the things they don't follow-up on. Like the Browning 9mm [the gun used in the attack] which was recovered in May 1992 when two men were arrested, we asked for the notes of that interview after they were arrested. The HET said they had been destroyed. But then our solicitor went and got those interview transcripts himself from PRONI [the Public Records Office for Northern Ireland] so the HET could have got them. So we're the ones who've had to get the information, had to move things forward. We got the interview notes, not the HET. Another example is some of the forensics - there was a coat recovered from a suspect with blood and they excluded that as evidence as they said it didn't match anyone. But they only matched the blood against the dead not the people who were injured in the*



*attack. [...] In the end the HET report is a historical document about murder and what we have is flawed and incomplete. It's meant to tell the truth about what happened that day and we want that document to do that."*<sup>94</sup>

In a number of cases, bereaved families told Amnesty International that they considered the thoroughness of their HET review had only been possible because a NGO had supported them during the process. Billy McKavanagh was shot in the back by a British soldier on 11 August 1971, as he was trying to run away. He was 21 years old. Amnesty International met with Billy McKavanagh's family on 17 September 2012. Oliver Morris, Billy McKavanagh's brother-in-law told Amnesty International their family's story:

*"With the HET we had a preliminary meeting and spoke about what we wanted. What we wanted was justice for Billy, it was hurtful what was said about him by the army, that he was an IRA gunman. We then had numerous meetings with HET, it was a difficult process and took time. When the HET provided us with their first report we were going to tell them to go away, to give up. But we were told by Pat Finucane Centre [an NGO] to take the report, to prove where it was wrong. So we went through the draft report, really broke it down into different parts. We then drafted out a reply, 10 pages, where we went through the report, the points where we agreed and where it wasn't right, we'd say that's wrong and give an example why. We did things like pointing out where there were inconsistencies in statements, we got a map of where it happened blown up, colour coded the areas where it happened, gave a key and showed them where it was -- showed them the trail where soldiers say they were so they could see clearly what happened. So HET re-did it, there's now a new report, it's a good report; they accepted some of our points, they left other bits in, but that's fine. We were extremely pleased by the end -- the HET worked well, because they listened to us and we got a better report. We started from a position where Billy was described as a gunman to finally 40 years later the report which says he was an innocent victim."*

The difference in the new report is striking. The 2010 draft HET report stated that Billy McKavanagh was carrying a rivet gun when he half-turned towards the soldier who shot him.<sup>95</sup> In contrast the final 2011 HET report found that Billy McKavanagh was not armed with a weapon when he was shot and posed no threat.<sup>96</sup> The finding that Billy McKavanagh posed no threat and was not armed led to the HET report calling for an apology from the government as *"Billy's family deserved no less"*.

Following the publication of the HET report, the Ministry of Defence sent the family a letter in October 2011, stating that the government accepted the findings made by the HET and hoped that this acceptance would be *"of value in setting the record straight on these tragic events"*.<sup>97</sup> The family interpreted this letter as an apology for Billy McKavanagh's death. Indeed in a meeting with Amnesty International in September 2012, Elisabeth Morris, Billy McKavanagh's sister, spoke about how important it was to them that they had finally got what they had always wanted – *"an apology"* and that this had *"helped lift the past a bit"*. However, Amnesty International has since learned of the family's deep distress after receiving a further letter from the Ministry of Defence in July 2013 stating that the earlier letter was not *"a formal apology"*, but had only been intended to express sincere regret about what had happened. The move, together with the government's decision to apologize in only a very small number of cases, indicates its reluctance to accept responsibility for events, even

where HET has established the responsibility of state actors and despite its obligations to provide victims with full reparation, including, where appropriate, an apology.

As a result of their experience with the HET, Billy McKavanagh's sister, Elisabeth Morris told Amnesty International that their advice to other families was *"to get as much help as you can get, to work with HET you need some help and if we'd not had that we'd have left it, not engaged further with HET and we'd have got nothing."*<sup>98</sup> However, the thoroughness and conduct of an investigation should not be left to the next-of-kin, who are not responsible for the conduct of the investigative procedures.<sup>99</sup> The HET Director, Dave Cox, told Amnesty International that the HET does not treat families differently. NGOs, he noted, sometimes ask more searching questions.<sup>100</sup> The thoroughness of a HET review should not be dependent upon the family having assistance from an NGO "to ask more searching questions", rather the HET itself should have the expertise to be asking the right questions, and the resources and powers to gather and analyse relevant information and evidence. Otherwise families unequipped to participate in this concerted manner are put at a distinct disadvantage.

Though most of the individuals Amnesty International met with who had engaged with the HET did receive the support of an NGO, a small number of people did not. For example, one individual – who has asked not to be named – was not initially supported by an NGO and found the HET process very difficult. Of particular concern for him was the conclusion reached by the HET – without any corroborative evidence in the report – that his brother was a member of the UDA and was killed as a result of an internal feud in the 1970s. He told Amnesty International that he struggled to work out how to get the evidence that the HET had relied upon in reaching its conclusion, or in the absence of such evidence, to ask the HET to change its report. As he explained: *"I was on my own so I didn't really know how to go about asking the right questions, I didn't know how to go back to the HET to get more answers."*<sup>101</sup>

NGOs and lawyers who met with Amnesty International emphasized that the HET reports they had seen from individuals who did not have support were often less detailed than those who had had support from the beginning of the process. This experience of NGOs and lawyers reflects on a much wider scale Amnesty International's own findings following interviews with four families who did not have support during the HET process. This discrepancy was also a finding of the HMIC report, which stated *"that the families who choose to be represented by a solicitor or NGO – who, generally, are far more intrusive and probe the findings of the HET reports – are treated differently than those who are unrepresented."*<sup>102</sup>

#### TRUST IN THE INDEPENDENCE OF THE HET

As noted above, a cornerstone of an investigation into the death of an individual must be that the body conducting the investigation is sufficiently independent. Furthermore any investigation should also have the *appearance* of genuine independence in order for it to be effective and gain the trust of victims.<sup>103</sup> The HET is described as "an operationally independent unit" within the PSNI, which reports directly to the Chief Constable.<sup>104</sup> It has a number of investigatory teams comprised solely of former police officers from outside Northern Ireland. In cases where the actions of an RUC officer led directly to the death of an individual, or where the HET has revealed evidence of criminal misconduct by an RUC officer, the case is referred to the Police Ombudsman of Northern Ireland.<sup>105</sup> The European Court of Human Rights has stated in one particular case that it was *"satisfied that the PSNI was institutionally distinct from its predecessor"*, though it also conceded that the PSNI

*“necessarily [...] inherited officers and resources”* from the RUC.<sup>106</sup> This decision also came before the extent of re-hiring of retired RUC staff by the PSNI was publicly known (see page 39).

However, the fact remains that as part of the PSNI, the HET is a policing mechanism investigating cases arising from the conflict in which the police service at the time was a central actor. HET reviews necessarily scrutinize the actions of the RUC as they examine the quality and conduct of the original investigations, and in some cases reviewed by the HET allegations of police collusion that have also been made by families (see the case of Patrick Shanaghan on page 28-29). Given the historical lack of trust in the police in Northern Ireland (predominantly within the nationalist community) and the ongoing belief for many that the RUC and the PSNI are inextricably linked despite the reforms that have occurred, the independence of the HET continues to be questioned. For example, the families of those killed in Ballymurphy by the British Army (see page 37) – who are awaiting fresh inquests into the deaths of their relatives to commence – have chosen not to engage with the HET, because they believe that it is not a sufficiently independent mechanism for the investigation of a case involving the state.<sup>107</sup> This view was also reflected in a number of interviews Amnesty International carried out, as people stated that they did not believe the HET could be independent in cases related to the state while it was part of the PSNI; many still chose, however, to engage with the HET as they believed it was the only option available to seek information about the death of a relative. The HMIC report also found that the differential treatment by the HET of state and non-state actors could easily give rise to the view that it is not sufficiently independent.<sup>108</sup> Indeed, its credibility as a mechanism able to independently and impartially investigate cases related to the state has been significantly, and quite possibly irreparably damaged, pointing, once more, to the need for a fully independent mechanism to investigate cases from the past.

A number of other factors have also undermined the perception of the HET as an “operationally independent unit” of the PSNI. The HMIC report raised concerns that the HET’s intelligence unit was staffed largely by former RUC or PSNI employees, and similarly that staff in the PSNI intelligence branch – effectively the gatekeepers for intelligence passed to the HET – have included former RUC special branch officers. The HMIC thus recommended:

*“Given the sensitivity of intelligence matters in the context of Northern Ireland the HET needs to do everything it can to make sure its independence is safeguarded. For this reason, it would be preferable to institute some independent procedure for guaranteeing that all relevant intelligence in every case is transmitted for the purposes of review, to ensure compliance with the Article 2 standard.”<sup>109</sup>*

In addition, there has been a change in the operation of the HET since it was first established. In 2006, just after the HET began its work, the Secretariat to the Committee of Ministers of the Council of Europe stated that whilst the establishment of the HET *“seems encouraging”* it would *“not provide full effective investigation in conformity with Article 2 in ‘historic cases’ but only identify if further ‘evidentiary opportunities’ exist.”<sup>110</sup>* The UK government provided further detail of the work of the HET to the Committee of Ministers stating that *“If evidential opportunities are identified during the review process by the HET, the investigation of the death will proceed and where there is credible evidence available*

*reports will be forwarded to the Public Prosecution Service with a view to prosecution. The investigation process will be undertaken 'in-house' by the HET.”<sup>111</sup> The Committee of Ministers, in 2007, noted that the HET “could be viewed as playing an important role in satisfying the State’s continuing obligation to conduct effective investigations in violations of Article 2 of the Convention” and in 2009 decided to close its examination of the HET on the grounds that it had “the structure and capacities to allow it to finalise its work”.<sup>112</sup>*

However, since January 2010, HET has been required to refer evidence which could form the basis for a criminal prosecution to the Serious Crimes Branch of the PSNI for criminal investigation, instead of conducting its own investigations “in-house”.<sup>113</sup> This change to the HET’s operation occurred following the publication of the OPONI report in 2007, known as “Operation Ballast”, which found evidence of police collusion with a unit of a loyalist armed group in a series of linked cases (see page 30). The Police Ombudsman recommended that the PSNI begin a criminal investigation and the case was referred to the HET. However, towards the end of 2009 the Chief Constable decided to transfer the case to the PSNI Serious Crimes branch on the grounds that the HET did not have the capacity or resources to carry out such a wide-scale and complex criminal investigation.<sup>114</sup> In addition, the Chief Constable decided that from January 2010 onwards all cases with potential evidential opportunities would be transferred to the PSNI for further investigation. This change has meant that instead of being a standalone operationally independent investigatory unit – as had been presented to the Committee of Ministers – the HET acts more like an initial case review body for the PSNI.

#### **The case of Patrick Shanaghan**

Patrick Shanaghan was killed on 12 August 1991, in an attack for which the UFF claimed responsibility, but in which allegations of state collusion also feature following claims that he was harassed by the RUC and security services in the years prior to his death.<sup>115</sup> Examples of this harassment include: that Patrick Shanaghan was stopped and questioned by RUC and UDR officers almost on a daily basis; that between 15 April 1985 and 19 May 1991 he was arrested and detained ten times, six of these arrests resulted in detention for four or more days, yet he was never charged with any crime; and that the family home was also searched sixteen times between 1985 and 1991 where likewise no illegal material was ever found.

It has also been alleged that Patrick Shanaghan received threats from the RUC. In addition, documentation containing information about Patrick Shanaghan, including a photographic montage that would have put him at risk, was lost by the Army, who claimed that the information had accidentally fallen out of the back of an army vehicle. Allegations regarding the conduct of RUC officers at the scene of Patrick Shanaghan’s death raised further concern, as it was claimed that RUC officers prevented him from receiving immediate medical attention and that a priest was obstructed from gaining immediate access to him.

This sequence of events, from the alleged harassment of Patrick Shanaghan prior to his death, to concerns about his treatment after he was shot, to alleged failures in the subsequent investigations, has given rise to claims of state collusion.

In 2001, the European Court of Human Rights found that the UK had failed to effectively investigate the death of Patrick Shanaghan.<sup>116</sup> Alongside an investigation by the Police Ombudsman, which remains ongoing, the HET review was put forward by the UK government as the means by which it intended to comply with its obligations under the Convention to investigate Patrick Shanaghan’s death.<sup>117</sup>

The family of Patrick Shanaghan agreed to engage with the HET; however, they maintained from the outset that they did not believe the HET was sufficiently independent. Their specific concern was that the HET, as a policing mechanism, would not make critical statements about the RUC's involvement in Patrick Shanaghan's death.

The family received the HET Review Summary Report in November 2010. In an interview with Amnesty International on 4 December 2012, Martin Bogues, Patrick Shanaghan's brother-in-law emphasized the family's disappointment in the review:

*"The HET were instructed to run with Patrick's case regardless of whether we as the family assisted. We were reluctant initially, both because of concerns about their independence and the level of access they had, but we agreed. At the outset we were told it was a family-orientated process and they asked us for a list of questions we wanted answered. We did that believing those questions would be addressed. We wanted the review to be good, we wanted to get the truth. We were given a report. It was immediately apparent that the HET had not done a detailed investigation; they did a desktop review and just took whatever they read in the files as truthful or as fact. The report doesn't answer the questions we posed. You know the report says there is no evidence of Patrick's involvement in paramilitary activity. But then the HET concluded that society was to blame for his death. We went back and said it wasn't society that stopped and searched Patrick hundreds of times, it was the RUC, UDR and the Army. It was the security forces and that's what marked him out."*<sup>118</sup>

The family said that they felt the HET report was "trying to portray the police in a good light" and had "adopted the same standard of investigation and misrepresentation of the truth that the RUC adopted in the years that led to Patrick's murder and in the subsequent murder investigation."<sup>119</sup>

In June 2013, the HET met with the family and the Committee on the Administration of Justice, an NGO assisting them. According to the Committee on the Administration of Justice, the HET conceded during that meeting that there were no proper records of the HET review process and the reasons why certain conclusions were reached in Patrick Shanaghan's case. Without these records it was not possible to respond immediately to the family's criticisms of the report. The HET reportedly apologized for how the case had been handled and has agreed to conduct a fresh review of the case.

## THE POLICE OMBUDSMAN FOR NORTHERN IRELAND

**"We cannot emphasize too strongly the importance of the office of Police Ombudsman in the future policing arrangements [...] The institution is critical to the question of police accountability to the law, to public trust in the police and to the protection of human rights"**

The Report of the Independent Commission on Policing for Northern Ireland, 'A New Beginning: Policing in Northern Ireland', September 1999, page 38.

The Office of the Police Ombudsman for Northern Ireland (OPONI) was established in order to investigate complaints of criminality or misconduct against the police in Northern Ireland. As policing was a central issue during the conflict, ensuring police accountability has long been considered a marker for the success of the 1998 Agreement. The importance of OPONI must therefore not be underestimated.

The OPONI is mandated to investigate incidents that have occurred in the previous 12 months. However, there is no time limit on the investigation of grave matters, or where exceptional circumstances exist. The Police Ombudsman has conducted investigations into

legacy cases concerning alleged misconduct by the RUC, and currently has over 150 such cases pending investigation. The specific remit of the OPONI as a police accountability mechanism, however, means that it necessarily can only investigate one aspect of the violations and abuses that arose during the conflict in Northern Ireland; namely violations by the RUC. It alone cannot – nor can it be expected to – provide a comprehensive picture of all the violations and abuses that occurred.

Amnesty International believes that the OPONI has the potential to work well as an effective investigatory mechanism for past human rights violations perpetrated by the police. Events over the past five years, however, have threatened to erode its effectiveness and independence. Recent and substantial reforms brought about by a new Police Ombudsman, who took office in July 2012, however, present a real opportunity for this to be reversed and for trust in the Office to be restored. There nonetheless remain a number of legislative gaps that undermine the effectiveness of the OPONI which still need to be remedied.

#### REBUILDING TRUST IN OPONI

By the time the first Police Ombudsman, Baroness Nuala O'Loan, left office in 2007 the OPONI had established itself as a robust and independent police oversight mechanism with the potential to ensure accountability for past violations by the RUC during the conflict. This was evidenced by the quality of its reports, including Baroness Nuala O'Loan's last major investigation while in office, Operation Ballast. This landmark report identified 32 areas of police collusion in a series of linked cases concerning police handling and management of identified informants from within a UVF unit, who were linked to serious crimes including murder, attempted murder, assault and kidnapping.<sup>120</sup> Findings by the Police Ombudsman included: failing to arrest informants for crimes to which those informants had allegedly confessed; concealing intelligence indicating that informants had been involved in a murder and other serious crimes; arresting informants suspected of murder, then subjecting them to lengthy sham interviews and releasing them without charge; withholding intelligence information from police colleagues; finding illegal munitions at an informant's home and doing nothing about it; and withholding information about the location to which a group of murder suspects had allegedly fled after a murder.

However, with the entry into office of a new Police Ombudsman, Al Hutchinson, in November 2007, concerns began to be raised by NGOs, lawyers and families about erosion in the independence and effectiveness of the OPONI and its ability to hold the police to account for past conduct. These concerns came to public prominence with the resignation of the OPONI Chief Executive Sam Pollock in March 2011 who stated that there had been a *"lowering of the professional independence between our operations (OPONI) and those of our key stakeholder, the PSNI"*.<sup>121</sup> Three highly critical reports were subsequently published between June and September 2011 raising substantial concerns about the capacity of the OPONI to investigate historical cases, its governance and its lack of independence.<sup>122</sup>

The reports included one by the Criminal Justice Inspection Northern Ireland (CJINI), an independent statutory inspectorate with responsibility for inspecting all aspects of the criminal justice system in Northern Ireland apart from the judiciary. Like the HMIC inspection of the HET, the CJINI was brought in to conduct an inspection of OPONI following growing concerns about the mechanism's independence and effectiveness.

The CJINI report identified significant concerns over the ways in which OPONI conducted historical investigations, including: a tendency by OPONI to view cases from a police perspective; the dilution or reversal without adequate explanation of findings critical towards the police during the latter stages of a report drafting process; concerns around the handling of sensitive information and flaws in the investigative process, including being heavily influenced by external feedback; little consistency in the processes for managing investigations, how families were kept informed of progress, or how cases were prioritized; and a failure to define adequately quality assurance processes.<sup>123</sup> The report concluded that this had led to a “lowering of the operational independence” of the OPONI and “undermined confidence” in its work.<sup>124</sup> The CJINI recommended that all historical investigations be suspended pending reform.

Domestic NGOs galvanized to call for the resignation of the Police Ombudsman. In a joint NGO press release Jane Winter, then director of British Irish Rights Watch stated “Public confidence in [the Police Ombudsman’s] ability to put right the problems he himself created is non-existent, and his continuing presence is bringing his office into disrepute and hampering desperately needed reform of the process for investigating historical cases involving the police.”<sup>125</sup> In January 2012, the Police Ombudsman announced his resignation.

### The case of Sean (Eugene) Dalton

The case of Sean (Eugene) Dalton demonstrates problems arising in the OPONI’s investigation of historical cases during the period of concern. Sean Dalton was killed on 31 August 1988 by an IRA bomb planted in a flat above his home, apparently with the intention of luring security services to the flat. The bomb was triggered when he went to check on the tenant of the flat who had not been seen for a number of days. The explosion killed Sean Dalton instantly, as well as his neighbour Sheila Lewis. Gerald Curran, a friend of Sean Dalton, was also seriously injured and died nine months later in hospital

In 2005, the Dalton family lodged a complaint with the OPONI claiming that the RUC had prior knowledge of the bomb and its location, but had chosen not to act in order to protect an informer. The family also claimed that the RUC had failed to conduct an effective investigation into the death of Sean Dalton. Rosaleen Quigley, Dalton’s daughter, described what happened with the OPONI investigation:

*“We met with the investigators, they were great. The investigators essentially said to us that the RUC did have prior knowledge of the bomb. The bomb was there for I think five days in a densely populated block of flats, there were children there, but the RUC didn’t do anything. [...] The investigators submitted their findings up to the senior heads in the Ombudsman’s office. Then in 2010 they said they were ready to release the report. We were told all the senior officers and the Ombudsman, were coming to see us, to discuss the findings and we thought it must be a good sign. But when we met they wouldn’t give us the report, instead they just read from it and none of the three elements – that there was no proper investigation, that the RUC had prior knowledge, and that there was state responsibility – was in what they said. But we knew those were the findings of the investigators from the verbal updates. [...] You know we’ve been let down so much before so we were careful not to expect too much. But secretly we were thinking if all the senior officers and the Ombudsman were coming down it must be good otherwise why would they all come down? We sat in silence after; you could have heard a pin drop. Then my brother said: I would like to thank Walt Disney for his version of events. Now what’s the real one?”<sup>126</sup>*

With the publication of the 2011 CJINI report it emerged that the findings of the Dalton investigation, which

had taken five years to complete, had been reversed over a period of just a few weeks. The CJINI report confirmed that in early May 2010 a draft report had been circulated amongst senior OPONI staff; this report reflected the original findings which had been discussed with the family. The Senior Investigating Officer in the case believed that there was general agreement as to the report's content and findings and that the Police Ombudsman had indicated that the report was generally in a state to be published. However, within a few weeks a new report had been drafted which was "substantially different in content and findings" to the earlier draft.<sup>127</sup> The new report reversed the investigators' findings and was less critical of the actions of the RUC, with no explanation for the changes being provided. In an interview with the BBC, the then Chief Inspector of the CJINI, who led the inspection of OPONI, stated that:

*"The overall impact of the changes in that report was to make it less critical of the police and to change the conclusions that had originally been given to families and their representatives. We weren't clear as to why some changes had been made because there was no clear evidence as to why and what new evidence had come to light in that regard."*<sup>128</sup>

Following reforms to OPONI, and eight years after the family first issued a complaint to the Office, the new Police Ombudsman released the final report in the case of Sean Dalton in July 2013.<sup>129</sup> The report found that the RUC did have information that there was an IRA bomb in the property, but did nothing to warn those living in the area of the danger. The RUC therefore failed to fulfil their duty to protect the public and *"there was a failure to uphold Mr Dalton's right to life"*.<sup>130</sup> The Police Ombudsman, however, said he found no evidence that this failure was due to a desire to protect an informant, though he did conclude that the police failed in their duty to properly investigate the deaths of Sean Dalton and Sheila Lewis.<sup>131</sup> In a statement responding to the report the family said:

*"After 25 years of lies, deception and evasion we finally feel vindicated. However we have no sense of jubilation. These findings are long overdue. We are sad that our brother Jim, who died two years ago, did not live to see this report."*<sup>132</sup>

In July 2012, a new Police Ombudsman, Dr Michael Maguire, took office; he had led the CJINI inspection of the OPONI. Historical investigations were subsequently restarted in January 2013 following a process of reform to the office, including: a restructuring of the History Directorate with new quality assurances processes embedded within it; the development of a prioritization index to help ensure the way cases are selected and prioritized is transparent and objective; and full access for Senior Investigating Officers to sensitive material.<sup>133</sup> An increase in funding and resources was also provided.

The welcome reforms brought about by the new Police Ombudsman have the potential to restore trust and confidence in the OPONI.<sup>134</sup> It is imperative, however, that sufficient resources continue to be provided in order to ensure that the Office can continue its historical investigations effectively and with relative expediency. A number of limitations on OPONI's formal powers also need to be addressed.

#### LEGISLATIVE REFORMS

Despite the new reforms being undertaken by the new Police Ombudsman, there remain legislative gaps that undermine the effectiveness of the OPONI which need to be remedied.

Firstly, under current legislation in cases where there was a previous investigation into police misconduct the OPONI can only conduct a fresh investigation if there is new evidence in the



case.<sup>135</sup> This requirement has created a particular barrier with respect to deaths that occurred as a direct result of police action, as they were investigated by the Independent Commission for Police Complaints (ICPC), the OPONI's highly criticized predecessor, which was not independent. As a result many of these cases have been interpreted as falling beyond the reach of OPONI – the only mechanism competent to look at policing cases – and therefore are the only cases of deaths arising from the conflict where no review of any kind is able to take place.<sup>136</sup> Changes to the regulations governing OPONI must therefore be implemented to ensure this gap in the investigation of historical cases is closed.

The ability of the OPONI to carry out effective investigations into historical cases of police misconduct is further restricted by its lack of powers to compel retired or former police officers to submit to interviews and provide all relevant documentation in their possession. This lack of cooperation has been highlighted as severely impeding a number of historical investigations. For example, in the Sean Dalton report the current Police Ombudsman stated that his investigation *“was hampered by both the refusal of a number of retired police officers, some formerly of senior rank, to co-operate and by the loss of investigation documentation”*<sup>137</sup> Recommendations that the legislation be changed to allow former or retired RUC officers to be compelled to attend interviews have not to date been implemented. Not having these powers erodes the effectiveness of the OPONI, as it impedes its ability to establish the circumstances of a death or the person or persons responsible.<sup>138</sup>

The Police Ombudsman also does not have oversight of civilian PSNI staff, even where their functions are part of policing work in Northern Ireland. This is of particular concern given reports that former RUC officers were reemployed by the PSNI as agency staff (see page 39).

A further failing in the system in Northern Ireland is the ability of the PSNI Chief Constable to reject OPONI findings. In January 2012, the CJINI began *“an investigation which will examine the relationship between the PSNI and the Police Ombudsman,”* following a complaint against the Chief Constable lodged by two NGOs after he rejected key findings in the OPONI report into the bombing of McGurk's Bar in 1971 (see immediately below). The CJINI report has not to date been published. Amnesty International understands that the position of the PSNI is that they are under no legal obligation to accept the findings of the OPONI.<sup>139</sup> However, investigations into police misconduct lie with OPONI, not with the Chief Constable, and rejecting its findings undermines OPONI's independent investigatory function and its ability to hold the police to account.

#### **McGurk's Bar**

On 4 December 1971, 15 people were killed and 16 injured in a bombing in McGurk's Bar in Belfast, carried out by a loyalist armed group. In 2006, some of the relatives of those killed in the bombing lodged a complaint with OPONI alleging that the RUC had colluded in the attack; failed to conduct an effective investigation; and provided false information to government officials to suggest that it was an 'IRA own-goal' – i.e. that it was an IRA bomb that exploded prematurely or accidentally inside the premises – creating the impression that those killed and injured were associated with or were members of republican armed groups.

As with the Sean Dalton case discussed above, the OPONI report on the McGurk's Bar bombing underwent several redrafts. According to the CJINI report, earlier drafts of the investigation were much *“more critical of police action”* than the version presented to the families in July 2010, which found no evidence of police

misconduct.<sup>140</sup> The report was withdrawn following complaints by the families and NGOs, who highlighted inconsistencies, factual inaccuracies, and failures to take evidence into account in the report.<sup>141</sup>

In February 2011, a new report was released that was more critical of police action, finding a number of failures by the RUC that had undermined the investigation. In particular, the Police Ombudsman concluded that the RUC focus on and perpetuation of claims that the IRA was responsible for the bombing led to “investigative bias” undermining “both the investigation and any confidence the bereaved families had in obtaining justice”. The Police Ombudsman also found that the RUC assessment presented to the Prime Minister and other government officials was selective and consequently misleading, because they expressed the view that the IRA were responsible for the bombing, but did not report on evidence or information which indicated loyalist armed groups could have been responsible. The report concluded, however, that there was “insufficient evidence to establish that the investigative bias was collusion on the part of the police”.<sup>142</sup> In doing so, it appeared to apply a narrow definition of collusion requiring the presence of “an agreement between two or more parties” and that “the act or omission complained of was deliberate and not merely negligent or inadvertent”.<sup>143</sup> The problems of using such a narrow definition of collusion are discussed on page 47-48.

Within hours of its publication, the Chief Constable of the PSNI issued a statement rejecting the OPONI report’s findings, stating that “the Ombudsman’s report is the latest in a series of historical investigations into this outrage. Other reports have reached differing judgments regarding the initial RUC investigation. None of them have concluded that there was an investigatory bias.”<sup>144</sup> In September 2011, the Chief Constable reaffirmed his rejection of the OPONI report’s core findings, stating that he could not accept the conclusion that there had been ‘investigative bias’ in the RUC investigation, or that the investigation was not ‘proportionate’ to the magnitude of the crime.<sup>145</sup> He did, however, ask the HET to re-examine the case, back-tracking on his immediate response to the findings when he stated that there were no further investigatory opportunities in the case. The HET completed this new report in December 2012 and provided it to the OPONI, before being passed to the Chief Constable of the PSNI in February 2013. However, as of August 2013, the Chief Constable had not agreed to release the report to the families. Amnesty International wrote to the Chief Constable in June 2013 to seek clarification about the delay, but has not to date received a response. In August 2013 it was reported that the families of those killed in the bombing of McGurk’s bar were considering legal action against the Chief Constable’s failure to provide the HET report to the family.<sup>146</sup>

## CORONERS’ INQUESTS

**“The current state of coronial law is extremely unsatisfactory. It is developing by means of piecemeal incremental case law. It is marked by an absence of clearly drafted and easily enforceable procedural rules. Its complexity, confusion and inadequacies make the function of a coroner extremely difficult and is called on to apply case law which does not always speak with one voice or consistently.”**

Hugh Jordan v Senior Coroner [2009] NICA 64, 6 October 2009.

A coroner’s inquest is a fact-finding exercise into the circumstances surrounding a death; its purpose is to identify a person and determine how, when and where he or she died. Inquests are usually conducted a short time after – or in more complex cases within a few years of – a person’s death. There are, at present, at least 36 cases in Northern Ireland of conflict-related deaths awaiting inquests. These cases fall into two broad categories: cases which have never had an inquest (referred to as the “outstanding legacy cases”), comprised primarily of deaths involving state actors/agents or allegations of collusion; and cases in which a previous inquest

has been completed, but the Attorney General for Northern Ireland has ordered a fresh one be held, for example on grounds that new evidence has emerged.<sup>147</sup> Inquests thus continue to be a mechanism in Northern Ireland for the investigation of historical cases.

Governed under a different statutory framework from that of England and Wales, the function of inquests in Northern Ireland has a long and complex history.<sup>148</sup> One of the crucial differences between the two frameworks is that in England and Wales coroners' courts can bring a verdict of unlawful killing, whereas in Northern Ireland coroners' courts have been barred since 1959 from doing so. They can, however, give a series of findings about the circumstances in which a person died.

During the conflict, the coroners' inquest system in Northern Ireland was criticized for falling short of human rights standards.<sup>149</sup> In the *McKerr* group of cases, the European Court of Human Rights criticized: the lack of verdicts;<sup>150</sup> the absence of legal aid;<sup>151</sup> the non-disclosure of witness statements;<sup>152</sup> the lack of promptness;<sup>153</sup> the inability to compel witnesses;<sup>154</sup> and the limited scope of some inquests.<sup>155</sup> Thus, restrictions, both through legislation and through judicial interpretation of the law and rules, meant that inquests were part of a system with *"shortcomings in transparency and effectiveness... [that] run counter to the purpose identified by the domestic courts of allaying suspicions and rumour."*<sup>156</sup>

These rulings resulted in the UK taking a number of measures to ensure that future inquests complied with Article 2 of the ECHR, including: the possibility to secure legal aid for inquests; changes to inquest rules so that witnesses could be compelled to; the extension of the scope of an inquest; and new practices relating to verdicts of coroners' juries at inquests. Ten years after the European Court of Human Rights judgments in the *McKerr* group of cases, the UK Supreme Court also issued a judgment finding that inquests into deaths attributed to the conflict in Northern Ireland were required – as a matter of domestic law – to be compliant with Article 2 of the ECHR.<sup>157</sup> In the judgment, Lady Hale stated "differences centre on the scope of the available verdict as to 'how' the deceased met his death: in a conventional inquest, 'how' means only 'by what means' whereas in an Article 2 compliant inquest it must also encompass 'in what broad circumstances'".<sup>158</sup>

#### LIMITATIONS OF INQUESTS

Despite these rulings by the European Court of Human Rights and the UK Supreme Court, the inquest system in Northern Ireland remains deficient in practice with respect to certain historical cases. First, there are significant delays. In two judgments delivered by the European Court of Human Rights on 16 July 2013, the Court ruled that the UK was in violation of Article 2 due to the endemic delays within the inquest system in Northern Ireland. In one of these cases, *McCaughy and Others v The United Kingdom* (see page 36) the Court found: *"the inquest process itself was not structurally capable throughout the relevant period of time of providing the applicants with access to an investigation which would commence promptly and be conducted with due expedition."*<sup>159</sup> In a concurring judgment Judge Kalaydjieva stated:

*"the period of demonstrated, if not deliberate, systematic refusals and failures to undertake timely and adequate investigation and to take all necessary steps to investigate arguable allegations under Articles 2 and 3 seem as a matter of principle to make it possible for at least some agents of the State to benefit from virtual impunity as a result of the passage of time"*.<sup>160</sup>

Second, concerns also remain regarding the scope of some inquests, in particular, controversial cases involving the use of lethal force by the state, including whether they will establish the broader circumstances of a death. Two inquests into outstanding legacy cases have so far been concluded following the 2011 Supreme Court ruling: the case of Pearse Jordan, a member of the IRA, who was shot by the RUC in November 1992; and the case of Martin McCaughey and Desmond Grew, members of the IRA who were shot and killed on 9 October 1990 by members of the army's Special Air Services (SAS) regiment. Both cases concerned allegations that the deaths were a result of unnecessary and disproportionate use of force by state agents and both give rise to claims that the UK had an official policy of planned killings of suspected members of armed opposition groups, (known as the "shoot-to-kill" policy). The UK government strongly disputes this allegation.<sup>161</sup>

The inquest into the death of Pearse Jordan concluded in October 2012, following lengthy and complex litigation. The inquest jury could not reach a unanimous agreement on any of the substantive issues related to the circumstances of Pearse Jordan's death. Instead of dismissing the jury and ordering a fresh inquest, Coroner Brian Sherrard requested that minimalist findings be issued containing those matters on which the jury agreed, i.e. the date of death, the location and the direct cause. The requirement that findings of the jury be unanimous – which does not exist for inquests conducted in England and Wales (majority findings will suffice) – therefore meant that the inquest could not answer crucial questions concerning the circumstances of Pearse Jordan's death at all. These questions included: whether the force used by the officer was reasonable or whether there was another course of action open to the officer as an alternative to firing; whether the operation was conducted in such a way to minimize to the greatest extent possible any recourse to lethal force; and whether there was any aspect of the training of or planning by any RUC officer at the scene that could account for the death. The jury was not even able to describe precisely how the shooting took place. As a result, 20 years after Pearse Jordan was killed, his father still does not have answers to many of the questions surrounding the circumstances of his son's death and whether the use of lethal force was justified.

The inquest into the deaths of Martin McCaughey and Desmond Grew concluded on 2 May 2012. The jury considered that the first soldier to fire did so in *the "belief that their position had been compromised and their lives were in danger"*, and the other soldiers then fired until *"they believed that the threat was neutralized"*.<sup>162</sup> The jury found the use of force had been reasonable. Lawyers acting for the men's families have raised concerns that the inquest failed, in practice, to adequately investigate the broader circumstances of the deaths: namely whether there was a shoot-to-kill policy, and/or whether SAS soldiers were more likely to resort to lethal force when it was not absolutely necessary.<sup>163</sup> The lawyers emphasized that during oral examination they were not able to cross-examine soldiers about their involvement in other lethal force incidents; that the majority of the soldiers' statements provided to the inquest jury were edited to remove all references to their involvement in other lethal force incidents; and that the next-of-kin were denied access to some of the material which concerned the involvement of some of the soldiers in other lethal force incidents.<sup>164</sup> Lawyers for the next-of-kin have started judicial review proceedings challenging the compliance of the inquest with Article 2 of the ECHR. The case remained pending as of August 2013.

This reflects the broader limitations of coroners' inquests as a mechanism to address the violations and abuses of Northern Ireland's past. Inquests are designed to focus on individual

cases. As a result questions concerning patterns of potential violations and abuses, whether the institutional culture of the security forces or other governmental agencies fostered the perpetration of human rights violations, and whether state policy or state-sanctioned practices deliberately or indirectly gave rise to unlawful conduct, are not being addressed effectively through this mechanism.

### Ballymurphy

Since the Supreme Court judgment requiring inquests into deaths attributed to the conflict in Northern Ireland to be compliant with Article 2 of the ECHR, more families have sought fresh inquests into the deaths of their relatives. Over 20 such inquests have been ordered by the Attorney General for Northern Ireland. Despite the problems outlined above with the practice of some inquests, families and lawyers have noted that coroners have the power to order disclosure of relevant documents and secure witnesses to give testimony, which mechanisms like the HET do not. As a result, for the small number of families able to secure fresh inquests, they can provide a potential avenue via which they can seek further information about the circumstances of the death of a relative.

The families of those killed in Ballymurphy are one group of families who have been granted a fresh inquest. Between 9 and 11 August 1971, over 600 British Army soldiers entered Ballymurphy, an area of West Belfast, raiding homes and rounding up men as they implemented the British government's new policy of internment without trial. During this three-day period, 10 people were shot and killed by British soldiers and an eleventh man died of a heart attack after soldiers carried out a mock execution on him. It is believed that some of the soldiers involved in Ballymurphy were subsequently involved several months later in Bloody Sunday when 13 civil rights marchers were killed by British soldiers on 30 January 1972 in Londonderry/Derry.<sup>165</sup>

The families of those killed in Ballymurphy have long campaigned for an independent, effective and thorough investigation into the deaths of their relatives. In November 2011, following a review of the first inquest, the Attorney General of Northern Ireland ordered that fresh inquests take place in relation to the 10 people shot. The Attorney General considered that the original investigation into the deaths had not been effective, and that relevant information, including the original statements given by soldiers to the Royal Military Police, was not provided to the coroner at the time. Delays endemic to the inquests system have meant that as of August 2013, these inquests had not yet begun. In July 2013, families of those killed in Ballymurphy issued a fresh call for an independent panel to review the case.<sup>166</sup>

### THE POLICE SERVICE OF NORTHERN IRELAND

**"In Northern Ireland, one of the critical elements impacting on community confidence is PSNI's ability to deal with the legacy of the past. The PSNI's commitment to dealing with the past is essential in order to build and consolidate community confidence. Equally, however, dealing with the past has the potential to erode confidence and damage the delivery of policing with the community today, and into the future."**

PSNI paper, *Policing the past, present and future: Examining the past and keeping people safe today and in the future*, December 2012.

During the decades of political violence substantial allegations were raised concerning the RUC's involvement in human rights violations.<sup>167</sup> The RUC furthermore repeatedly obstructed efforts to hold the police to account, including by failing consistently to disclose relevant information about law enforcement operations, individual officers, and the chain of

command. Police reform was therefore foundational to the negotiation of the 1998 Agreement. While there have been significant reforms to current policing activities, Amnesty International is concerned by the ongoing failure of the PSNI to provide full and timely disclosure to inquests, which frustrates efforts to establish the truth about the past. Other issues of concern are the re-hiring of former RUC officers as civilian staff, who are not accountable to OPONI, and delays in investigating historical cases.

#### DISCLOSURE OF MATERIAL TO CORONERS' INQUESTS

Amnesty International continues to be concerned by the failure of the PSNI to deliver full and timely disclosure of material containing "sensitive" information for inquest proceedings. Refusing access to information about human rights violations can never be justified, including on grounds of national security.<sup>168</sup> The concern arises particularly with respect to the inquests into the deaths of six men shot dead in so-called 'shoot-to-kill' incidents in 1982, which remain incomplete over thirty years since they were killed.<sup>169</sup> A key part of this sensitive material relates to reports by then Deputy Chief Constable of Greater Manchester John Stalker, who was called in to investigate the shootings in 1984, and subsequently Sir Colin Sampson of the West Yorkshire Police, who completed the report in 1987.<sup>170</sup> Their full findings, known as the Stalker/Sampson reports, have never been made public. In 2010, the PSNI lost a protracted legal challenge aimed at preventing disclosure of the reports on national security grounds to the next-of-kin and their lawyers. As Justice Gillen commented:

*"If inquests are to maintain public confidence, put minds at rest and answer the questions of the families who are bereaved, it is vital to ensure that the interested parties/next of kin can participate in an informed, open and transparent fashion on an equal footing with all other parties throughout the various stages of the inquest including, at the outset of the process, the very scope of the inquest. This can only be achieved where appropriate disclosure has been made of potentially relevant material."*<sup>171</sup>

However, serious delays continue as the PSNI carries out a process of redacting sensitive material contained in the reports and the underlying intelligence material on which it is based, and determines whether to recommend that the Secretary of State for Northern Ireland issue Public Interest Immunity (PII) certificates in order to prevent disclosure of some of the material on national security grounds.<sup>172</sup> Serious concerns have also emerged about how the PSNI is undertaking this process of review. In October 2012, it emerged that personnel carrying out the redaction process for the PSNI were four former Special Branch officers and one former RUC intelligence officer.<sup>173</sup> Subsequently, in May 2013 it was revealed that these former Special Branch and RUC officers had served directly with 92 serving and former police officers who could potentially be called as witnesses at the inquests, which compromises the independence of the process.<sup>174</sup> One of the lawyers representing some of the families involved in the inquest stated in response that:

*"It is totally and utterly callous and unacceptable to allow former Special Branch officers, who have worked side by side with no less than 92 potential police witnesses in this case, to decide what intelligence is withheld from this inquest [...] It is nothing less than Alice in Wonderland and makes a mockery of our entire justice system."*<sup>175</sup>

Upon finding out that at least some of these same officers were also involved in the

disclosure process in connection with the inquest into the death of Pearse Jordan (see page 36), his family have issued high court proceedings to challenge the Chief Constable's decision to recruit the former Special Branch officers to oversee the evidence disclosure process in the inquest. Lawyers for the family claim that these officers played a key role in either deliberately or negligently withholding from the coroner information relevant to Pearse Jordan's death, including details of one officer who was involved in a separate fatal shooting. This information could have been relevant to the investigation of the broader circumstances of Pearse Jordan's death and whether he was a victim of an alleged shoot-to-kill policy.<sup>176</sup>

#### THE RE-HIRING OF FORMER RUC OFFICERS

The revelation that former Special Branch and RUC officers were involved in the process of determining what intelligence material should be disclosed to inquests reflects a wider concern of the re-hiring of former RUC officers back into the PSNI. In the aftermath of the 1998 Agreement, which provided for a new police service, a redundancy scheme was established to encourage RUC officers to leave the police force in order to make way for new recruits. An Audit Office report published in October 2012, however, revealed that more than 1,000 former RUC officers who availed themselves of the redundancy scheme were later rehired as civilian staff on temporary contracts.<sup>177</sup> According to the report, one of the highest concentration of re-hires was within the Crime Operations Department, which investigates serious crime and terrorism – including cases referred by the HET (see page 28) – and handles all intelligence material for the PSNI. This department also handles the investigation of historical cases, and intelligence material related to those cases. Amnesty International is concerned that PSNI investigations into historical cases may be compromised if those involved in investigations are not hierarchically, institutionally and practically independent from those implicated in the incident.<sup>178</sup> Furthermore, the role of re-hired officers in the intelligence unit, acting effectively as “gatekeepers” for the intelligence provided to some of the other mechanisms, without independent safeguards, undermines confidence in the PSNI's willingness to cooperate fully with historical investigations.

As civilian staff, the re-hired former RUC officers are also not accountable to the Police Ombudsman, despite its recommendation that any civilian operating directly in conjunction with police officers in the course of their policing functions be brought under the remit of the OPONI.<sup>179</sup> Amnesty International calls for the swift implementation of this proposed change.

#### INVESTIGATIVE DELAYS AND FAMILY ENGAGEMENT

Ongoing lengthy delays by the PSNI in the criminal investigation of historical cases are also creating a serious impediment to securing accountability for past human rights violations and abuses. As of 23 July 2013, the PSNI's Serious Crime Branch reported that it had “investigative responsibility” for 66 cases, involving over 170 fatalities.<sup>180</sup> In a meeting with Amnesty International, the Assistant Chief Constable of the PSNI highlighted that they do not receive extra funding or resources specifically for investigating historical cases.<sup>181</sup> The funding instead comes from the general policing budget, which presents them with “*difficult decisions...about how to prioritise finite resources between the past and the present*”.<sup>182</sup>

Amnesty International recognizes these challenges. However, there should not have to be a choice between the past and the present. There is a clear duty on the relevant authorities to ensure that sufficient funding and resources are provided to the PSNI to allow for the reasonable expedition of investigations into human rights violations and abuses.<sup>183</sup> This is

essential in maintaining trust and confidence in the rule of law and preventing impunity.<sup>184</sup>

For some families of those killed in the Claudy bombings (see page 17-18), delays in the PSNI investigation have caused considerable frustration. The PSNI reinitiated criminal investigations in their case in October 2010 following the publication of the OPONI report. However, the PSNI has acknowledged that no real progress was made in the investigation up until August 2012, when the investigation was reassigned to a new team.<sup>185</sup> Since then, the families report having had little engagement with the PSNI and say they do not have any substantive update on what, if any, progress has been made.

According to the PSNI, the delay in the Claudy investigation has been as the result of *“the operational demands of the current day investigations, which pose greater real and present risk of harm to the community”*.<sup>186</sup> Resources, however, are no excuse for the UK evading its obligation under international human rights law to ensure that an investigation into human rights abuses is carried out expeditiously. There is, accordingly, a responsibility on the relevant authorities to ensure that adequate resources are provided to ensure investigations into cases arising from the decades of political violence are carried out in a human rights compliant manner, including that such investigations be prompt and effective.

Several family members said that they felt that they had not been kept sufficiently updated about the progress of the investigation, and any updates they had received were as a result of their efforts to follow-up with the PSNI. The authorities are required to involve families in the investigatory process to the extent necessary to safeguard their legitimate interests.<sup>187</sup> This should include keeping them informed about the progress in their case.<sup>188</sup>

Two people recounted to Amnesty International that the PSNI had failed to inform them that an arrest had been made in relation to their cases, leaving them to find out through a third party, causing significant distress to the families. One of those people was Sandra Riddle, whose brother, John Proctor, was an RUC reserve constable. He was killed on 14 September 1981 by the IRA, as he was leaving hospital after visiting his wife, who had just given birth to their second child. The case was reviewed by the HET, who passed it to the PSNI for further investigation after a match was found to DNA from a cigarette butt found at the scene. Sandra Riddell said:

*“The HET reviewed the case first and they did a good job. Then they sent the case to the PSNI. The PSNI they didn’t tell us they were about to arrest someone. I knew things were going on, people weren’t telling me things so I knew something was happening and then this person was arrested. I found out because my friend from school phoned me in the morning and she’d seen it on TV. The PSNI knew on Friday they were going to arrest someone on Monday but someone slipped up and we weren’t told. So it was on the news and that was a real shock for us. I found out at 8:30 in the morning on the Monday and that was really tough for the family, to suddenly see Johnny’s picture on the news. It would have been better if we knew. Would have been better if they shared more with us, not just we’re working on it, but about what was happening. So communication hasn’t been good, and not being told about the arrest was really hurtful. To see your brothers face on TV after all these years without warning. [...] So I’m glad we engaged with the HET, I got some information from it, but I do think the PSNI need to look at how they deal with people more sensitively.”*<sup>189</sup>



## PUBLIC INQUIRIES

**“There are many cases in Northern Ireland that deserve an inquiry, but very few people are fortunate enough to get one, and the UK’s coalition government has sent very strong signals that there will be no more lengthy and costly inquiries. It should be borne in mind that Inquiries are a remedy of last resort – they only happen when the system has failed.”**

Jane Winter, Director of British Irish Rights Watch, evidence to the US Helsinki Commission, 16 March 2011.

In the UK, a Minister can establish a public inquiry to investigate specific, often controversial, events that have given rise to public concern. The Inquiries Act 2005 provides the current framework governing statutory inquiries in the UK. Amnesty International, alongside others, has criticized the Act as a framework for governing inquiries into controversial killings, because it provides the government powers to impose restrictions on the inquiry where necessary “in the public interest”.<sup>190</sup> Of particular concern are the powers allowing a Minister to impose restrictions on public access to the inquiry hearings and on the disclosure or publication of evidence through “restriction notices”.

With the aim of ensuring public confidence, UK public inquiries are intended to ascertain the full circumstances about a particular event or series of events, especially when the facts are disputed; to identify unlawful acts by individuals, organizations or organs of the state; and to identify systematic and institutional flaws that lead to violations so that lessons can be learned to prevent their recurrence.<sup>191</sup>

Since 1998, only four inquiries have been established in Northern Ireland in relation to cases arising from the conflict.<sup>192</sup> The UK government has made it clear that it will resist establishing further inquiries on the grounds that they are too costly. This leaves a significant gap in the current system to investigate human rights violations and abuses committed in Northern Ireland, recognizing that a number of human rights violations and abuses are of significant public concern and may require special processes to ensure prompt, thorough, effective, independent and impartial investigations.

### A BROKEN PROMISE: THE CASE OF PATRICK FINUCANE

**“Mrs Finucane knows the name of the person who pulled the trigger. The question is: who was pulling the strings?”**

Barry Macdonald QC, preliminary hearing on 31 January 2013 in the judicial review brought by the family of Patrick Finucane

In 2001, the Weston Park agreement, reached between the governments of the UK and Ireland, included the decision to jointly appoint an international judicial figure to examine six key cases where collusion had been alleged and “[i]n the event that a Public Inquiry is recommended in any case, the relevant Government will implement that recommendation.”<sup>193</sup> Former Canadian Supreme Court Justice Peter Cory was appointed to this task and he recommended inquiries be established into five of the six cases he examined. With respect to four of these cases, inquiries have since been established (see Rosemary Nelson’s case, page 48-49).<sup>194</sup> However, in the fifth, the killing of Patrick Finucane, no inquiry has been delivered, despite Justice Cory’s clear call:

*“In this case only a public inquiry will suffice. Without public scrutiny doubts based solely on myth and suspicion will linger long, fester and spread their malignant infection throughout the Northern Ireland community.”<sup>195</sup>*

Patrick Finucane, a prominent criminal defence and civil rights lawyer, was shot dead in front of his wife and three children by UDA/UFF gunmen at his Belfast home on 12 February 1989. He was shot 14 times and his wife, Geraldine, was also injured in the attack. In the aftermath of Patrick Finucane's killing, extensive and compelling evidence emerged that his killing took place within the context of widespread state collusion with loyalist armed groups.

In light of emerging evidence of collusion, in September 1989, Sir John Stevens, then the Deputy Commissioner of the Metropolitan [London] Police Service, was appointed to investigate allegations of collusion between members of the security forces and loyalist armed groups. He eventually carried out three investigations, the third of which ("Stevens 3") concerned the killing of Patrick Finucane, the report of which is believed to run to approximately 3,000 pages. In 2003, Sir John Stevens confirmed that his investigations had uncovered evidence of *"collusion, the wilful failure to keep records, the absence of accountability, the withholding of intelligence and evidence, and the extreme of agents being involved in murder"*.<sup>196</sup> However, the full findings of the three investigations remain secret.

The family of Patrick Finucane and NGOs, including Amnesty International, have campaigned tirelessly for an independent public inquiry into his killing.<sup>197</sup> In October 2010, following a change in government, substantive discussions began between government officials and the family of Patrick Finucane and/or their legal representatives as to what type of public inquiry might be acceptable to all parties.<sup>198</sup> Against this background, the family of Patrick Finucane and their legal representatives were invited to meet with the Prime Minister at Downing Street in October 2011. The family was told they would be "satisfied" with the decision that would be presented to them. However, despite accepting collusion had occurred, rather than delivering the promised public inquiry, the Prime Minister stated that another review of the papers would instead take place.

Sir Desmond de Silva QC was asked to conduct this review, including providing a full public account of any involvement by military intelligence (FRU), Special Branch and MI5 in Patrick Finucane's killing. The review, however, was not the public inquiry which the government had committed to in the Weston Park agreement, which the Irish government continues to support. For example, the review of papers was conducted in private with no cross-examination of witnesses and without powers to compel a broad range of witnesses and with no involvement of the family or transparency (with the exception of its final report) to demonstrate that it was thorough and effective.

Patrick Finucane's family are in the process of legally challenging the Prime Minister's decision to renege on the promised public inquiry. Papers disclosed as part of the judicial review included an email sent by Sir Jeremy Heywood, now Cabinet Secretary, to the Prime Minister stating the following: *"Does the PM seriously think that it's right to renege on a previous Government's clear commitment to hold a full judicial inquiry? [...] This was a dark moment in the country's history – far worse than anything that was alleged in Iraq/Afghanistan [...] I can't really think of any argument to defend not having a public inquiry. What am I missing?"*<sup>199</sup>

Meanwhile, on 13 December 2012, the report of the de Silva review was published. The report catalogues numerous and substantial ways in which the state and its agents colluded in the killing of Patrick Finucane, leaving *"no doubt that agents of the State were involved in*

*carrying out serious violations of human rights*".<sup>200</sup> The review's findings include: that it was likely that an RUC officer or officers proposed Patrick Finucane, along with at least one other individual, as a target; the leaking of intelligence information from members of the security forces to loyalist groups, including the UDA; that MI5's role in disseminating propaganda against him *"could have had the effect of further legitimising Patrick Finucane as a target for loyalist paramilitaries"*<sup>201</sup>; facilitating access to the murder weapon; the failure of RUC Special Branch to provide CID with intelligence information immediately after the killing; the failure to investigate, arrest, and prosecute UDA operatives at the time, despite known intelligence of their criminality and alleged involvement; and covering up collusion in the killing. The review highlighted successive governments' "abject and wilful" failure to ensure that agents run by different agencies operated lawfully.<sup>202</sup>

The Prime Minister repeated publicly in parliament an apology given to the family privately, stating that *"the collusion demonstrated beyond any doubt by Sir Desmond – which included the involvement of state agents in murder – is totally unacceptable"*.<sup>203</sup>

Alongside the report, Sir Desmond also published 329 pages of previously confidential documents, including intelligence material. It is, however, a matter of concern that new evidence came to light which had not been available to the three Stevens investigations, and Justice Cory's investigation.<sup>204</sup> The failure of the different agencies and government departments to fully disclose all relevant information to each successive investigation, and the fact that each new investigation has received more information, raises the suspicion that there is still crucial information that lies hidden from public scrutiny.

The findings of the de Silva review, instead of replacing the need for a public inquiry, further strengthen the urgent need for one. The materials uncovered by the review of papers, added to what was already in the public domain, highlight the scale of the collusion, which is a matter of significant public interest. A public inquiry could further examine the scale, extent and methods of the pattern of violations and the chain of responsibility in relation to collusion, including the potential role of senior government members and officials.

#### ONGOING CALLS FOR PUBLIC INQUIRIES

Despite the government's reluctance to establish further public inquiries, growing numbers of families are calling for them as they continue to try and establish the truth as to what happened to their relatives. These calls are a result of repeated failures in the investigation of human rights violations and abuses perpetrated during the decades of political violence documented above and elsewhere. They are also symptomatic of the political failure to address the legacy of the past in Northern Ireland.

#### **The call for a public inquiry in the case of the Omagh bombing**

*"Far too many questions remain unanswered. The criminal justice system has failed to bring to justice those responsible for the Omagh bombing. The least that those who were bereaved or injured have the right to expect are answers to those questions."*<sup>205</sup>

On 15 August 1998, 29 people were killed and over 200 people injured when a car bomb exploded in Omagh, County Tyrone. The Real IRA subsequently claimed responsibility. The case is distinguishable from others focused on in this report in that the bombing occurred a few months after the 1998 Agreement was signed.

Amnesty International supports the campaign by some of the families and victims of Omagh for an independent public inquiry to be established to investigate the case in its totality, including the circumstances leading to the Omagh bomb and the investigative failures that occurred in its aftermath.<sup>206</sup> Such an investigation is crucial to ensure lessons are learnt.

There has been a documented catalogue of failures in the investigation of the Omagh bombing.<sup>207</sup> Despite criminal investigations, a civil case, a Police Ombudsman investigation, and other reviews in the UK and Ireland—including one conducted by the UK's former Intelligence Services Commissioner, Sir Peter Gibson, the full contents of which have not been made public—serious questions remain outstanding about alleged state failures in the lead up to and the aftermath of the Omagh bomb.<sup>208</sup> In particular, there are unresolved questions concerning the gathering and sharing of intelligence material both between domestic agencies (for example between the RUC and MI5) and international agencies (for example between UK authorities, Ireland's police force – An Garda Síochána, and the United States' Federal Bureau of Investigation (FBI)). It is of particular concern to Amnesty International that – as with the case of Patrick Finucane – there has been a failure of the different agencies to fully disclose all relevant information to each successive investigation or review. As a result even after the Police Ombudsman investigation in 2001, further information has come to light raising serious concerns about the circumstances of the Omagh bombing.

For example, following the OPONI investigation it emerged that four months prior to the Omagh bombing information was given by an informer, jointly handled by the FBI and MI5, in Ireland that Omagh or Londonderry/Derry was to be a target for a car bomb attack and that the warning times would be shortened.<sup>209</sup> This information, however, was not at the time passed to the PSNI team investigating the Omagh bombing.

Similarly, in 2008 – seven years after the Police Ombudsman published her report – new information emerged that the UK Government Communications Headquarters (GCHQ) had been monitoring and recording the phones of some of those involved in the Omagh bomb.<sup>210</sup> In response to these claims a review was ordered of the intercepted intelligence material related to the Omagh bombing and how it was shared. That review, conducted by Sir Peter Gibson, the Intelligence Services Commissioner, found that “any intelligence derived from interception as might have existed could not have prevented the bombing”.<sup>211</sup> However, the parliamentary Northern Ireland Affairs Committee subsequently raised a number of serious concerns about the narrowness of Sir Peter Gibson's review and highlighted a number of outstanding questions regarding the intercepts by GCHQ, for example, why it was that the transcripts of the mobile phone recordings and the numbers of those mobile phones were not shared with those investigating the Omagh bombing.<sup>212</sup> The full report by Sir Peter Gibson has never been made public. Nor has it been provided to the Northern Ireland Affairs Committee despite frequent requests for access.

Questions also remain about alleged failures in the sharing of intelligence between An Garda Síochána and the RUC about the activities and movements of members of the Real IRA<sup>213</sup>, as well as the degree of cooperation provided by the Irish authorities to subsequent investigations<sup>214</sup>. For example, it has been reported that the Gardaí refused formal requests by the PSNI to interview an informant believed to potentially be a crucial witness in the case and who is currently in witness protection.

On 8 August 2013, Baroness Nuala O'Loan – who was the Police Ombudsman at the time of OPONI's Omagh investigation – publicly called for the establishment of a cross-border inquiry into the Omagh case, stating that the information that had emerged in the fifteen years since the attack was “*cause for enormous concern*” and that “*there can be no doubt that there were massive failures by the security and intelligence services.*”<sup>215</sup> She added that an inquiry would “*provide answers for the families, but above all inform the fight against*

*terrorism in the future*”<sup>216</sup> Amnesty International has also urged the UK authorities to establish an independent inquiry without delay, and called on the Irish and United States governments to offer their full cooperation with the work of such an inquiry.

## A FRAGMENTED SYSTEM FAILING TO DELIVER THE TRUTH

**“All we want is a simple recognition that in this community so many of us suffered and some of us still live with our wounds every day. You know, when I hear people say ‘Oh, just draw a line under it and we’ll all get on with the future’, I say, ‘Well, will I get up tomorrow and walk about again, will I get my daddy back, will them people get their relatives back?’ I’m all for the future and a shared future but I don’t think we should ever forget the past.”**

Peter Heathwood, shot by suspected loyalist gunmen on 27 September 1979. His father died at the scene. (see page 52-53).

Weaknesses and failings – both past and present – in each of the existing mechanisms have undermined confidence and trust in the ability of the current investigatory system in Northern Ireland to effectively address the outstanding violations and abuses of Northern Ireland’s past. Though some of the mechanisms do have the potential to work well, the inherent limitations of their investigations and their narrow mandates means that they cannot – even collectively – provide a comprehensive account of the violations and abuses in question, including who is responsible for them. Consequently, the people of Northern Ireland are left with a piecemeal system of accountability that obscures the truth and contributes to an environment of impunity, including for senior figures in the UK government and security forces who may be responsible for human rights violations or were complicit in them. This impunity also extends to leaders at all levels of the various armed groups in Northern Ireland who may have ordered, committed or were complicit in acts of violence.

### THE NEED TO INVESTIGATE PATTERNS OF VIOLATIONS AND ABUSES

The focus of mechanisms on individual cases has limited the possibility for thorough examinations of patterns of abuses and violations that occurred during the conflict, as well as the opportunities for wider public understanding and acknowledgment of the wrongs perpetrated by all sides. In situations where there has been a pattern of serious human rights violations and abuses, investigations should be expansive enough to examine broader questions of the systemic nature of the violations and abuses. These questions should include the chain of command and management within the system; whether policy or practices deliberately or inevitably gave rise to abuses; and the institutional culture of the armed groups, state agencies or other governmental apparatus alleged to have been involved in the violations and abuses.

### SHEDDING LIGHT ON THE POLICIES AND PRACTICES OF ARMED GROUPS

Although armed groups were responsible for the vast majority of deaths during the decades of political violence, and other human rights abuses – including torture or other ill-treatment, punishment shootings and beatings, abductions, and secret burials, their structures and details of their policies and practices remain unclear. A more comprehensive approach to the

investigation of abuses by armed groups, including the identification not only of those who committed the violence, but those who ordered and helped plan these operations, would facilitate a broader understanding by victims, families and communities of what happened to them. Many people told Amnesty International that they hoped that shedding such light on the structure, organization, policies, and practices of these groups would compel the groups' former leaders to come forward and publicly acknowledge the harm they caused and apologize for that suffering.<sup>217</sup>

The HET is the principal mechanism currently investigating killings by armed groups. However, although HET can consider a range of questions posed by the families which may include these issues, in practice, it has no powers to compel people to give testimony or to produce documents (though as part of the PSNI it can access police files). For instance, members of loyalist or republican armed groups linked to particular attacks, or those higher up in the chain of command, cannot be ordered by HET to appear and provide information about the motivation for, planning, and execution of an operation. As a result, HET is limited in its ability to produce a comprehensive record of human rights abuses committed by armed groups, including how they operated and the chain of command. As Jean Caldwell, whose husband was killed in the Teebane bombings (see below), told Amnesty International:

*"It feels like we're in limbo, because no one has been caught. I thought we would get the answers from the HET report, but there are still missing pieces, because people who could come forward and speak the truth choose not to."*<sup>218</sup>

Some people interviewed for this report raised the concern that there was a fundamental "unfairness" because mechanisms such as the OPONI and the HET either were able to access or compel documents from the police service, or in the case of OPONI compel current police officers to appear for an interview. The same powers, however, did not apply with respect to leaders or members of armed groups; unless the case was referred to the PSNI for a full criminal investigation with normal police powers.

#### **Teebane bombing: forgotten victims**

On 17 January 1992, a roadside bomb destroyed a van transporting construction workers who were working at a British army base. Eight men were killed and six injured; they were all Protestant. Although the IRA claimed responsibility for the attack, no one to date has been held responsible for it.

James (Jimmy) Irons' brother died in the Teebane bombing. He met with Amnesty International and spoke of the frustration he felt by the failure to bring anyone to justice for his brother's killing:

*"When you have a relative that is murdered and someone says just draw a line in the sand, well that makes you angry. I want to know the reason why they were killed. Why the IRA did it? Why attack them just because they were construction workers? I want to know what it was all for, why they couldn't sort it out a different way, why they turned to such violence. No one has ever been arrested and no one charged, but there are people who know things, who know who did it and why they did it. I just feel like the victims of Teebane have been forgotten."*<sup>219</sup>

Jean Caldwell, the wife of another Teebane bombing victim, told Amnesty International:

*"Teebane was one of the forgotten atrocities. It didn't have the profile or the support other cases did. People forget that it also had an impact on the children of the men killed, there is an intergenerational harm that is done. So for families, being remembered is important - that remembrance has to be respectful and families need to be a part of it, but it's important for us to have at least that."*<sup>220</sup>

The inability to uncover the truth about armed group activity extends as well to loyalist groups. The next section of this report addresses a key obstacle to establishing the truth about some of these loyalist operations as it addresses one of the most significant issues of the conflict: state collusion with armed groups.

#### FAILURE TO FULLY EXAMINE THE EXTENT OF STATE COLLUSION WITH ARMED GROUPS

Collusion between the state and armed groups in Northern Ireland is a central issue which has not been addressed effectively by existing mechanisms. It is clear that collusion took place during the conflict. Various investigations have evidenced collusion in a range of ways in particular cases including: members of security forces being directly involved in attacks, complicity in killings, aiding and abetting such actions through the passing on of intelligence information, covering-up of crimes, as well as repeated failures to independently and effectively carry out investigations into allegations of collusion. State practices and policies around the handling and management of agents and informers in armed groups have also given rise to serious concern.<sup>221</sup> There have been, however, very few prosecutions brought against state actors. Substantial questions remain as to the degree and level of collusion that took place during the 30 years of violence, the responsibility of various state actors and agencies, and what those in senior levels of government knew and what actions they took.

As reflected throughout this report, as well as in past Amnesty International reports concerning collusion in Northern Ireland, the UK government and other state actors have frustrated efforts to investigate allegations of collusion between state actors and armed groups. Furthermore, in some cases, such as the McGurk's bombing (page 33-34), the investigative mechanisms have applied a narrow definition of collusion leading to limited findings of state responsibility. In other cases, such as Rosemary Nelson's killing (see below), a decision not to include collusion in the terms of reference precluded an analysis of relevant facts to determine whether collusion occurred. In the Patrick Finucane case (see page 41-42), the government's refusal to hold a public inquiry is indicative of its unwillingness to ensure that allegations of collusion are fully and effectively investigated.

Competing claims over what constitutes collusion has undermined efforts to document collusion in a number of cases.<sup>222</sup> The Stevens Inquiry report stated:

*"Collusion 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. 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 of individuals 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."*<sup>223</sup>

Justice Cory in 2003-2004 agreed with this, adding that in some cases, it is the cumulative effect of such acts that may constitute collusion.<sup>224</sup> He noted that the verb collude means, “...to connive with another: conspire, plot,” with the definition of the verb connive being, “to pretend ignorance or unawareness of something one ought morally, or officially or legally to oppose; to fail to take action against a known wrongdoing or misbehaviour – usually used with connive at the violation of a law.”<sup>225</sup>

However, in later cases, various investigatory mechanisms have sought to limit the definition of collusion, requiring the additional requirement of an express *agreement* between or among parties; the element of *intentional* or *deliberate* acts or omissions; and the notion that a definition of collusion can be *tailored* to the specific circumstances of one case, which excludes many of the elements adopted by the Stevens Inquiry and Judge Cory.<sup>226</sup> For example, the definition of collusion applied by the panel in the Billy Wright inquiry, which published its report in September 2010, maintained that:

*“the essence of collusion is an agreement or arrangement between individuals or organisations, including government departments, to achieve an unlawful or improper purpose. The purpose may also be fraudulent or underhand.”<sup>227</sup>*

Amnesty International considers defining collusion in such a way is too narrow and the Stevens/Cory definition more accurately reflects the range of methods by which state authorities and officials may support or facilitate the commission of human rights abuses by non-state actors – and in such way be themselves responsible for human rights violations. In defending his formulation, Judge Cory maintained the necessity of a broad definition of collusion:

*“Because of the necessity for public confidence in the Army, the Police, and Security Services the definition of collusion must be reasonably broad when it is applied to actions of these agencies. This is to say that Army and police forces must not act collusively by ignoring or turning a blind eye to the wrongful acts of their servants or agents. 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.”<sup>228</sup>*

### **The case of Rosemary Nelson**

The failure of an accountability mechanism to adequately address the issue of collusion is manifest in the case of Rosemary Nelson, a lawyer and human rights defender who was killed on 15 March 1999 in an explosion caused by a bomb attached to her car in Lurgan, Northern Ireland. The Red Hand Defenders, a loyalist armed group, claimed responsibility, but no one has ever been convicted for involvement in Rosemary Nelson’s killing.

Rosemary Nelson had gained prominence for her defence of individuals detained under emergency legislation or on suspicion of terrorism-related offences. In the years before her killing, Rosemary Nelson had reported harassment and intimidation, including sexual innuendos and a physical assault, by members of the RUC. She also suffered abuse from members of the Army -- and reported receiving anonymous verbal and written death threats.<sup>229</sup>



The Rosemary Nelson Inquiry opened in April 2005 and hearings were conducted in 2008 and 2009. In his 2004 report on Rosemary Nelson's case, Judge Cory had reminded any future inquiry that: *"It must be determined whether the failure of Government agencies to protect Rosemary Nelson, in light of the threats they were aware of, constituted collusion. If the Government knew Rosemary Nelson's life was in danger, yet took no steps to ensure her safety, this could constitute collusion."*<sup>230</sup>

The subsequent inquiry, however, failed to adopt a definition of collusion at all; indeed, the issue was not addressed other than to acknowledge that there had been allegations of collusion.<sup>231</sup> The May 2011 inquiry report did roundly criticize state agencies for numerous omissions that may have contributed to her killing, but did not find any evidence of any act by a state agency that directly facilitated her murder.

The Inquiry concluded, among other things, that there was a possibility of a rogue member or members of the RUC or the Army who may have assisted the perpetrators to target Rosemary Nelson. It also concluded that RUC officers made abusive and threatening comments about her to her clients, and publicly assaulted Rosemary Nelson in 1997, legitimizing her as a target; police intelligence was leaked, increasing the danger to her life; and various serious omissions by state agencies (the RUC and the NIO) rendered Rosemary Nelson at risk.<sup>232</sup> Some of the key omissions included: individual failures by RUC officers; RUC local and systemic management failures; the failure of the NIO to press the RUC on the issue of her protection; the failure of the NIO to address seriously threats to defence lawyers; the repeated documented inability of the RUC to distinguish Rosemary Nelson from her clients' causes thereby legitimizing her as a target; and the failure by law enforcement and intelligence agencies to cooperate fully in the investigation into her death.<sup>233</sup>

The Inquiry report stated that *"the combined effect of these omissions by the RUC and the NIO was that the state failed to take reasonable and proportionate steps to safeguard the life of Rosemary Nelson. If Rosemary Nelson had been given advice about her safety and offered security measures, then assuming that she had accepted such advice and security measures, the risk to her life and her vulnerability would have been reduced."*<sup>234</sup>

The UK government interpreted the Inquiry's conclusions to have completely cleared the authorities of collusion in Rosemary Nelson's killing. The Secretary of State for Northern Ireland at the time told Parliament that the report concluded that there had been "no collusion" by the authorities. This selective interpretation is an example of the UK government glossing over factual findings of an inquiry, thus allowing it to evade responsibility for actions that, taken collectively, strongly indicated that collusion could have occurred. As Justice Cory had maintained in his 2004 report into Rosemary Nelson's killing:

*"Carelessness or negligence might be found to constitute collusion either in the careless or negligent act or omission itself or taken together with other acts or omissions which would indicate a pattern of conduct."*

Other existing investigatory mechanisms also cannot effectively address allegations of collusion because of their limited mandates and powers. For example, although the OPONI has the power to investigate allegations of police collusion, it lacks the power to compel former RUC officers to be interviewed or to produce documents that might still be in their possession. Critically, allegations of collusion normally involve a range of state actors and agencies; despite this reality, OPONI cannot investigate the actions or policies of other state agencies such as MI5, FRU, and the government or civil service.

The Claudy bombings (see page 17-18) are an example of both the capabilities and limitations of OPONI in this regard. In that case the Police Ombudsman report of 2010 made a clear finding of police collusion. However, it could not fully and effectively investigate the actions of the UK and Irish governments or the Roman Catholic Church, because these entities fell outside of OPONI's mandate. Thus, even in cases where OPONI could make a finding of collusion, the investigation necessarily falls short of providing a full picture of the state's role in the case.

Likewise, the HET has not investigated certain state actors or agencies – such as the UK government, the civil service and the prosecution authorities – having interpreted them as falling outside its remit. For example, in the Rock Bar case (see page 11-12), the HET commented that *“it is difficult to believe, when judged with other cases emerging around that time that such widespread evidence of collusion was not a significant concern at the highest levels of the security services or government.”* Yet the HET concluded that the response to that evidence of collusion at political and higher levels of the security apparatus involved *“a wider set of issues than concerns this HET review”*.<sup>235</sup> Dave Cox, Director of the HET, told Amnesty International that their primary focus is the individual case and whether there are evidential opportunities that could lead to prosecution.<sup>236</sup> As a result questions concerning the wider policies, practices, and actions of the government and other state agencies in cases of collusion have not been effectively and fully investigated by the HET.

One case where the HET failed to address allegations of state collusion effectively is that of Trevor Brecknell. Trevor Brecknell was killed with Patrick Joseph Donnelly and Michael Francis Donnelly, who was just 14 years old at the time, on 19 December 1975 in a gun and bomb attack in Donnelly's Bar in Silverbridge, County Armagh. The attack was carried out by armed men and six people were seriously injured.<sup>237</sup> The Red Hand Commando, a loyalist armed group linked to the UVF, claimed responsibility the next day.

Information contained in a HET report included: the alleged and confirmed involvement of members of the security forces, including serving members of the RUC and UDR, in the planning and carrying out of the attack; the failure of the RUC Special Branch to provide the original investigating team with key intelligence identifying a number of individuals linked to or who were members of the UVF believed to have been involved in the attack; claims that a police raid by RUC uniformed officers of Donnelly's Bar the week before the attack was an unofficial visit to undertake reconnaissance of the bar; the links between this attack and other attacks at the time in which serving members of the security forces were also involved, including the gun and bomb attack on Rock Bar; and archive documents that show the government was aware of cases of collusion between and among the RUC, UDR and loyalist armed groups in the early 70s. Despite this information, the HET failed to make any explicit finding of collusion or state responsibility in the killing of Trevor Brecknell.

The role of the government, civil servants and high level members of security forces is crucial in an investigation of collusion. For example, the Glenanne series of cases (see page 50-51), which include Rock Bar and Trevor Brecknell, offers a clear example of why investigations must also examine patterns of incidents, as well as the policies, practices and institutional culture of government and security forces. The Glenanne series relates to a large number of incidents that took place between July 1972 and June 1978, in the area around the towns of Armagh, Portadown and Dungannon. It has been alleged that members of the UDR and RUC

were involved with a loyalist armed group in the planning and carrying out of these attacks. These cases have given rise to claims that the government and senior members of the security forces had knowledge of and tolerated collusion between loyalist armed groups and members of the UDR and RUC.

In a number of HET reports into these cases seen by Amnesty International, the HET has committed for the first time – as far as Amnesty International is aware – to produce one report focusing on the Glenanne series that is intended to be *“an overview report that examines the trends and themes connected with this series”*.<sup>238</sup> Amnesty International assumes that collusion will be one of the central issues examined by the HET in this overview report, given that it has developed a definition of collusion specific to the Glenanne cases.<sup>239</sup>

If that is the case, a focus on collusion in the Glenanne series would be useful.<sup>240</sup> However, were such an overarching report to be produced, Amnesty International remains concerned that the HET's approach to the Glenanne series would be exceptional and not necessarily be applied to other relevant cases or series of cases. In addition, as noted above, some HET reports have argued that certain state actors and agencies fall outside HET's remit. If the HET still intends to carry out such a review, it should clarify whether there has been a shift in policy in terms of investigating the broader context of a case or series of cases, including state agencies and actors previously not viewed to be within the HET's remit, or whether the Glenanne cases are an exception and why. Moreover, the HET should clarify what the investigation of state actors and agencies will entail in the Glenanne review.

Investigating state collusion with armed groups both loyalist and republican, including how and why state agencies and individual actors acted, is a vital to establishing the truth about what happened in Northern Ireland. A comprehensive mechanism with the power to compel information from those state entities alleged to have been involved in such collusion should be established to deliver the truth about state responsibility for the human rights violations and abuses suffered by victims of the political violence in Northern Ireland.

## EXCLUSION OF INJURED VICTIMS

During the three decades of violence in Northern Ireland many people sustained severe and traumatic injuries that have had a long-term impact on their lives and the lives of their families. Estimates of the number of people injured in Northern Ireland range between 8,000 and 100,000.<sup>241</sup> This variance in figures is a result of different definitions as to what constitutes ‘injury’, no comprehensive available census of people who were injured, and changing practices in record keeping (including the destruction of records).<sup>242</sup>

The UK has a duty to investigate life-threatening attacks, torture or ill-treatment by both state and non-state actors which result in injury; victims have the right to a remedy including full reparation to address the harm caused which should include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. The current accountability mechanisms in Northern Ireland focus primarily on the investigation of killings and suspicious deaths, mostly excluding people who were injured as a result of life-threatening attacks, torture and ill-treatment. As the Commission for Victims and Survivors has noted:

*“since historical investigations are limited solely to killings, the much greater number of crimes relating to the Troubles is set to remain unsolved and largely unexplained. Thus,*

*the seriously injured and the traumatized are unlikely to achieve anything more from the justice system.”<sup>243</sup>*

What happened to injured victims is part of the pattern of human rights violations and abuses that occurred during the conflict. Their exclusion means that the truth about the past cannot be properly established, and the harm that they suffered is not acknowledged and their own right to an effective remedy is denied.<sup>244</sup>

Amnesty International met with a number of people who were seriously injured as a result of the violence to discuss their experiences.<sup>245</sup> Alex Bunting, like many other people who were seriously injured, knows very little about the criminal investigation that took place in his case. Seriously injured in a bomb attributed to the IRA, Alex Bunting told Amnesty International that no one told him about the RUC investigation, its progress or if they had any suspects. The only contact he said he had with the police was when he was asked to provide a statement a year after the attack. He remarked that people like him *“were just left to move on, so we’ve accepted we won’t get anything. But still it sticks in the mind. Why weren’t the people who did this to me brought to book by the Security Services?”* This lack of information was repeated across people Amnesty International met with who were seriously injured, who stated that they had either never been contacted by the police after they were injured, or had met them just once to give a statement. As a result most victims know very little about the circumstances in which they were harmed.

The HET’s mandate, for instance, does not provide for the review of cases of injured persons.<sup>246</sup> In incidents where people were both killed and injured, there will be a HET report. These reports, however, are in most cases given to the relatives of those who died and not to those people who were injured. Indeed, injured persons in some such cases had not even been contacted and informed about the HET review.

Like bereaved families, not all people who were seriously injured want to know more about what happened to them. But for many people like Peter Heathwood, who are still seeking answers to the questions they have about what happened to them, the denial of an HET review to learn more about the circumstances in which they were injured has been a source of deep frustration. Peter Heathwood was seriously injured in a suspected loyalist gun attack at his home on 27 September 1979. He explained to Amnesty International what happened to him that night:

*“On Thursday 27<sup>th</sup> September 1979 while I was playing with my youngest, who was three months old, I heard a shout from my wife at the door ‘gunmen... gunmen’. The men tried to get into the room where I was. I managed to close the door shut, but they fired through the door. They fired three bullets, which just missed my little girl. I can still hear the noise of my kids screaming. The ambulance came, but when they tried to get me out of the house they couldn’t get the trolley into the front room to get me out. So instead they put me in a body bag. They took me outside in a body bag. My father saw that, he thought I was dead and he had a heart attack right there and died. I was in hospital a year, I died twice and ended up 7 stone. I was left paralysed from the waist down.”*

Peter Heathwood explained that the only contact he had with the police was three months

after he had been shot when they took a statement from him. After that he had no further contact with them, no one was ever charged with the attack and he has never been provided with information about the attack or the investigation that followed. He told Amnesty International that it was only following the peace agreement that he felt able to tell his story and start asking questions about what happened to him. In particular, he claims that while he was lying on the floor after having been shot, two RUC officers came into the room, looked down at him and said “Who the fuck is he?” Subsequently, a man who was renting the flat above Peter Heathwood’s came down the stairs, when it is claimed the RUC officers said to that man “That was meant for you”.

Peter Heathwood turned to the HET in the hope that they would review his case, especially given that his father died of a heart attack at the scene. In 2010, the HET turned down his request. Peter Heathwood said to Amnesty International:

*“I want to know about the investigation, what they knew and did. I want to know about those two officers. It eats away at you, wanting to know what happened to you and why. I asked the HET to review my case, but they say they can’t investigate because I was only injured. I said my father died, but the HET said heart attacks don’t count. I’ve explained what happened, to me, to my father, but can’t get them to open it, so that’s it. I’m left with no answers.”*

Peter Heathwood has now asked the OPONI to investigate his case. However, an OPONI investigation would only examine the conduct of the RUC in his case, and not the full circumstances of what happened to him that evening, nor indeed investigate directly those who carried out the attack. Given the limit on OPONI’s mandate to investigating cases where there are allegations of police misconduct, many people injured by other actors have nowhere to turn for truth, justice or reparation. Amnesty International believes that a comprehensive mechanism established to address the past must be able to also look at the cases of people who were injured in life-threatening attacks: either where cases are relevant to wider thematic reviews of patterns of human rights violations and abuses or other linked cases; or following a request from a person who was seriously injured that their case be examined.

### Services for people who were seriously injured

People who were seriously injured during the political violence in Northern Ireland also expressed concern to Amnesty International about the need for ongoing resources and support for services such as counselling and other psychological services, carer support, and rehabilitation services. They also identified finances as a key concern. Initial compensation, where it was awarded, was based on income only, and many reported that the process of being assessed for compensation was deeply traumatic. Many people remain reliant on state disability benefits, which are currently subject to cuts, increasing people’s insecurity and causing extreme stress.<sup>247</sup> Many people reported serious financial concerns and wanted to see more resources spent on ensuring financial, psychological and rehabilitative support for people who were injured. As Alex Bunting explained:

*“What happened to us – it destroyed our lives. What I had was taken away from me by the actions of others. I had to live on handouts. I didn’t have counselling or any support. At the hospital the doctor said just to get used to it, that’s all we’ll get. The day I went to court for compensation I was treated like I was a piece of meat, told to strip to my underwear as people were coming in and out of the room. It was demoralizing and*

*degrading. I would have taken anything to just get out of the room. I wouldn't want anyone to have to go through that. For years I vegetated. I couldn't face people. Now 20 years on, with the welfare reforms I don't see much light in the tunnel. No one seems to want to know, no one is representing the injured. It's very disheartening, so we're fighting to be recognized."*<sup>248</sup>

## VICTIMS OF TORTURE AND OTHER ILL-TREATMENT

During the conflict in Northern Ireland acts of torture and other ill-treatment were perpetrated by both state and armed groups. However, victims of torture and other ill-treatment frequently fall outside of the existing mechanisms in place to examine historical cases, meaning that the full truth of these practices remains obscured and reparation for many is denied.<sup>249</sup>

There are documented cases of torture and other ill-treatment against suspects and detainees by members of the RUC and the army in Northern Ireland. In a landmark judgment in 1978, the European Court of Human Rights found that the UK's use of five interrogation techniques in Northern Ireland amounted to a practice of inhuman and degrading treatment, in violation of Article 3 of the ECHR.<sup>250</sup> The five techniques used were: wall-standing: forcing the detainees to remain for periods of some hours in a "stress position"; hooding; subjection to noise; deprivation of sleep; and deprivation of food and drink. Recent claims have also emerged alleging that the UK government deliberately withheld the existence of a secret interrogation centre at Ballykelly army base when it gave evidence to the European Court of Human Rights in this case.<sup>251</sup> The UK, however, has consistently denied that it tortured or otherwise ill-treated people, despite strong evidence to the contrary. The failure to conduct prompt, thorough, effective, impartial and independent investigations at the time the alleged violations were committed essentially allowed a climate of impunity to be established. The current mechanisms, however, in Northern Ireland do not allow for a systematic and thorough investigation of allegations of torture and ill-treatment.

This situation is illustrated in the case of Billy McKavanagh (see page 25-26). The HET published a final report, confirming Billy McKavanagh was not a threat to soldiers when he was killed. Billy, however, was not alone the day he died: his brother Patrick McKavanagh and cousin Edward (Teddy) Rooney were with him. After Billy was shot, Teddy and Patrick were both arrested by the army. The HET report states that there "*is no doubt that Patrick and Teddy were badly beaten by the soldiers who took them to Hastings Street barracks*". The report states that the lack of any documentation about what happened suggests that there was no investigation into the assaults at the time. However, as the HET is not mandated to investigate torture and ill-treatment, it did not go further. The government's letter of regret following the report stated that it "*accepts the evidence that his brother and cousin were mistreated after being taken into custody*". However the incidents have not yet been fully investigated and the victims continue to be denied the truth, justice and full reparation.

Acts of torture and other ill-treatment by loyalist and republican groups were also widespread. These groups carried out frequent "punishment" beatings, shootings and kidnappings, for which they frequently evaded justice.<sup>252</sup> These attacks were often carried out in the context of a reduced presence of normal policing in Northern Ireland. Actual and alleged informers were also often subjected to torture or other ill-treatment before being killed by armed groups. However, there has never been a comprehensive investigation of the practices and patterns of abuse carried out by armed groups which examines the institutional culture of the

organizations and the chain of command responsible for these abuses. People who were victims of torture and other ill-treatment by armed groups have no mechanism through which they can seek the truth.

## TIME FOR A NEW APPROACH TO ADDRESSING THE PAST

**"The truth is the mirror that reflects peace. We build peace together, using the truth from each of us. If the truth is incomplete, there will never be justice nor peace."**

Gloria Elcy Ramírez, Colombia, coordinator of the Nunca Más Museum, Cited by International Centre for Transitional Justice.

The duty of every state under international law to respect and protect human rights requires that effective measures should be taken to combat impunity. Impunity arises from a failure by states to meet their obligations to investigate violations and abuses and to provide victims with effective remedies, including ensuring full and effective reparation to address the harm they have suffered; establishing the truth about violations and abuses; and taking other necessary steps to prevent a recurrence of violations.<sup>253</sup>

Two key problems arise with the current piecemeal and multi-mechanism approach to the past in Northern Ireland. Firstly, weaknesses and deficiencies in the existing mechanisms have meant that they are too often failing to deliver the effective investigations needed. Secondly, even if all the mechanisms were operating fully in compliance with their mandates, their inherent limitations mean that collectively they are insufficient to address the outstanding violations and abuses in Northern Ireland's past. In light of this, Amnesty International calls for prompt measures to be taken to fully investigate all violations and abuses committed by all sides and ensure justice, truth and reparation for victims.

Amnesty International believes that a single overarching mechanism should be established that can promptly, thoroughly, effectively, impartially and independently investigate all outstanding cases of violations and abuses (including cases involving injury and torture and ill-treatment). The mechanism should also examine the overall patterns of abuses committed during the conflict, including the policies and practices of state and non-state actors and collusion. It should be able to identify individuals or organizations responsible and, where sufficient evidence exists, lead to criminal prosecutions. It should also consider and formulate recommendations for providing full and effective reparation to the victims including revealing the truth, as far as possible. Such a mechanism would be an important step towards ending impunity for human rights violations and abuses in Northern Ireland, and allowing for public recognition and understanding about the harm that was inflicted by all sides. It could contribute towards reconciliation and recommend other initiatives that would contribute towards ending division in Northern Ireland. As reflected in a 2004 report by the United Nations Secretary-General on the Rule of Law, such mechanisms:

*"have the potential to be of great benefit in helping post-conflict societies establish the facts about past human rights violations, foster accountability, preserve evidence, identify perpetrators and recommend reparation and institutional reforms."*<sup>254</sup>

## A LACK OF POLITICAL WILL

The call for such a single, overarching mechanism to be established is certainly not new, having been repeated by victims, civil society, NGOs, politicians across different parties and prominent figures over a number of years. As recently as May 2013, the Committee against Torture recommended that the UK “*develop a comprehensive framework for transitional justice in Northern Ireland and ensure that prompt, thorough and independent investigations are conducted to establish the truth and identify, prosecute and punish perpetrators*”. Yet, 15 years after the signing of the 1998 Agreement, there remains a lack of political will – both in Westminster and Stormont – to find an effective way to address the legacy of the past in Northern Ireland comprehensively.

The rejection and politicization from various quarters of the proposals made in 2009 by the Consultative Group on the Past in Northern Ireland (the Group) following a period of extensive consultation, epitomized this lack of political will. One of the Group’s proposals was the establishment of a legacy commission that would fulfil a number of different functions, including: the creation of a new independent unit to review and investigate historical cases, backed by police powers, a process of information recovery and the ability to examine different themes which remain of public concern. Amnesty International does not endorse all aspects of the legacy commission as proposed by the Group; however, it was an idea that could and should have been considered and developed into something that was effective and human rights compliant. The approach in the Northern Ireland Assembly and in Westminster to not engage fully with the proposals and take them forward in a meaningful way, and defer that discussion indefinitely instead, has left outstanding human rights abuses and violations in Northern Ireland unaddressed.

### The cooperation of Irish authorities

Any overarching mechanism established to investigate the human rights abuses and violations in Northern Ireland must be able to effectively investigate relevant connections with Ireland. For example, there are longstanding allegations that Irish authorities turned a blind eye to arms smuggling across the border and to members of republican groups fleeing – after attacks had been carried out – back to the Republic of Ireland where they lived.<sup>255</sup> There are also allegations concerning collusion by An Garda Síochána. One such case is the killing of two senior RUC officers, Chief Superintendent Harry Breen and Superintendent Robert Buchanan, by the IRA on 20 March 1989 in Northern Ireland, near the border with Ireland. The two men were driving back to Northern Ireland from a routine, informal meeting with their Irish counterparts in Dundalk, Ireland. Information that directly facilitated the killing was allegedly leaked from a serving Garda official or employee to the PIRA. This case is currently the subject of an inquiry in Ireland, known as the Smithwick Tribunal, which began its preliminary investigations in 2006. Public hearings were continuing in 2013.<sup>256</sup> Allegations also exist concerning the Garda Síochána’s knowledge about the planning of the bombing in Omagh in 1998.

A number of cases concerning collusion between authorities in Northern Ireland and loyalist armed groups also have direct links to Ireland. For example, on the same day of the explosion at Donnelly’s Bar, Armagh (see page 50), a fatal bomb explosion occurred outside Kay’s Tavern, Dundalk, Ireland, killing Jack Rooney and Hugh Waters, and injuring 20 others. The attacks were believed to have been coordinated and carried out by the same loyalist group. The Report of the Independent Commission of Inquiry into the Dublin and Monaghan bombings (known as the Barron Report, published in 2003) also linked the Dublin and Monaghan bombings with the same group of loyalists and members of the RUC and UDR. The report also made a number of



criticisms about failures by An Garda Síochána during the investigation.<sup>257</sup> To date not a single person has ever been prosecuted in connection with any of these cross-border bombings.

Amnesty International urges the Irish government to support the establishment of a single comprehensive mechanism to address the past in Northern Ireland and, once established, to provide full cooperation.

## PRINCIPLES FOR A NEW MECHANISM

In light of the research and experience of Amnesty International, and other NGOs across the world, Amnesty International considers that the establishment of a comprehensive mechanism in Northern Ireland to address the outstanding abuses and violations of the past should reflect the following principles:<sup>258</sup>

- The establishment and framework by which any mechanism would function should be the product of extensive and meaningful consultation with all interested parties, in particular victims. It should comply with international human rights norms; respond to the needs of victims; and take account of Northern Ireland's social and institutional context.
- The mechanism should be given the mandate, capacity and resources to clarify, as far as possible, the facts about past human rights violations and abuses. This objective normally includes an inquiry into the causes, antecedents, circumstances, contexts, nature, and extent of violations and abuses. It is clear that any attempt to deal with the legacy of the past in Northern Ireland must recognize that few areas of life remained impervious to the violence of the 30 years of political conflict.
- The mechanism should be able to investigate the range of human rights violations and abuses (including killings, life-threatening attacks resulting in injury, torture and other ill-treatment) committed by all sides involved (including state agents and non-state actors) that occurred during the period under investigation. It should identify which persons, authorities, institutions were involved in human rights violations and abuses, including collusion between the authorities and armed groups. It should be able to determine whether those violations and abuses were a result of deliberate planning, policy or authorization on the part of a state or any of its organs, or of any political organization, armed group or other group or individual. It should also be authorized to investigate incidents that occurred outside of Northern Ireland and have a protocol on how best to ensure cooperation with third state authorities.
- Arrangements should be put in place to enable information gathered by the mechanism which indicates responsibility for criminal acts [or omissions] to be passed to appropriate bodies for criminal investigation and, where there is sufficient admissible evidence, prosecution in accordance with international fair trial standards.
- The mechanism must have the mandate to formulate effective recommendations for providing full reparation to the victims, including their families. This should also include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Guarantees of non-repetition should include measures to address the causes of conflict, the socio-economic legacy of the past, changes needed to law and policy; and to advance reconciliation and promote human rights education and public awareness.
- Any mechanism established must be completely independent of all parties to the conflict including the state. Those working for the mechanism should be selected on the

basis of their competence, proven independence and recognized impartiality. A mechanism aimed at dealing with the past that is not scrupulously independent is likely to be tarnished by real or perceived bias.

- The mechanism must be mandated with the powers and authority to gather all information it considers relevant, including the power to compel the production of information and the attendance of persons as and when necessary.
- The mechanism should enjoy financial, administrative, and operational autonomy. It should receive sufficient resources, including support from a sufficient number of experienced, trained and skilled staff. It should also have access to impartial, expert legal counsel.
- As a matter of principle, all aspects of the work of the mechanism should be made public. As far as possible, the media and public should be given access to the proceedings and to the information on which the commission bases its findings. However, confidentiality may be required to protect the rights of individual victims, witnesses and others who may be at risk of serious harm.
- Victims should be able to participate effectively in investigations and consulted on key issues where their interests are affected. They should always be treated with respect for their dignity and with humanity and appropriate measures should be taken to protect their safety, physical and psychological well-being, and privacy. Particular care should be taken to ensure that they are not re-traumatized as a result of their participation in the process, for example by creating a safe environment for victims to come forward to speak of their experiences. Victims should not be unfairly discriminated against. No group of victims should be prioritized over others. Measures should be taken to ensure the protection of victims and witnesses who may be at risk as a result of their participation in the process.
- The mechanism's procedures should be fair. In particular, persons suspected of committing human rights violations and abuses should have the right to be represented by legal counsel and allowed a right to reply.
- Throughout its operation, information should be regularly disseminated about the mechanism's work, through a range of media and formats to ensure the information is accessible to all interested sections of the public.
- The results of investigations and recommendations should be officially proclaimed, published and widely disseminated.
- The government and any other body or bodies to whom its recommendations are addressed should issue a public response within a reasonable time and should state what steps they will take to implement the recommendations made by the mechanism and a proposed timeline for implementation.

# CONCLUSION AND RECOMMENDATIONS

The patchwork system of investigation that has been established in Northern Ireland has proven inadequate for the task of comprehensively and systematically addressing the past.

When information is delivered incrementally, the broader truth about past violations and abuses remains hidden and those who were in positions of responsibility – both within armed groups and the state – are shielded. All too often, families, and the civil society organizations assisting them, have been left to assemble what truth they can. This fragmented approach, each part of which has itself been subject to protracted legal and public dispute, has exacerbated the lack of any shared public understanding and recognition of the abuses committed by all sides.

Investigating human rights violations and abuses to establish the truth and ensure justice is essential to address impunity in Northern Ireland and ensure meaningful and lasting peace. Victims must also be provided with full and effective reparation.

Steps therefore need to be taken to find a way to systematically and comprehensively address the human rights violations and abuses committed in Northern Ireland's past. Without the political will on all sides to acknowledge and confront past abuses, the lessons of history will go unheeded and the pain caused by Northern Ireland's past will continue to cast a long shadow over its future.

## **Amnesty International recommends that the UK:**

- Establish a single mechanism capable of ensuring that all allegations of human rights abuses and violations in the past are investigated in a prompt, impartial, independent, thorough and effective manner. Such a mechanism should be able to investigate overall patterns of abuse, policy and practice of non-state and state actors, identify those responsible at all levels and issue recommendations aimed at securing victims' right to reparation. The mechanism ought to take over the work currently being carried out by the HET;
- Establish a Bill of Rights for Northern Ireland that takes into account its particular circumstances and history;
- Provide adequate resources across all of the existing mechanisms to address endemic delay in the investigation and processing of historical cases;
- Provide OPONI with powers to compel retired officers to submit to interview; bring civilian staff working with the PSNI under the remit of the OPONI; and amend regulations to ensure there are no restrictions on OPONI investigating deaths where RUC officers were responsible despite the fact that the death might have otherwise been previously investigated.

- Ensure that coroners' inquests in practice allow for effective and thorough investigation of the circumstances of a death;
- Ensure that the PSNI provides timely and adequate disclosure to all bodies undertaking historical investigations and that all processes for disclosing and redacting documents are undertaken in an independent manner and subject to effective challenge;
- Reform the Inquiries Act 2005 to ensure the independence of future inquiries;
- Establish an independent public inquiry into the death of Patrick Finucane;
- Establish an independent public inquiry into the Omagh bombing;
- Until a single overarching mechanism as described is established, reforms should be made to the HET, including: the establishment of an independent complaints mechanism that is easily accessible to those who might want to complain about any aspect of the HET's work; that proper policies and procedures are put in place in the HET to ensure thoroughness of reviews across all cases; provide the HET with powers to compel witnesses and material; as well as the implementation of other recommendations put forward by HMIC. With respect to cases involving the state, it is imperative that these cases are investigated in an impartial manner and by a suitably independent body; a threshold that at present the HET does not meet.

**Amnesty International recommends that the Irish government:**

- Support the establishment of a single comprehensive mechanism to address the past in Northern Ireland and provide it with full cooperation.

# ENDNOTES

<sup>1</sup> All statistics for this report, except where indicated, are taken from the Conflict Archive (CAIN) website, <http://cain.ulst.ac.uk/>.

<sup>2</sup> Amnesty International uses the term human rights “violations” in its legal sense, specifically to refer to acts or omissions by governments that “violate” (i.e. contravene) the state’s obligations under international human rights law. Amnesty International uses the term “abuses” of human rights to refer to acts by armed groups or other non-state actors which infringe on the right to life or other human rights but to which international human rights law does not directly apply. In some cases, however, when armed non-state actors commit human rights abuses, there may also be human rights violations by the state connected with the acts of the armed group. For example there may be a failure by the state to have been duly diligent in preventing the act despite being specifically aware of the threat in question, or the state may fail afterwards to carry out an effective investigation or to bring those responsible to justice in a fair trial. Amnesty International’s use of the term “abuse” or “violation” does not imply any difference in the gravity of the act or the seriousness of the impacts on the victim. Amnesty International categorically condemns and opposes attacks by armed groups or other non-state actors aimed at the destruction of human rights. Such attacks, regardless of whether they are legally characterized as “violations” or “abuses” of human rights, can cause devastating harm to victims; states can and must act at both the international and national levels to protect against such attacks and to respect and fulfil the rights of victims.

<sup>3</sup> Reports by Amnesty International include: *A Report on Allegations of Ill-Treatment made by Persons Arrested Under The Special Powers Act After 8 August, 1971*, November 1971; *Report of an Amnesty International mission to Northern Ireland, 28 November-6 December 1977* (Index: EUR 45/01/78); *Northern Ireland: Killings by Security Forces and "Supergrass" Trials* (Index: EUR 45/08/88); *United Kingdom: Allegations of ill-treatment in Northern Ireland* (Index: EUR 45/19/91); *United Kingdom: Ill-treatment in Northern Ireland: comments on proposed codes of practice for interrogation centres* (Index: EUR 45/11/93); *United Kingdom (Northern Ireland): Alleged coerced confessions during ill-treatment at Castlereagh Holding Centre of eight youths from Ballymurphy, Northern Ireland* (Index: EUR 45/010/1993); *United Kingdom : Fair trial concerns in Northern Ireland: the right of silence* (Index: EUR 45/002/1992); *United Kingdom: Political Killings in Northern Ireland* (Index: EUR 45/001/1994); *An Agenda for Human Rights Protection* (Index: EUR 45/12/97); *Cruel, Inhuman or Degrading Treatment: Detention of Róisín McAliskey* (Index: EUR 45/08/97); *Special Security Units: Cruel, Inhuman or Degrading Treatment* (Index: EUR 45/06/97); *United Kingdom: Inquiry into "Bloody Sunday" - a step towards justice* (Index: EUR 45/001/1998); *United Kingdom: UN Report Criticizes Emergency Law Practices in Northern Ireland* (Index: EUR 45/06/98); *UK: Briefing for the Committee Against Torture* (Index: EUR 45/023/1998); *United Kingdom: Submission by Amnesty International to the Independent Commission on Policing for Northern Ireland* (Index: EUR 45/024/1998); *UK: Briefing to the Human Rights Committee* (Index: EUR 45/011/2008); *United Kingdom/Northern Ireland: Deplorable government decision to renege on promise of public inquiry into Finucane killing* (Index: EUR 45/017/2011).

<sup>4</sup> A recent study showed that an estimated 40% of people in the region experienced one or more traumatic event during the conflict and today 8.8% of the population suffer from post-traumatic stress disorder (the highest rate of the 30 countries surveyed), *The Economic Impact of Post Traumatic Stress Disorder in Northern Ireland: A report on the direct and indirect health economic costs of post traumatic stress disorder and the specific impact of conflict in Northern Ireland*, Bamford Centre for Mental health and Wellbeing and the Northern Ireland Centre for Trauma and Transformation, 2012.

<sup>5</sup> An Independent Commission for the Location of Victims’ Remains was established by an intergovernmental agreement between the Irish and UK governments, signed on 27 April 1999. The purpose of the Commission is to obtain information, confidentially, which may lead to the location of those who were “disappeared”. For further information see <http://www.iclvr.ie/>. See also, *The Disappeared of Northern Ireland’s ‘Troubles’*, produced on behalf of the families of those who disappeared in association with the WAVE trauma centre, 2012.

<sup>6</sup> In June 2013, Baroness Nuala O’Loan, former Police Ombudsman for Northern Ireland, renewed calls for assistance in locating the men’s bodies, see <http://www.thedetail.tv/columns/steven-mccaffery/the-disappeared-%E2%80%93-families-still-looking-for-their-lost-boys>.

<sup>7</sup> For Amnesty International reports see endnote 3. Among others see also, Human Rights

Watch/Helsinki, *Children in Northern Ireland: Abused by Security Forces and Paramilitaries*, July 1992; *To serve without favour: Policing, Human Rights, and Accountability in Northern Ireland*, May 1997; documents by the Committee on the Administration of Justice including: *Plastic Bullets and the Law*, 1985; *The Stalker Affair: More questions than answers*, 1988; *Police Accountability in Northern Ireland*, 1988; *Cause for Complaint: The system for dealing with complaints against the police in Northern Ireland*, 1990; *Submission to the UN Human Rights Committee "Human Rights in Northern Ireland"*, 1991; *Submission to the United Nations Committee Against Torture*, 1991; *Inquests and Disputed Killings in Northern Ireland*, 1992; *The Casement Trials: A Case Study on the Right to a Fair Trial in Northern Ireland*, 1992; *Allegations of Psychological Ill-treatment of Detainees held under Emergency Legislation in Northern Ireland*, 1993; *Submission to United Nations Commission on Human Rights*, 1993; *Submission on the killings of Pearse Jordan, Gerard Maginn & Patrick Finucane, to the UN Special Rapporteur*, 1993; *"Harassment: It's part of life here..." Survey of young people's attitudes to and experience of harassment by the security forces*, 1994; *Submission to the United Nations Committee against Torture*, 1995; *The Misrule of Law: A Report on the policing of events during summer 1996 in Northern Ireland*, 1996. British Irish Rights Watch, *Deadly Intelligence, state involvement in Loyalist murder in Northern Ireland*, 1999; *Submission to the United Nations Committee against Torture*, October 1998; *Submission to the United Nations' Special Rapporteur on Summary and Arbitrary Executions*, 1994. Also the report on the mission of the Special Rapporteur on the independence of judges and lawyers to the United Kingdom of Great Britain and Northern Ireland, 5 March 1998, E/CN.4/1998/39/Add.4; Report to the Government of the United Kingdom on the visit to Northern Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 20 to 29 July 1993.

<sup>8</sup> See, for example, Statement by the Police Ombudsman for Northern Ireland on her investigation into the circumstances surrounding the death of Raymond McCord Junior and related matters, 22 January 2007; the Cory Collusion Inquiry Reports, the Report of the Patrick Finucane Review, and the Stevens I, II, III investigations.

<sup>9</sup> HET Review Summary Report, into the gun and bomb attack on Rock Bar, copy received by the Pat Finucane Centre on 6 June 2009, p. 44: *"Members of the Nationalist community had been making allegations of widespread involvement and collusion by members of the security forces with loyalist paramilitaries. These claims were ridiculed and individual instances previously uncovered had been dismissed by reference to 'rotten apples.' This investigation in 1978 revealed a much more disturbing picture; the Rock Bar case had the potential to validate claims of widespread and routine collusion."*

<sup>10</sup> The Report of the Independent Panel on Alleged Collusion in Sectarian Killings in Northern Ireland (Centre for Civil and Human Rights, Notre Dame Law School), October 2006, examined 24 cases, involving 74 murders, which it identified as part of this series. Further research by the Pat Finucane Centre, which is working with over seventy families connected to the series has attributed over 120 deaths to the Glenanne series of cases.

<sup>11</sup> HET Review Summary Report, into the gun and bomb attack on Rock Bar, copy received by the Pat Finucane Centre on 6 June 2009, p. 35.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*, p. 40-42 and ECHR *McGrath v the United Kingdom*, no. 34651/04, 27 November 2007, §12.

<sup>14</sup> There have been a number of criminal investigations with respect to the Rock Bar attack. There was the initial police investigation following the attack in 1976. This became active again in 1978. There was a further police investigation in 1999, following allegations made by a former RUC officer about security force collusion with loyalist armed groups in a series of incidents. The European Court of Human Rights found that the investigation initiated in 1999 by the RUC was insufficiently independent and found the UK to be in violation of the procedural aspect of Article 2 (the right to life) of the ECHR, *McGrath v the United Kingdom*, no. 34651/04, 27 November 2007, § 26. The case was referred to the HET because of its links to other cases; ordinarily the HET would not review such cases as no one was killed in the attack. The case has now been referred to OPONI. However, the OPONI can only investigate the conduct of the RUC and not senior members of the other security forces or the government.

<sup>15</sup> HET Review Summary Report into the gun and bomb attack on Rock Bar, copy received by the Pat Finucane Centre on 6 June 2009, p. 45.

<sup>16</sup> See the following link for further detail regard what matters are devolved and where Westminster retains responsibility: <https://www.gov.uk/devolution-settlement-northern-ireland>.

<sup>17</sup> Weston Park Agreement 2001; Joint Declaration 2003; St Andrews Agreement 2006; Hillsborough Castle Agreement 2010.

<sup>18</sup> The Independent International Commission on Decommissioning was responsible for overseeing the decommissioning of weapons held by armed groups. It was established by an agreement between the Irish and British governments, signed on 26 August 1997. The 1998 Agreement reaffirmed the commitment to disarmament of armed groups and support of the Independent Commission.

<sup>19</sup> See, for example, para. 2 of the Declaration of Support of the 1998 Agreement and section 6 of the Agreement, para. 1.

<sup>20</sup> The Report of the Independent Commission on Policing for Northern Ireland, *A New Beginning: Policing in Northern Ireland*, September 1999, p. 18.

<sup>21</sup> It should be noted that intra-communal attitudes are often more complex than portrayed here. For further discussion on some of these issues see Graham Ellison, *Youth, Policing and Victimisation in Northern Ireland - Reforming the Royal Ulster Constabulary*, 2000 and Graham Ellison and Jim Smyth, *The Crowned Harp: Policing Northern Ireland*, 2000.

<sup>22</sup> The Committee on the Administration of Justice, *Mapping the Rollback? Human Rights provisions of the Belfast/Good Friday Agreement 15 years on*, conference paper, April 2013.

<sup>23</sup> Concluding observations of the Committee on the Elimination of Racial Discrimination, 14 September 2011, UN Doc CERD/C/GBR/CO/18-20 para. 19 and the concluding observations of the Committee on Economic, Social and Cultural Rights, 12 June 2009, UN Doc E/C.12/GBR/CO/5, para. 16.

<sup>24</sup> Joint Declaration by the British and Irish governments, April 2003, para. 28.

<sup>25</sup> Interview with Amnesty International on 6 February 2013. The individual received a HET Review Summary Report in 2010 and has asked for his name to be withheld in order to protect his privacy.

<sup>26</sup> For further detail on dissident republican groups see Paul Nolan, *Northern Ireland Peace Monitoring Report*, March 2013.

<sup>27</sup> *Ibid.* p. 56-63.

<sup>28</sup> *Ibid.* Also, the Guardian, *Paramilitary attacks treble in West Belfast*, 3 June 2013 and the Belfast Telegraph, *Republican Action Against Drugs admits shooting two men and says it will shoot more*, 4 May 2012.

<sup>29</sup> The Northern Ireland government's programme for Cohesion, Sharing and Integration has recently laid out a target of bringing down all of Northern Ireland's peace walls by 2023.

<sup>30</sup> The Guardian, *Northern Ireland violence brings number of police injured to 350*, 21 August 2013.

<sup>31</sup> The Detail, *US Vice President in new role to bolster troubled Northern Ireland peace process*, 01 August 2013; Office of the Vice President, *Biden's calls to Northern Ireland Ministers*, 15 July 2013, <http://iipdigital.usembassy.gov/st/english/texttrans/2013/07/20130715278649.html#ixzz2cng2LPir>.

<sup>32</sup> *Report of the Consultative Group on the Past*, 2009, p. 24.

<sup>33</sup> ECHR, *El-Masri v "The former Yugoslav Republic of Macedonia"* [GC], no. 39630/09, 13 December 2012, joint concurring opinion of judges Tulkens, Spielman, Sicilianos and Keller, §5. See also, for example, the Inter-American Commission of Human Rights and the Inter-American Court of Human Rights in *Bámaca Velásquez v Guatemala*, Case No 11.129, judgment of 25 November 2000, *Velásquez Rodríguez v Honduras*, Case No 7920, 29 July 1988 and *Contreras et al. v. El Salvador*, Case No 12.517, 31 August 2011.

<sup>34</sup> Public statement by the Police Ombudsman under Section 62 of the Police (Northern Ireland) Act 1998: Relating to the RUC investigation of the alleged involvement of the late Father James Chesney in the bombing of Claudy on 31 July 1972.

<sup>35</sup> *Ibid.*, p. 19.

<sup>36</sup> *Ibid.*, p. 10.

<sup>37</sup> *Ibid.*, p. 11.

<sup>38</sup> Other senior RUC officers also had sight of the correspondence, *ibid.*, p. 11.

<sup>39</sup> See PSNI, *Policing the past, present and future: examining the past and keeping people safe today*, 5 December 2012.

<sup>40</sup> Meeting with Amnesty International, 5 February 2013.

<sup>41</sup> See, for example, ECHR, *El-Masri v. The Former Yugoslav Republic of Macedonia*. [GC], 13 December 2012, § 191; UN HRC, General Comment No 31, UN Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 15. See also Principles 2 and 4 of the Updated Set of principles for the protection and promotion of human rights through action to combat impunity, addendum to the Report of the independent expert (UN Doc: E/CN.4/2005/102/Add.1), 8 February 2005; Principle 24 of the UN Basic Principles on the Right to a Remedy, adopted by General Assembly Resolution 60/147, 21 March 2006 (hereinafter UN Basic Principles on the Right to a Remedy); CAT, GC 3, paras. 16-17; UN Human Rights Council, res. 9/11 'Right to the truth', A/HRC/RES/9/11, 24 September 2008; see also Human Rights Commission, res. 2005/66 'Right to the truth', E/EN.4/RES/2005/66, 20 April 2005; and Study on the right to the

truth, Report of the Office of the United Nations High Commissioner for Human Rights, UN Doc: E/CN.4/2006/91, 8 February 2006, para. 38 and conclusions. See also the International Centre for Transitional Justice, "The Right to Truth", *Truth Seeking: Elements of Creating an Effective Truth Commission*, 2013.

<sup>42</sup> The European Court of Human Rights has held in numerous cases that "*the obligation to protect life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention"*", requires that there should be some form of effective official investigation when individuals have been killed as a result of the use of force, either by State officials or by private individuals (see, for example: *Mladenović v Serbia*, no. 1099/08, 22 May 2012, §51; *Branko Tomašić and Others v. Croatia*, no. 46598/06, 15 January 2009, §62). See also the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, recommended by the United Nations Economic and Social Council in Resolution 1989/65 of 24 May 1989, para. 9 and the Human Rights Committee in General Comment 31, para. 16.

<sup>43</sup> See, for example: ECHR, *Ognyanova and Choban v. Bulgaria*, no. 46317/99, 23 February 2006, §136.

<sup>44</sup> See, for example: ECHR, *Angelova and Iliev v. Bulgaria*, no. 55523/00, 26 July 2007, §98 and *Makaratzis v Greece*, no. 50385/99, 20 December 2004, §§73-74. See also: *R (JL) v Secretary of State for the Home Department* [2006] EWHC 2558 (Admin), §19; *Green v Police Complaints Authority* [2004] UKHL 6, §9; *D v Secretary of State for the Home Department* [2006] EWCA Civ.

<sup>45</sup> Article 12 of the Convention against Torture requires states parties to proceed with "*a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.*" The European Court of Human Rights has also decided in numerous cases that "*where an individual raises an arguable claim that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State's general duty under Article 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 an effective official investigation" (see: *Assenov and Others v. Bulgaria*, 28 October 1998, §102, Reports of Judgments and Decisions 1998-VIII; *Corsacov v. Moldova*, no. 18944/02, 4 April 2006, §68; and *El-Masri v The Former Yugoslav Republic of Macedonia*, no. 39630/09, 13 December 2012, §182). See also the Human Rights Committee in General Comment 31, para. 16.

<sup>46</sup> The European Court has held in numerous cases that the obligation to carry out an effective investigation applies both when the state is directly implicated in, or responsible for, violations of Article 2 and 3 and where the death is as a result of the actions of a non-state actor. In relation to Article 2, see for example: *Yasa v Turkey*, no. 63/1997/847/1054, 2 September 1998, §100. In relation to Article 3, see for example, *M.C. v. Bulgaria*, no. 39272/98, 4 December 2003, §151. See also, the Human Rights Committee in General Comment 31, para. 8 and the Committee against Torture in General Comment 2, which states "[s]ince the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or defacto permission." The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism stated in his report, "Framework principles for securing the human rights of victims of terrorism", UN Doc A/HRC/20/14, 04 June 2012 para. 11 "*the deliberate infliction of lethal or potentially lethal violence by non-State actors in the course of an act of terrorism amounts, in all cases where death or serious physical or psychological injury results, to a grave violation of the human rights of the victim, irrespective of the question of direct or indirect State responsibility.*"

<sup>47</sup> The Human Rights Committee in General Comment 31, para.16, confirms that the right to a remedy in article 2(3) of the ICCPR "*requires that States Parties make reparation to individuals whose Covenant rights have been violated. Without reparation...the obligation to provide an effective remedy...is not discharged.*" The UN Basic Principles on the Right to a Remedy, Principle 3 states "*the obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to... (d) provide effective remedies to victims, including reparation.*" Principle 31 of the Updated Set of principles for the protection and promotion of human rights through action to combat impunity states "*Any human rights violation gives rise to a right to reparation on the part of the victim or his or her beneficiaries, implying a duty on the part of the State to make reparation and the possibility for the victim to seek redress from the perpetrator*". Article 41 of the ECHR provides that "*if the Court finds that there has been a violation*



of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.” Article 14 of the Convention against Torture states “each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.” The Committee against Torture confirms in General Comment 3, para. 1, that Article 14 is applicable to all victims of torture and acts of cruel, inhuman or degrading treatment or punishment (ill-treatment).

<sup>48</sup> *The Factory at Chorzów case (Germany v. Poland)*, Judgment, Permanent Court of International Justice, 13 September 1928, p. 47. The state has a responsibility to provide full reparation to victims of human rights violations committed by state organs, its agents and conduct directed or controlled by the state, including ensuring that victims can seek reparation through the courts or administrative mechanisms: see the International Law Commission’s Draft Articles on State Responsibility and, also, the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, “Framework principles for securing the human rights of victims of terrorism”, UN Doc A/HRC/20/14, 04 June 2012 paras. 52-53. The state must also ensure that victims can seek reparation before the courts for abuses by non-state actors. Where the state fails to do so, including by not investigating human rights abuses, the state may become responsible; the Committee against Torture in General Comment 3, para. 7, states “[w]here State authorities or others acting in their official capacity have committed, know or have reasonable grounds to believe that acts of torture or ill-treatment have been committed by non-State officials or private actors and failed to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors in accordance with the Convention, the State bears responsibility for providing redress for the victims (general comment No. 2).” When it is not possible for victims to seek or obtain reparation against non-state actors (for example, because they cannot be identified or because they lack resources) the state should step in and provide reparation to victims and then seek to reclaim any costs from those responsible, Principle 15 of the UN Basic Principles on the Right to a Remedy states “In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim”.

<sup>49</sup> The Human Rights Committee in General Comment 31, para. 16, states that “the Covenant generally entails appropriate compensation.” The Committee also notes that “where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices” The Committee against Torture similarly states in General Comment 3, para. 6, that “redress includes the following five forms of reparation: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.” The European Court has ordered a range of monetary and non-monetary measures as just satisfaction. Principle 18 of the UN Basic Principles on the Right to a Remedy states “victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, as laid out in principles 19 to 23, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.” Principle 34 of the Updated Set of principles for the protection and promotion of human rights through action to combat impunity states: “The right to reparation shall cover all injuries suffered by victims; it shall include measures of restitution, compensation, rehabilitation, and satisfaction as provided by international law.” Principle 35 deals with guarantees of non-recurrence.

<sup>50</sup> Principle 35, Updated Set of principles for the protection and promotion of human rights through action to combat impunity.

<sup>51</sup> See ECHR: *McKerr v the United Kingdom*, no. 28883/95, 4 May 2001; *Jordan v the United Kingdom*, no. 24746/94, 4 May 2001; *Kelly and others v the United Kingdom*, no. 30054/96, 4 May 2001; *Shanaghan v the United Kingdom*, no. 37715/97 4 May 2001; *McShane v the United Kingdom*, no. 43290/98, 28 May 2002; and *Finucane v the United Kingdom*, no. 29178/95, 01 July 2003.

<sup>52</sup> Concluding observations of the Human Rights Committee, United Kingdom of Great Britain and Northern Ireland, UN Doc CCPR/CO/73/UK, 6 December 2001, para. 8 and Concluding observations of the Human Rights Committee, United Kingdom of Great Britain and Northern Ireland, UN Doc CCPR/C/GBR/CO/6, 30 July 2008, para. 9. The Committee against Torture in 2004, called on the UK to take all practicable steps to “review investigations of deaths by lethal force in Northern Ireland that have remained unsolved, in a manner [...] commanding the confidence of the wider community”, conclusions

and recommendations of the Committee against Torture, United Kingdom of Great Britain and Northern Ireland, UN Doc CAT/C/CR/33/3, 10 December 2004, para. 5.

<sup>53</sup> Comprehensive statistics on the number of cases referred by these mechanisms to the PPS, and the number of those cases where prosecutions were then directed are difficult to obtain due to the way in which case information is held by these bodies. However, in an email to Amnesty International, dated 22 July 2013, the PPS - who highlighted that they cannot identify "legacy" cases from their computer system - provided the following details of cases that were "troubles related" cases and related to offences committed before the 1998 Agreement: four legacy cases were under active consideration by the PPS; one case was pending trial following a direction to prosecute; three cases where decisions not to prosecute had been made; four cases where prosecutions were directed and following trial convictions had been made in three of the cases. In an email dated 23 July 2013, the PSNI stated that between 2007 and 2013, 14 cases had been referred to the PPS for consideration by the PSNI and up to 2010 the HET had referred 5 cases to the PPS.

<sup>54</sup> See for example, ECHR *Kelly and others v United Kingdom*, no. 30054/96, 4 May 2001, §97; *Hugh Jordan v. the United Kingdom*, no. 24746/94, §108; and *Mityaginy v. Russia*, no. 20325/06, 4 December 2012, § 55.

<sup>55</sup> ECHR *Ergi v Turkey*, no. 23818/94, 28 July 1998, §79; *Kaya v Turkey*, no. 22535/93, 19 February 1998, §124.

<sup>56</sup> ECHR *Mikheyev v. Russia*, no. 77617/01, 26 January 2006, §108.

<sup>57</sup> ECHR *Hugh Jordan v. the United Kingdom*, no. 24746/94, 4 May 2001, §107. See also, *Rantsev v Cyprus and Russia*, no. 25965/04, 7 January 2010, §§235-236; *Assenov v Bulgaria*, no. 24760/94, 28 October 1998, §103; *Tanrikulu v Turkey*, no. 23763/94, 8 July 1999, §109; *Gül v Turkey*, no. 22676/93, 8 June 2010, §89; *Colibaba v Moldova*, no. 29089/06, 23 October 2007, §54. See also the 2011 Council of Europe Guidelines on eradicating impunity, H/Inf (2011) 7 and the Istanbul Protocol.

<sup>58</sup> See for example, in relation to Article 2 of the ECHR: *Aslakhanova and others v. Russia*, nos. 2944/06, 8300/07, 50184/07, 332/08, 42509/10, 18 December 2012, §124; and in relation to Article 3: *Dimitar Shopov v. Bulgaria*, no. 17253/07, 16 April 2013, §48.

<sup>59</sup> See for example, in relation to Article 2 of the ECHR: *Eremiášová and Pechová v. The Czech Republic*, no. 23944/04, 16 February 2012, §132; and in relation to Article 3: *Dimitar Shopov v. Bulgaria*, no. 17253/07, 16 April 2013, §48.

<sup>60</sup> See for example, in relation to Article 2 of the ECHR: *Eremiášová and Pechová v. The Czech Republic*, no. 23944/04, 16 February 2012, §132; and in relation to Article 3: *Biser Kostov v. Bulgaria*, no. 32662/06, 10 January 2012, §78.

<sup>61</sup> ECHR *Fedorchenko and Lozenko v. Ukraine*, no.387/03, 20 December 2012, §42. The Human Rights Committee in General Comment 31, para.18 states that when investigations reveal violations of the ICCPR recognized as criminal under either domestic or international law states parties "must ensure that those responsible are brought to justice."

<sup>62</sup> See, for example, ECHR *Fedorchenko and Lozenko v. Ukraine*, no.387/03, 20 December 2012, §43. The principle has also been applied by the European Court of Human Rights in considering violations of Article 3, see: *Lenev v. Bulgaria*, no. 41452/07, 4 December 2012, §125.

<sup>63</sup> ECHR *Yuksel v Turkey*, no. 40154/98, 20 July 2004, §37; and *McKerr v United Kingdom*, no. 28883/95, 4 May 2001, §112.

<sup>64</sup> See for example, the Special Rapporteur on human rights and counter-terrorism report, "Framework principles for securing the human rights of victims of terrorism", UN Doc A/HRC/20/14, 4 June 2012, para. 36.

<sup>65</sup> See for example: ECHR *Isayeva v Russia*, no. 57947/00, §210; *McKerr v United Kingdom*, no. 28883/95, 4 May 2001, §128; *Kelly and others v United Kingdom*, no. 30054/96, 4 May 2001, §114.

<sup>66</sup> See for example: ECHR *Nechto v. Russia*, no. 24893/05, 24 January 2012, §85; *Ilhan v Turkey*, no. 22277/93, 27 June 2000, §97.

<sup>67</sup> See for example, ECHR *Koku v. Turkey*, no. 27305/95, 31 May 2005, §158; *Slimani v France*, no. 57671/00, 27 July 2004, §47.

<sup>68</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Adopted by the United Nations General Assembly on 29 November 1985, Principle 6(a) states: "[t]he responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:(a)Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information." Victims of torture and ill-treatment, extrajudicial executions and enforced disappearance have a specific right to the verification of the facts and full and public disclosure of the truth relating to a violation,

including the fate or whereabouts of the missing. See: Article 24(2) of the International Convention for the Protection of All Persons from Enforced Disappearance; ECHR *Cyprus v. Turkey*, no. 25781/94, 10 May 2001, para. 136; *Barrios Altos v. Peru*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 75, 14 March 2001, §§45-49; Updated Set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1), Principle 4 states “*Irrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims’ fate.*” Committee against Torture, General Comment 3, para. 16; Working Group on Enforced or Involuntary Disappearances, General Comment on the Right to the Truth in Relation to Enforced Disappearances.

<sup>69</sup> ECHR *Paul and Audrey Edwards v United Kingdom*, no. 46477/99, 14 March 2002, §73.

<sup>70</sup> See, for example, *Edwards v United Kingdom*, no. 46477/99, §73, (2002) (Article 2 case); *Bati v Turkey*, no. 33097/96, §137, (2006) (Article 3 case).

<sup>71</sup> Figure taken from a letter from the HET to Amnesty International, dated 22 April 2013. The HET generally reviews cases in a chronological order from when they happened, there are, however, exceptions to this rule. For further detail see <http://www.psnl.police.uk/historical-enquiries-team/het-operating-protocols.htm>.

<sup>72</sup> Language taken from HET Review Summary Reports under the subheading “What is the role of the Historical Enquiries Team?”

<sup>73</sup> Meeting with Amnesty International, 15 January 2013.

<sup>74</sup> In a very limited number of cases the Ministry of Defence has issued an apology or a statement of regret in relation to an individual killed by a British soldier. For example, an apology was issued in the case of Majella O’Hare following an HET review of the case. Majella O’Hare was shot dead by a British soldier on 14 August 1976 when she was 12 years old. A letter to the family signed by the then Defence Secretary, Liam Fox, stated: “*On behalf of the army and the government, I am profoundly sorry that this tragic incident should have happened*”, the Guardian, *Ministry of Defence says sorry for killing of Majella O’Hare*, 28 March 2011.

<sup>75</sup> According to the HET Marian Bowen was killed, alongside her two brothers, Seamus and Michael McKenna, on 21 April 1975 in a bomb blast attributed to the UVF. HET Review Summary Report concerning the deaths of Marian Teresa Bowen (with child), Seamus Eugene McKenna and Michael McKenna, dated 21 April 2011.

<sup>76</sup> Interview with Amnesty International, 21 September 2012.

<sup>77</sup> Operation Motorman was a large operation carried out by the British Army on 31 July 1972 with the aim of re-taking areas controlled by republican armed groups. Further information about Operation Motorman and the death of Daniel Hegarty can be accessed here [http://www.birw.org/archive\\_hegarty.html](http://www.birw.org/archive_hegarty.html).

<sup>78</sup> See the statement made by Lord Carrington at Hansard, House of Lords, 31 July 1972, column 30. In August 2007, the Ministry of Defence apologised for referring to Daniel Hegarty as a “terrorist” in a document it had published in 2006 entitled “Operation Banner – An Analysis of Military Operations in Northern Ireland”. The Ministry of Defence amended the document following a complaint by the family.

<sup>79</sup> HET Review Summary Report concerning the death of Daniel Hegarty.

<sup>80</sup> When Daniel Hegarty was killed there were no effective and independent investigations into his death as a result of an agreement between the British Army and the RUC that the Royal Military Police (RMP) would deal with any soldiers who were witnesses or suspects in a death. In 2003, the Northern Ireland High Court confirmed that this process was not compliant with Article 2 of the ECHR - *Application by Mary Louise Thompson for Judicial Review* [2003] NIQB 80.

<sup>81</sup> The initial inquest into the death of Daniel Hegarty was held in 1973 and recorded an open verdict.

<sup>82</sup> Interview with Amnesty International, 14 September 2012.

<sup>83</sup> HMIC, *Inspection of the Police Service of Northern Ireland Historical Enquiries Team*, 3 July 2013.

<sup>84</sup> Press release for the HMIC Inspection of the Police Service of Northern Ireland Historical Enquiries Team, *The Historical Enquiries Team’s approach to reviewing deaths during ‘the troubles’ is inconsistent, has serious shortcomings and so risks public confidence, HMIC finds*, 3 July 2013.

<sup>85</sup> HMIC, *Inspection of the Police Service of Northern Ireland Historical Enquiries Team*, 3 July 2013, page 17.

<sup>86</sup> See Patricia Lundy: *Can the Past be Policed?: Lessons from the Historical Enquiries Team Northern Ireland*, Journal of Law and Social Challenges, Volume 11, 2009 and Patricia Lundy, *Assessment of HET Review Processes and Procedures in Royal Military Police Investigation Cases*, 2012.

<sup>87</sup> HET Review Summary Report into the death of William Francis McGreaney, 27 May 2010, p. 39.

<sup>88</sup> It should be noted that by interviewing suspects under caution, or using the “pragmatic approach” the HET was acting contrary to a MoU agreed with the PSNI that required the HET - from January 2010 - to pass all cases to the PSNI that required criminal investigation. The HMIC found that this MoU was only being applied in cases involving non-state actors.

<sup>89</sup> See The Detail, *Declassified documents reveal army lobbied Attorney General not to prosecute soldiers*, 15 April 2013.

<sup>90</sup> For copies of some of the archive documents see the following links:  
<http://www.thedetail.tv/system/uploads/files/274/original/King%20letter%20to%20AF.pdf?1365767205>;  
[http://www.patfinucanecentre.org/declassified/ag1971p2\\_3.pdf](http://www.patfinucanecentre.org/declassified/ag1971p2_3.pdf) and  
[http://www.patfinucanecentre.org/declassified/comments\\_ag71paras12\\_22.pdf](http://www.patfinucanecentre.org/declassified/comments_ag71paras12_22.pdf).

<sup>91</sup> See, for example, ECHR *McCaughy and Others v the United Kingdom*, no. 43098/09, 16 July 2013 §120 referencing a submission to the Court made by the Northern Ireland Human Rights Commission; Hansard 8 Dec 2010: Column 135WH, Civilian Deaths (Ballymurphy); British Irish Rights Watch, *Historical Enquiries Team report on the death of William McGreanery is welcome but raises disturbing questions*; John Patrick Cunningham - Statement by Alan Brecknell (PFC), 19 March 2013; Human Rights Watch/Helsinki, *Northern Ireland: Continued abuse by all sides*, March 1994; Amnesty International, *United Kingdom: Killings by security forces in Northern Ireland*, (Index: EUR 45/12/91).

<sup>92</sup> HET Summary Review Report, 27 May 2010 into the death of William Francis McGreanery. The HET report led to the Ministry of Defence issuing an apology for the killing.

<sup>93</sup> See United Kingdom Response to the CAJ/PFC and RFJ submissions made to the Committee of Ministers, February 2012, para. 25.

<sup>94</sup> Interview with Amnesty International, 12 September 2012.

<sup>95</sup> 2010 HET Review Summary Report into the death of William (Billy) McKavanagh. The report does note that this allegation was disputed by Billy McKavanagh's cousin.

<sup>96</sup> 2011 HET Review Summary Report into the death of William (Billy) McKavanagh. The report stated that: “The HET does not believe that Billy McKavanagh had the rivet gun when he was shot by soldier A. If correct, then it follows that soldier A must have shot the wrong man. This scenario was put to the former soldier by the HET during interview. He remained adamant though that he fired at and hit the man who had the rivet gun. The HET strongly believes he is mistaken.”

<sup>97</sup> Amnesty International was shown a copy of the letter by the family, extracts can also be seen at: <http://www.theguardian.com/uk/2011/nov/01/mod-apology-billy-mckavanagh-killing>.

<sup>98</sup> Interview with Amnesty International, 17 September 2012.

<sup>99</sup> See ECHR, *Isayeva, Yusupova & Bazayeva v Russia*, nos. 57947/00, 57948/00 & 57949/00, 24 February 2005, §209; *Shanaghan v the United Kingdom*, no 37715/97, 4 May 2001, §88; *Finucane v the United Kingdom*, no. 29178/95, 1 July 2003, § 67; *Ilhan v Turkey* [GC], no. 22277/93, 27 June 2000, §63. See also the Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations, Adopted by the Committee of Ministers on 30 March 2011 at the 1110th meeting of the Ministers' Deputies, at V(3).

<sup>100</sup> Meeting with Amnesty International, 4 December 2012.

<sup>101</sup> Meeting with Amnesty International, 4 February 2012.

<sup>102</sup> HMIC, *Inspection of the Police Service of Northern Ireland Historical Enquiries Team*, 3 July 2013, p. 16.

<sup>103</sup> See ECHR, *Finucane v the United Kingdom*, no. 29178/95, 01 July 2003, §82, *Eremiasova and Pechova v Czech Republic*, no. 23944/04, 16 February 2012, §154.

<sup>104</sup> UK response to the CAJ/PFC submission made to the Committee of Ministers, September 2011.

<sup>105</sup> See the website for OPONI which notes that “The law does not permit the police in Northern Ireland to investigate complaints made by members of the public about police officers. These must be referred to the Police Ombudsman's Office for independent investigation. The PSNI's Historical Enquiries Team, which is examining all murders during ‘The Troubles’, therefore refers to the Police Ombudsman's Historical Investigations Directorate any matter arising from its work which raises a concern of possible police criminality.”

[http://www.policeombudsman.org/modules/historical\\_investigations/index.cfm/view/intro](http://www.policeombudsman.org/modules/historical_investigations/index.cfm/view/intro)

<sup>106</sup> ECHR, *Brecknell v the United Kingdom*, no. 32457/04, 27 November 2007, §76.

<sup>107</sup> In a letter to Amnesty International, dated 22 April 2013, the HET confirmed that families are traced in over 99% of cases, of which 69.7% choose to engage.

<sup>108</sup> HMIC, *Inspection of the Police Service of Northern Ireland Historical Enquiries Team*, 3 July 2013.

<sup>109</sup> *Ibid*, p. 22-23.

<sup>110</sup> CM/Inf/DH(2006)4, para. 65.

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- <sup>111</sup> Interim Resolution CM/ResDH(2007)73, annex I.
- <sup>112</sup> 4 Ministers Deputies Information documents CM/ResDH(2007)73 and Interim Resolution CM/ResDH(2009)44.
- <sup>113</sup> Memorandum of Understanding between HET and C2 Serious Crime, undated, accessible here: [http://www.caj.org.uk/files/2012/02/16/CAJ\\_and\\_PFC\\_Joint\\_Submission\\_to\\_the\\_Committee\\_of\\_Ministers\\_%28February\\_2012%29.pdf](http://www.caj.org.uk/files/2012/02/16/CAJ_and_PFC_Joint_Submission_to_the_Committee_of_Ministers_%28February_2012%29.pdf)
- <sup>114</sup> PSNI, *Policing the past, present and future: examining the past and keeping people safe today*, 5 December 2012. In a meeting with Amnesty International on 4 December 2012, the Director of the HET also emphasized that approximately 30% of the HET's budget and 40-50% of senior staff time was going into investigating Operation Ballast, preventing them from moving forward effectively with reviews in other cases.
- <sup>115</sup> For further detail see ECHR *Shanaghan v the United Kingdom*, no 37715/97, 4 May 2001, §§77-80 and Human Rights Watch/Helsinki Report, *To serve without favour: Policing, Human Rights, and Accountability in Northern Ireland*, May 1997.
- <sup>116</sup> ECHR *Shanaghan v the United Kingdom*, no 37715/97, 4 May 2001.
- <sup>117</sup> See Interim Resolution CM/ResDH(2009)44, Action of the Security Forces in Northern Ireland (Case of McKerr against the United Kingdom and five similar cases), 19 March 2009 and Interim Resolution CM/ResDH(2007)73, Action of the Security Forces in Northern Ireland (Case of McKerr against the United Kingdom and five similar cases), 6 June 2007.
- <sup>118</sup> Interview with Amnesty International, 4 December 2012.
- <sup>119</sup> Confidential overview of HET report into the death of Patrick Shanaghan written by the family, on file with Amnesty International.
- <sup>120</sup> Operation Ballast began following a complaint by Raymond McCord regarding the murder of his son, Raymond McCord Junior, who was beaten to death by the UVF on 9 November 2007. Due to links to other killings, a wide-ranging investigation was carried out concerning police handling and management of identified informants from within a UVF unit in North Belfast and Newtonabbey, primarily between 1991 and 2003. The investigation focused on the activities of one informant who was a suspect in the murder of Raymond McCord's son. The Police Ombudsman found intelligence reports and other documents linking the informant to ten murders, ten attempted murders and 72 different other crimes between 1991 and 2003, including (but not limited to): armed robbery; assault/grievous bodily harm; control/use of bombing equipment; drug dealing; hijacking; intimidation; kidnap; "punishment" attacks; and threats to kill. The informant had been paid in excess of £79,000 during a twelve year period from 1991 – 2003 that he acted as a police informer. See Statement by the Police Ombudsman for Northern Ireland on her investigation into the circumstances surrounding the death of Raymond McCord Junior and related matters, 22 January 2007.
- <sup>121</sup> Sam Pollock resignation letter, quoted in report by Tony McCusker published on 16 June 2011 (see endnote 122). In a later BBC interview he stated that he had "*lost confidence in the direction of the office and independence of the office in relation to very serious matters. The perspective of the police mind became uppermost.*" BBC Spotlight: The Whistleblower and the Watchdog, broadcast on 18 October 2011.
- <sup>122</sup> The first report was by the Committee on the Administration of Justice, *Human Rights and Dealing with Historic Cases – A Review of the Office of the Police Ombudsman for Northern Ireland*, published June 2011. The report outlines a growing lack of confidence in the Office and raises concerns in relation to the actual and perceived effectiveness, efficiency, transparency and independence of the Office of the Police Ombudsman. The second report, published on 16 June 2011, was written by Tony McCusker at the request of the Minister for Justice, David Ford, to review the allegations made by the former Chief Executive Sam Pollock, which highlighted a number of governance and senior management issues in the OPONI. Accessible here: <http://www.dojni.gov.uk/index/media-centre/police-ombudsman-investigation-report.pdf>. The third report was by the CJINI, published September 2011, accessible here <http://www.cjini.org/TheInspections/Inspection-Reports/Latest-Publications.aspx?did=2297>
- <sup>123</sup> CJINI, *An inspection of the Office of the Police Ombudsman for Northern Ireland*, September 2011.
- <sup>124</sup> *Ibid.*
- <sup>125</sup> Joint Press Release by British Irish Rights Watch, the Committee on the Administration of Justice and the Pat Finucane Centre, 20 October 2011.
- <sup>126</sup> Interview with Amnesty International, 14 September 2012.
- <sup>127</sup> CJINI, *An inspection of the Office of the Police Ombudsman for Northern Ireland*, September 2011.
- <sup>128</sup> See BBC Spotlight: The Whistleblower and the Watchdog, broadcast on 18 October 2011, interview with Dr Michael Maguire. The same programme also interviewed Sam Pollock, who had been Chief

Executive of OPONI when the Dalton report was drafted who stated, “*I am in no doubt from within the office there were concerns about the changing of that report.*” In the programme the Police Ombudsman at the time, Al Hutchinson, rejected the claim that there was any deliberate lowering of criticism of the police.

<sup>129</sup> Public Statement by the Police Ombudsman under Section 62 of the Police (Northern Ireland) Act 1998 Relating to the complaints by the relatives of a victim in respect of the events surrounding the bombing and murders at 38 Kildrum Gardens on 31 August 1988, July 2013.

<sup>130</sup> *Ibid* p. 59.

<sup>131</sup> *Ibid* p. 62.

<sup>132</sup> Statement from the family of Sean Dalton, accessible here:

<http://www.thedetail.tv/system/uploads/files/314/original/Statement%20from%20the%20family%20of%20Sean%20Dalton.pdf?1373384048>

<sup>133</sup> The CJI conducted a follow-up review of OPONI and found that substantial progress had been made in reforming the Office, CJI, *The independence of the Office of the Police Ombudsman for Northern Ireland: A follow-up review of inspection recommendations*, January 2013.

<sup>134</sup> As of August 2013, only one report had been published following these reforms (the case of Sean (Eugene) Dalton). It therefore remains too early to fully assess the independence and effectiveness of the OPONI under the new Police Ombudsman following the reforms CJINI has stated that there will be another review of the OPONI when a number of historic investigations have been completed.

<sup>135</sup> Police (Northern Ireland) Act 2003, part one, section 16 and RUC (Complaints etc) Regulations 2001, regulation 5 and 6. Also BBC, *RUC Troubles killings 'caught in legal limbo'*, 24 November 2011 and the Belfast Telegraph, *Anger as RUC killing probes are dropped*, 25 November 2011.

<sup>136</sup> See reports by Amnesty International including: *Northern Ireland: Killings by Security Forces and "Supergrass Trials"* (Index: EUR 45/08/88); *United Kingdom: Political killings in Northern Ireland* (Index: EUR 45/001/1994) and *United Kingdom: submission by Amnesty International to the Independent Commission on Policing for Northern Ireland* (Index: EUR 45/024/1998). Also ECHR: *McKerr v the United Kingdom*, no. 28883/95, 4 May 2001, §112 and § 128; *Shanaghan v the United Kingdom*, no. 37715/97, 4 May 2001, §89 and §104; *Hugh Jordan v the United Kingdom*, no. 24746/94, 4 May 2001, §106 and §120.

<sup>137</sup> Public Statement by the Police Ombudsman under Section 62 of the Police (Northern Ireland) Act 1998 Relating to the complaints by the relatives of a victim in respect of the events surrounding the bombing and murders at 38 Kildrum Gardens on 31 August 1988, July 2013, p. 2. See also p. 37 of the Operation Ballast report in which the Police Ombudsman stated that: “*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. In addition to this, their refusal to co-operate has had the effect of lengthening the investigation, and of depriving the public of their understanding of what happened.*”

<sup>137</sup> See Police Ombudsman of Northern Ireland Statutory Report: Review under Section 61(4) of the Police (Northern Ireland) Act 1998, p. 33-34.

<sup>138</sup> In *Paul and Audrey Edwards v the United Kingdom*, no. 46477/99, 14 March 2002, § 79, the Court stated that it “*finds that the lack of compulsion of witnesses who are either eyewitnesses or have material evidence related to the circumstances of a death must be regarded as diminishing the effectiveness of the inquiry as an investigative mechanism. In this case, as in the Northern Irish judgments referred to above, it detracted from its capacity to establish the facts relevant to the death, and thereby to achieve one of the purposes required by Article 2 of the Convention.*” See also *McKerr v the United Kingdom*, no. 28883/95, 4 May 2001, §144; *Hugh Jordan v the United Kingdom*, no. 24746/94, 4 May 2001, §127; *Kelly and others v the United Kingdom*, no. 30054/96 § 121; *Shanaghan v the United Kingdom*, no. 37715/97 4 May 2001, §50.

<sup>139</sup> The then Chief Constable of the PSNI, Sir Ronnie Flanagan also rejected the findings of the OPONI's investigation into the Omagh bombing which was highly critical of the RUC.

<sup>140</sup> CJINI, *An inspection of the Office of the Police Ombudsman for Northern Ireland*, September 2011, and the Committee on the Administration of Justice, *Human Rights and Dealing with Historic Cases – A Review of the Office of the Police Ombudsman for Northern Ireland*, June 2011.

<sup>141</sup> In a press release issued by the Pat Finucane Centre and British Irish Rights Watch the following concerns were highlighted: that the 2010 report appeared to ignore evidence that the police knew by 1977 at the latest that the UVF were responsible for the bombing; it minimised the impact of early

fabricated RUC reports that just before the explosion a man entered the bar and left a suitcase, to be picked up by a known member of the IRA; that the report contained contradictory findings, including stating initially that the allegation that police failed to conduct a thorough investigation was not substantiated, while later on in the report stating that the allegation was partly substantiated; and that it left out the name of one of the people killed in the bombing, adding instead the name of one of the relatives who had issued the complaint to the Police Ombudsman.

<sup>142</sup> Public statement by the Police Ombudsman under Section 62 of the Police (Northern Ireland) Act 1998: Relating to the complaint by relatives of the victims of the bombing of McGurk's Bar on 4 December 1971, pp. 77-78.

<sup>143</sup> *Ibid.*

<sup>144</sup> Statement by the Chief Constable following the OPONI report into the McGurk's Bar bombing, February 2011.

<sup>145</sup> Letter to the Pat Finucane Centre, dated 27 July 2011, from the Chief Constable of the PSNI.

<sup>146</sup> BBC, *McGurk's Bar families to begin Belfast legal challenge*, 1 August 2013.

<sup>147</sup> See section 14 of the Coroners Act (Northern Ireland) 1959.

<sup>148</sup> See Coroners Act (Northern Ireland) 1959 and the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963.

<sup>149</sup> Amnesty International wrote extensively about the main features of inquests that obstructed the victims' families from obtaining the full facts, including the lack of a final verdict, the refusal of security personnel to testify, the lack of legal aid, the non-disclosure in advance of forensic and witness statements, and concerns regarding the government's issuing of Public Interest Immunity Certificates which blocked the disclosure of crucial information during the inquest. See: *Killings by Security Forces in Northern Ireland* (Index: EUR 45/08/88); *United Kingdom: Political killings in Northern Ireland*, (Index: EUR 45/001/1994); *UK: Briefing for the Committee against Torture* (Index: EUR 45/023/1998). See also European Court of Human Rights judgments in the McKerr groups of cases.

<sup>150</sup> ECHR *McKerr v the United Kingdom*, no. 28883/95, 4 May 2001, §157; *Hugh Jordan v the United Kingdom*, no. 24746/94, 4 May 2001, §142; *Kelly and others v the United Kingdom*, no. 30054/96, 4 May 2001, §136.

<sup>151</sup> ECHR *Finucane v the United Kingdom*, no. 29178/95, 1 July 2003, §49.

<sup>152</sup> ECHR *Shanaghan v the United Kingdom*, no. 37715/97 4 May 2001, §117; *McKerr v the United Kingdom*, no. 28883/95, 4 May 2001, §148; *Kelly and others v the United Kingdom*, no. 30054/96, §136.

<sup>153</sup> ECHR *Finucane v the United Kingdom*, no. 29178/95, 01 July 2003, §80; *Shanaghan v the United Kingdom*, no. 37715/97 4 May 2001, §120; *McKerr v the United Kingdom*, no. 28883/95, 4 May 2001, §152; *Hugh Jordan v the United Kingdom*, no. 24746/94, 4 May 2001, §142.

<sup>154</sup> *McKerr v the United Kingdom*, no. 28883/95, 4 May 2001, §144; *Hugh Jordan v the United Kingdom*, no. 24746/94, 4 May 2001, §142.

<sup>155</sup> *McKerr v the United Kingdom*, no. 28883/95, 4 May 2001, §§142-155 & 157-161; *Finucane v the United Kingdom*, no. 29178/95, 1 July 2003, §78.

<sup>156</sup> *Hugh Jordan v the United Kingdom*, no. 24746/94, 4 May 2001; §144.

<sup>157</sup> *In the matter of an application by Brigid McCaughey and another for Judicial Review (Northern Ireland)* [2011] UKSC 20, 18 May 2011. Prior to this judgment the position in UK domestic law was that there was no domestically enforceable legal obligation that inquests comply with Article 2 of the ECHR with respect to deaths that occurred before the Human Rights Act 1998 came into force. See *re McKerr* [2004] UKHL 12, where the Law Lords ruled that the Human Rights Act 1998 did not apply retrospectively and so could not be used to force the state to hold an Article 2 compliant inquest into a death that occurred before the Act came into force. In 2007, the House of Lords stated that this position also applied to inquests that were ongoing and incomplete, *Jordan v Lord Chancellor* [2007] UKHL 14.

<sup>158</sup> *In the matter of an application by Brigid McCaughey and another for Judicial Review (Northern Ireland)* [2011] §§82 and 83.

<sup>159</sup> ECHR *McCaughy and Others v the United Kingdom*, no. 43098/09, 16 July 2013, §144.

<sup>160</sup> ECHR *McCaughy and Others v the United Kingdom*, no. 43098/09, 16 July 2013, concurring opinion of Judge Kalaydjieva p. 38.

<sup>161</sup> A series of killings by a special unit of the RUC in 1982 gave rise to serious allegations of an official policy of planned killings of suspected members of armed opposition groups, known as the "shoot-to-kill policy. Subsequent killings by security forces, in particular by the army's Special Air Services (SAS) regiment, in the next decade increased suspicions that such a policy existed. Amnesty International had conducted detailed research into cases where it was alleged that security force personnel deliberately

killed people as an alternative to arresting them. In its report on Political Killings in Northern Ireland, published in 1994, the organization concluded that: "*The pattern that has emerged, and that causes concern, is one of repeated allegations that suspects are arbitrarily killed rather than being arrested, that members of the security forces believe they can operate with impunity, and that this is reinforced by government failure to take steps to prevent unlawful killings. The government evades responsibility by hiding behind an array of legal procedures and secret inquiries which serve to cloud the issues.*" United Kingdom: Political killings in Northern Ireland, EUR 45/001/1994 (1994), p. 7. Also *United Kingdom: Killings by Security Forces and 'supergrass trials'* (Index: EUR 45/08/88).

<sup>162</sup> As part of an ongoing surveillance operation, members of the SAS had been observing a mushroom shed when Martin McCaughey and Desmond Grew arrived wearing gloves and balaclavas and armed with AK47 rifles. Both were members of the IRA.

<sup>163</sup> See also ECHR *McCaughy and Others v the United Kingdom*, no. 43098/09, 16 July 2013.

<sup>164</sup> The exception to this was with respect to Soldier A, who fired the first shot. The Coroner initially ruled that material relating to his involvement in previous lethal force incidents - including that he had been involved in the fatal shooting of Francis Bradley - could also not be provided to the jury or used during the cross-examination of Soldier A. The lawyers for the next-of-kin took judicial review proceedings challenging this decision. On 28 March 2012 the Belfast High Court ruled that the Coroner had been wrong in his ruling, *An application for leave to apply for judicial review by Brigid McCaughey (No. 2)* [2012] NIQB. 28 March 2012, §22. Despite this ruling, however, there was a failure by the Coroner to ensure that Soldier A re-attended the inquest in order to answer questions concerning other lethal force incidents, meaning that he could not be cross-examined on this issue. See ECHR *McCaughy and Others v the United Kingdom*, (no. 43098/09) 16 July 2013, for further detail.

<sup>164</sup> In light of these domestic proceedings the European Court of Human Rights declined to rule on the issue of whether the inquest was able to effectively investigate the broader circumstances of the deaths of Martin McCaughey and Desmond Grew, ECHR *McCaughy and Others v the United Kingdom*, no. 43098/09, 16 July 2013.

<sup>165</sup> The Guardian, *Were Bloody Sunday soldiers involved in 'Ballymurphy massacre'?*, 20 June 2010; Hansard 8 December 2010: Column 35WH.

<sup>166</sup> BBC, *Call for independent panel to review Ballymurphy killings*, 10 July 2013.

<sup>167</sup> See endnote 3.

<sup>168</sup> See *Inter-American Court of Human Rights (IACtHR), Gomes-Lund et al. v. Brazil (2010), paras 200-2*.

<sup>169</sup> Those killed were Seamus Grew, Roddy Carroll, Gervaise McKerr, Sean Burns, Eugene Toman, and 17 year-old Michael Tighe who were shot dead by the RUC's elite Special Support Unit (SSU) in a series of controversial shootings in Co Armagh during a three week period in 1982. Apart from Michael Tighe, they were all members of republican armed groups.

<sup>170</sup> Stalker was removed from the investigation after having complained that the police obstructed his inquiry. See John Stalker, *Stalker*, Penguin Books Ltd, 1988.

<sup>171</sup> See PSNI, *Re Judicial Review* [2010] NIQB 66, 27 May 2010.

<sup>172</sup> Delays experienced in another "shoot-to-kill" case are outlined in the European Court of Human Rights judgment *McCaughy and Others v the United Kingdom*, no. 43098/09 16 July 2013. See also media reports, including the Detail, *Coroner warns PSNI delays threatens his ability to hold proper inquiries*, 31 May 2013.

<sup>173</sup> In May 2012, Coroner Leckey asked the Crown Solicitor's Office (CSO) to provide the families' legal team with an explanation of how the reading and redacting process is carried out by the PSNI, setting out whether any personnel involved in the process have Special Branch experience, and if so the extent of that experience. In a letter to the coroner, CSO confirmed: "*Five personnel, together with a lawyer, are engaged on the preparation of the materials in this matter. Of the five personnel, four served as Special Branch officers and one as an intelligence officer in the RUC. The work of the five personnel is overseen by the lawyer.*"

<sup>174</sup> The European Court of Human Rights has repeatedly underlined that those involved in investigations must have hierarchical, institutional and practical independence from those implicated in the incident. See, for example, *Isayeva, Yusupova & Bazayeva v Russia*, nos. 57947/00, 57948/00 & 57949/00, 24 February 2005, §210.

<sup>175</sup> The Detail, *Coroner warns PSNI delays threatens his ability to hold proper inquiries*, 31 May 2013.

<sup>176</sup> See the Inquest statement from the McKerr, Toman and Burns families, accessible here: <http://www.thedetail.tv/system/uploads/files/303/original/INQUEST%20STATEMENT%20FROM%20THE%20McKERR.pdf?1370010814>.



<sup>177</sup> Northern Ireland Audit Office, *Police Service of Northern Ireland: Use of Agency Staff*, 2 October 2012. See also the Detail, *Rehiring in the police: the full story*, 03 October 2012 and the BBC, *Audit Office RUC rehiring report stark reading for PSNI*, 3 October 2012.

<sup>178</sup> This is also noted in the Commission for Victims and Survivors, *Comprehensive Needs Assessment*, February 2012.

<sup>179</sup> See Police Ombudsman of Northern Ireland Statutory Report: Review under Section 61(4) of the Police (Northern Ireland) Act 1998, recommendation 4 page 18, and Recommendation 2 in Appendix B “Summary of 2007 review recommendations – prepared pursuant to S.62(4) Police (Northern Ireland) Act 1998”.

<sup>180</sup> Email from the PSNI to Amnesty International, dated 23 July 2013.

<sup>181</sup> Amnesty International meeting with PSNI, 18 September 2013.

<sup>182</sup> *Ibid.*, the PSNI paper *Policing the past, present and future: examining the past and keeping people safe today*, 5 December 2012, highlights that the PSNI’s resources are allocated against threat, harm and risk, including: The positive duty to take feasible operational steps to protect life under Article 2(1) of the ECHR ie where a known suspect in a case is believed to pose an ongoing threat to the lives of others; ‘Live’ cases that have occurred that month or in the preceding few months; the existence of a potential evidential opportunity and whether this offers a realistic prospect of criminal proceedings being brought.

<sup>183</sup> This is in keeping with the European Court of Human Rights dicta that “the object and purpose of the Convention as an instrument for the protection of individual human beings requires that its provisions be interpreted and applied so as to make its safeguards practical and effective.” See, for example, *McCann and Others v the United Kingdom* [GC], no. 18984/91, 27 September 1995, § 146; Article V of the Council of Europe Guidelines on Eradicating Impunity, which underlines the “absolute character” of the duty to investigate. UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989, para. 10.

<sup>184</sup> See ECHR, *Kelly v. the United Kingdom* no. 30054/96, §97.

<sup>185</sup> See PSNI, *Policing the past, present and future: examining the past and keeping people safe today*, 5 December 2012. The case was reassigned on the grounds that the Major Investigations Team who had been charged with the case did not have sufficient resources in light of demands of current major crime investigations it was undertaking. Instead the case was assigned to the Retrospective Murder Investigation Team, a team set up with the purpose of examining non-conflict related murders that occurred between 1969 and 10 April 98 and all unsolved murders between 10 April 98 and the creation of Crime Operations on 1 March 2004.

<sup>186</sup> *Ibid.*, p. 10.

<sup>187</sup> See for example, ECHR *Koku v. Turkey*, no. 27305/95, 31 May 2005, §158; *Slimani v France*, no. 57671/00, 27 July 2004, §47.

<sup>188</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Adopted by the United Nations General Assembly on 29 November 1985, Principle 6(a).

<sup>189</sup> Interview with Amnesty International, 6 February 2013.

<sup>190</sup> See for example the following Amnesty International documents: *UK: Briefing to the Human Rights Committee*, EUR 45/011/2008; *UK: Human Rights: A broken promise*, EUR/004/2006; *UK: The government must withdraw the Inquiries Bill and act on its promise*, EUR 45/003/2005. In July 2008, the UN Human Rights Committee also expressed its concern at this legislation, see UN Doc: CCPR/C/GBR/CO/6, 30 July 2008. Similar concerns have been voiced by senior members of the judiciary in the UK and elsewhere; by the parliamentary Joint Committee on Human Rights; and by national and international human rights organizations.

<sup>191</sup> For further information regarding public inquiries in the UK see Jason Beer QC, *Public Inquiries*, Oxford University Press, 2011, page 1-3; see also <http://publicinquiries.org/>.

<sup>192</sup> The inquiries that have been established are: The Bloody Sunday Inquiry, the inquiry report is accessible here: <http://webarchive.nationalarchives.gov.uk/20101103103930/http://report.bloody-sunday-inquiry.org/>. For further detail see also Amnesty International’s public statement: *UK: Bloody Sunday Inquiry vindicates the innocence of victims* (Index: EUR 45/008/2010). The Rosemary Nelson Inquiry, see p. 48-49 for further detail. The Billy Wright Inquiry: Billy Wright was a leading loyalist killed in Maze Prison in 1997. The final report of the Billy Wright Inquiry was published in September 2010 and found no evidence of state collusion in his death, but in light of failings by authorities, the report recommended a number of reforms to the prison service. The Robert Hamill Inquiry: the report of the inquiry into the sectarian killing of Robert Hamill, a 25-year-old Catholic man, has been completed, but

will not be published until criminal proceedings against individuals on charges of perverting the course of justice is completed. In Ireland, the Irish government established a public inquiry into the killings of two senior Royal Ulster Constabulary (RUC) Chief Superintendent Harry Breen and Superintendent Robert Buchanan.

<sup>193</sup> The Weston Park Agreement was aimed at the further implementation of the 1998 Agreement. A copy of the text can be accessed here: <http://cain.ulst.ac.uk/events/peace/docs/bi010801.htm>.

<sup>194</sup> The Irish government established a public inquiry into the killings of two senior Royal Ulster Constabulary (RUC) Chief Superintendent Harry Breen and Superintendent Robert Buchanan. The UK authorities established inquiries into three other cases: the killings of Rosemary Nelson, Robert Hamill and Billy Wright.

<sup>195</sup> *Cory Collusion Inquiry Report: Patrick Finucane*, para. 1.297

<sup>196</sup> Stevens Inquiry: Overview and Recommendations, 17 April 2003, para. 1.3.

<sup>197</sup> In 2003, the European Court of Human Rights found that the UK had violated its procedural obligations under article 2 of the ECHR with respect to the case of Patrick Finucane, *Finucane v the United Kingdom*, no. 29178/95, 1 July 2003, §84.

<sup>198</sup> The UK government has insisted that an inquiry in this case could only be held under the Inquiries Act 2005, which, in light of the possibility for government interference, the family had rejected. Justice Cory stated that the Act would make a “meaningful inquiry impossible” and that he could not “contemplate any self-respecting Canadian judge accepting an appointment to an inquiry constituted under the new proposed (Justice Cory’s letter to US Congressman Chris Smith of 15 March 2005). However, following the Baha Mousa inquiry, in which the Minister provided undertakings not to restrict access to documents, the family agreed to further discussions as to how an inquiry under the Inquiries Act 2005 might be able to proceed in a human rights compliant manner.

<sup>199</sup> BBC *Pat Finucane killing: ‘Far worse than anything alleged in Iraq or Afghanistan’*, 31 January 2013.

<sup>200</sup> *Report of the Patrick Finucane Review*, December 2012 para. 116.

<sup>201</sup> *Ibid* para. 15.

<sup>202</sup> *Ibid* para. 116.

<sup>203</sup> Statement on Sir Desmond de Silva’s report into the nature and extent of state collusion in the murder of Patrick Finucane, 12 December 2012.

<sup>204</sup> The de Silva Report states in the executive summary, para. 7, that: “*I decided at the outset of my Review that it was important to conduct a far more wide-ranging process than a straightforward examination of the available evidence gathered by the criminal investigations. I have, therefore, sought and received new documentary material from all the organisations cited in my Terms of Reference and a number of Government Departments. That material has included new and significant information that was not available to Sir John Stevens or Justice Cory.*” However, it is striking to note that in Justice Cory’s report, para. 13, he also states that “*Most of these documents have already been gathered together in one place and were being held in safekeeping by the investigating teams that worked on the Stevens I, II and III Inquiries. However, I have also reviewed documents in the possession of other state agencies. I have been assured by these agencies that they have furnished me with any and all information that might bear on the issues I am examining.*”

<sup>205</sup> The Northern Ireland Affairs Committee report, *The Omagh bombing: some remaining questions*, 16 March 2010.

<sup>206</sup> On 13 September 2012 Amnesty International with a number of family members of those killed during the Omagh bombing. The organization also met with Martin Bridger on 22 February 2013 to discuss his findings in a confidential report on the bombing commissioned by some of the families of the Omagh bomb.

<sup>207</sup> Some of the failures in the initial investigations are laid out by the Police Ombudsman in her report of December 2001. For example, the Police Ombudsman found that significant intelligence held by RUC Special Branch was not shared with the Omagh Bomb Senior Investigating Officer. This included information from an informant provided to his handlers in the months prior to the Omagh bombing about dissident republican activities which was never passed to the Omagh investigating team despite its relevance in naming suspects. In addition the Police Ombudsman found that a warning given eleven days before the bombing to the Omagh police station that there would be an attack on 15 August 1998 in Omagh was not sufficiently investigated or handled correctly. The Serious Threat Book in which this would have been recorded subsequently went missing from Omagh police station and has never been recovered. See the *Police Ombudsman Report on the investigation of matters relating to the Omagh bombing of 15 August 1998*, 12 December 2001. A review commissioned by the Assistant Chief Constable and commenced by the RUC in March 2000 (known as the McVicker review) also found

significant and fundamental errors in the investigation, including the failure to link this case to other previous incidents.

<sup>208</sup> On 8 June 2009, in a civil action for damages brought by the families, the High Court ruled that four named individuals and the Real IRA were responsible for the Omagh bombing, and awarded more than £1.6m in damages. In Northern Ireland criminal charges have only been brought against one individual, who was subsequently acquitted of all charges in 2007. In Ireland, one individual was found guilty in January 2002 by the Dublin Special Criminal Court of conspiracy to cause the Omagh bombing. In 2005, a retrial was ordered when it emerged that two Garda officers had persistently lied under oath during the trial. Following a retrial the individual was acquitted on 24 February 2010.

<sup>209</sup> The PSNI provided this information to the family in February 2006. The intelligence transcripts of the informer were subsequently used as evidence in the civil action brought by some of the families against four named individuals. See *Breslin & Ors v McKenna & Ors* (Omagh Bombing case) [2009] NIQB 50, 8 June 2009.

<sup>210</sup> This followed a BBC Panorama programme, *Omagh: what the police were never told*, broadcast 15 September 2008. See Sunday Telegraph, *The words that could have saved Omagh*, 14 September 2008.

<sup>211</sup> See summary of the review of intercepted intelligence in relation to the Omagh bombing of 15 August 1998, by Sir Peter Gibson, the Intelligence Services Commissioner, 16 January 2009, para. 29.

<sup>212</sup> The Committee further questioned the narrowness of Sir Peter Gibson's review, stating that "*It is unclear to us precisely what Sir Peter Gibson did investigate. [...] we believe that further investigation is required into what Special Branch gave to the investigation team, when it was given, and what information was withheld and why. We believe that the public interest would be served by revealing to the greatest possible extent why information that might have led to arrests in a mass murder case was not used.*" See, the Northern Ireland Affairs Committee, *The Omagh bombing: some remaining questions*, HC 374, 16 March 2010, para. 212.

<sup>213</sup> See Rights Watch UK, *A report into the Omagh bombing 15 August 1998*, May 2013 and a confidential report commissioned by the Omagh Support and Self Help Group, the summary of which is public. Following the publication of the Police Ombudsman report in 2001, allegations were made by a member of An Garda Síochána that information from an informant that the Real IRA were planning a bomb attack within the next two weeks in Northern Ireland was not properly acted upon or provided to the PSNI. As a result the Irish government established a three-member group ("the Nally group") to examine these allegations. In its 2003 report the group cleared the Garda of any wrongdoing and found that the allegations made by the police officer were without foundation. *Report of Group established by the Minister for Justice, Equality and Law Reform to examine matters arising from the 'Report raising concerns of the activity of An Garda Síochána Officers during 1998' dated 22 March, 2002, prepared by the Police Ombudsman for Northern Ireland for the Minister for Foreign Affairs*. The report was finalised in June 2003 but only published – and not in full – in November 2006. Concerns were raised by relatives of those killed in the Omagh bombing that the Group was selective in the witness's that they interviewed. For example, the PSNI Senior Investigating Officer for the Omagh bomb investigation in 2001 who stated he believed he could show that a lack of intelligence sharing may have led to the bomb not being stopped was not able to give evidence. Nor was the informant who was alleged to have given the information about the planned attack to the Garda.

<sup>214</sup> See Rights Watch UK, *A report into the Omagh bombing 15 August 1998*, May 2013, p. 86, Northern Ireland Policing Board 2008 para. 91; the Guardian, *Omagh: a 15 months' DNA delay*, 31 October 2004. The Police Ombudsman for Northern Ireland also found that cross border cooperation in the subsequent investigation had serious flaws, and lacked urgency.

<sup>215</sup> Belfast Telegraph, *O'Loan backs calls for cross-border inquiry over 'massive failures'*, 10 August 2013.

<sup>216</sup> *Ibid.*

<sup>217</sup> See the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, "Framework principles for securing the human rights of victims of terrorism", UN Doc A/HRC/20/14, 04 June 2012.

<sup>218</sup> Interview with Amnesty International, 03 December 2012.

<sup>219</sup> Interview with Amnesty International, 04 December 2012.

<sup>220</sup> Interview with Amnesty International, 03 December 2012.

<sup>221</sup> Questions about the handling and management of agents and informers relates both to loyalist and republican armed groups, for example, allegations persist about Freddie Scappaticci who was alleged to have acted as a high-level FRU agent in the IRA, while he was allegedly involved in a series of murders and kidnappings. For further information on Freddie Scappaticci see:

[http://www.birw.org/archive\\_stakeknife.html](http://www.birw.org/archive_stakeknife.html). As Sam Pollock, former Chief Executive of OPONI, reflected on the investigation of informers by the OPONI: *"I sensed in the end a dilemma or a conflict in terms of dealing with the whole issue of informers. it's a difficult matters it's a sensitive matter, but short of that a family who has maybe been living for years or decades with grief not knowing basic information with regard to the death and loss, they have a right to know as much as possible, to speak about the involvement of an informant either directly or indirectly in murder, the loss of life, some atrocities you cannot fudge that and the office should not and never should step back from exposing that."* BBC Spotlight: The Whistleblower and the Watchdog, broadcast on 18 October 2011.

<sup>222</sup> Domestic NGOs have also raised concern about the narrowing definition of collusion see for example British Irish Rights Watch (now Rights Watch UK) statement on the definition of collusion accessible here: <http://www.birw.org/reports/summaries/collusion-definition.pdf> and the Committee on the Administration of Justice, *Human Rights and Dealing with Historic Cases – a Review of the Office of the Police Ombudsman for Northern Ireland*, June 2011.

<sup>223</sup> Stevens 3 Inquiry: Overview and Recommendations, April 2003, para. 4.7-4.8.

<sup>224</sup> See, for example, *Cory Collusion Inquiry Report: Rosemary Nelson*, HC 473, April 2004, para. 4.33: *"evidence may reveal a pattern of behaviour by a government agency that comes within the definition of collusion. This evidence may add to and form part of the cumulative effect which emerges from a reading of the documents"*.

<sup>225</sup> *Cory Collusion Inquiry Report: Rosemary Nelson*, HC 473, April 2004, p. 14.

<sup>226</sup> With respect to the apparently narrowing definition of collusion by the OPONI see CAJ, *Human Rights and Dealing with Historic Cases – a Review of the Office of the Police Ombudsman for Northern Ireland*, June 2011, pp. 18-24.

<sup>227</sup> *The Billy Wright Inquiry – Report*, HC 431, September 2010, para. 1.33.

<sup>228</sup> *Cory Collusion Inquiry Report: Patrick Finucane*, HC470, April 2004 para. 1.274.

<sup>229</sup> Amnesty International and other human rights organizations monitoring the situation in Northern Ireland expressed concerns about such intimidation and threats, and urged the authorities to address them in the years leading up to her killing. The UN Special Rapporteur on the Independence of Judges and Lawyers issued an urgent appeal for her protection in the year before her death. See *UK: Prominent human rights lawyer killed* (Index: EUR 45/013/1999); *UK (Northern Ireland): The Killing of Human Rights Defender Rosemary Nelson* (Index: EUR 45/022/1999); *United Kingdom: Publish Cory reports now, human rights groups urge government* (Index: EUR 45/031/2003) *Public judicial inquiries into the killings of Robert Hamill, Billy Wright and Rosemary Nelson An Open Letter from Amnesty International, British Irish RIGHTS WATCH and the Committee on the Administration of Justice* (Index: EUR 45/024/2005).

<sup>230</sup> *Cory Collusion Inquiry Report: Rosemary Nelson*, HC 473, April 2004, p. 72.

<sup>231</sup> The stated terms of reference of the Rosemary Nelson Inquiry, after being amended in 2005, were: *"to inquire into the death of Rosemary Nelson with a view to determining whether any wrongful act or omission by or within the Royal Ulster Constabulary, Northern Ireland Office, Army or other state agency facilitated her death or obstructed the investigation of it, or whether attempts were made to do so; whether any such act or omission was intentional or negligent; whether the investigation of her death was carried out with due diligence; and to make recommendations."*

<sup>232</sup> The Rosemary Nelson Inquiry found that *"any reasonably thorough and objective assessment could only have reached the conclusion that general intelligence, circumstances and recent events indicated that Rosemary Nelson was at significant risk"*, Rosemary Nelson Inquiry Report, HC 947, p. 466.

<sup>233</sup> For further detail see Amnesty International Public Statement, *United Kingdom/Northern Ireland: Inquiry into the killing of human rights defender and lawyer Rosemary Nelson finds serious omissions by state agencies* (Index: EUR 45/006/2011).

<sup>234</sup> Rosemary Nelson Inquiry Report, HC 947, p. 466.

<sup>235</sup> HET Review Summary Report, copy received by the Pat Finucane Centre on 6 June 2009, into the gun and bomb attack on Rock Bar, p. 45.

<sup>236</sup> Meeting with Amnesty International, 4 December 2012.

<sup>237</sup> The European Court of Human Rights found that the United Kingdom had violated the procedural obligations contained in Article 2 of the ECHR because of the lack of independence in the investigations carried out by the RUC into the death of Trevor Brecknell. See *Brecknell v the United Kingdom*, no. 32457/04, 27 November 2007.

<sup>238</sup> According to HET reports, the report will examine 89 incidents 46 murder cases involving a total of 80 deaths; 22 non-fatal bombings; 13 attempted murders; seven non-injury (intimidation) shootings; one abduction and false imprisonment 'kidnapping'.

<sup>239</sup> In an appendix to one HET report seen by Amnesty International, the HET provides a definition of collusion stating that it is “specific to the series of incidents within the ‘Glenanne’ linked series only”: *collusion is where a member of the security forces commits with any other person an offence that amounts to either 1. Murder 2. Any other serious offence (including attempt murder, causing explosions, intimidation shooting and kidnap) 3. Malfeasance (illegal activity) in public office 4. Conspiracy to commit any of the above. For an individuals behavior to be considered as collusive the following levels of involvement will be assessed. Police Officers or Military Personnel: personally carried out the murders or serious offences; directed the activities of paramilitaries by exploiting information or intelligence; provided paramilitaries with weapons and equipment. Police Officers, Military Personnel or State Officials: initiated/influenced such activities through the use of agents; failed to prevent/investigate/prosecute crimes; protected security force personnel, paramilitaries and agents; acted directly in accordance with state/official policy”*

<sup>240</sup> It should be noted that an NGO supporting a number of the families involved in the Glenanne series told Amnesty International in August 2013 that it now appeared that the HET would renege on its earlier commitments to produce such an overview report.

<sup>241</sup> Conflict Archive, RUC/PSNI statistics: Table NI-SEC-05: Persons injured (number) due to the security situation in Northern Ireland (only), 1969 to 2003.

<sup>242</sup> Marie Breen-Smyth, *The needs of individuals and their families injured as a result of the Troubles in Northern Ireland*, Commissioned by WAVE Trauma Centre, May 2012, p. 9.

<sup>243</sup> Commission for Victims and Survivors, *Comprehensive Needs Assessment*, February 2012, para. 4.2.2-4.2.3.

<sup>245</sup> On 3 December 2013 Amnesty International held a group meeting with 6 people from WAVE's injured group who were all seriously injured during the conflict.

<sup>246</sup> There are some exceptions to this, as Amnesty International is aware of a very small number of cases in which the HET has provided a report to an individual injured in an attack.

<sup>247</sup> For further discussion see: Marie Breen-Smyth, *The needs of individuals and their families injured as a result of the Troubles in Northern Ireland*, Commissioned by WAVE Trauma Centre, May 2012 and Commission for Victims and Survivors, *Comprehensive Needs Assessment*, February 2012.

<sup>248</sup> Meeting with Amnesty International, 12 September 2012.

<sup>249</sup> Some victims are turning to the legal system, for example, some of those detained during the UK's policy of internment without trial have begun a civil action against UK authorities in relation both to the legality of their detention, and the alleged torture and other ill-treatment that they suffered.

<sup>250</sup> *Ireland v the United Kingdom*, no. 5310/71, 18 January 1978.

<sup>251</sup> The Detail, *New call for answers over the scandal of Northern Ireland's “hooded men”*, 06 August 2013, and also the following documents from the Pat Finucane Centre: <http://www.patfinucanecentre.org/declassified/DEFE13917.pdf>.

<sup>252</sup> See Human Rights Watch/Helsinki Report, *To serve without favour: Policing, Human Rights, and Accountability in Northern Ireland*, May 1997 and *United Kingdom: Political Killings in Northern Ireland* (Index 45/001/1994).

<sup>253</sup> E/CN.4/2005/102/Add.1 Updated Impunity Principles, p. 7.

<sup>254</sup> The rule of law and transitional justice in conflict and post-conflict societies, report of the UN Secretary-General, UN Doc. S/2004/616, 23 August 2004, para. 50. See also UN Doc E/CN.4/2005/102/Add.1 Impunity Report of the independent expert to update the Set of principles to combat impunity, 8 February 2005, Principle 5.

<sup>255</sup> This was highlighted in the collective speech given by Lord Robin Eames and Denis Bradley on 29 May 2008.

<sup>256</sup> In October 2003, the Cory Inquiry submitted its findings to the Irish government in the Breen and Buchanan cases recommending a public inquiry. The Irish government published the Cory Collusion Inquiry's findings in December 2003, and simultaneously announced the establishment of a public inquiry under the Tribunals of Inquiry (Evidence) Act 1921. The Tribunal was formally established in 2005 by the Minister for Justice, Equality and Law Reform following resolutions of both houses of the Oireachtas (Irish Parliament). The Tribunal (<http://www.smithwicktribunal.ie/>) began its preliminary investigations in 2006. Public hearings began in June 2011 and were continuing in 2013.

<sup>257</sup> Interim Report on the Report of the Independent Commission of Inquiry into the Dublin and Monaghan Bombings, December 2003, p. 268-272.

<sup>258</sup> *Indonesia: Time to face the past: Justice for past abuses in Indonesia's Aceh province: Executive summary* (Index: ASA 21/007/2013); *Balkans: The right to know: Families still left in the dark in the Balkans* (Index: EUR 05/001/2012); *Commissioning Justice: Truth commissions and criminal justice*,

(Index: POL 30/004/2010); *Checklist for the establishment of an effective truth commission* (Index: POL 30/020/2007).





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## NORTHERN IRELAND: TIME TO DEAL WITH THE PAST

Three decades of political violence in Northern Ireland left over 3,600 dead and over 40,000 injured. Human rights violations by state actors and abuses by armed groups, from all sides, have left a devastating impact. Fifteen years since the Belfast/Good Friday Agreement, there has been remarkable progress towards a more peaceful future. Little, however, has been done to deal with the past effectively.

This report documents the search for the truth in Northern Ireland. The work of established formal investigatory mechanisms has not been uniform. The patchwork 'system' of accountability arising from these discrete, individualized mechanisms cannot comprehensively address outstanding violations and abuses. Much of the truth is still obscured, people in positions of responsibility remain shielded and there is a lack of shared public understanding and recognition of the abuses committed by all sides.

Without the truth, Northern Ireland's past will continue to cast a long, damaging shadow over its present and its future. Truth can help victims, families and communities understand what happened to them, allow identification of those responsible, counter misinformation and misconceptions about the past, and offer lessons to avoid repetition of abuses and violence. Truth can contribute towards the process of reconciliation between divided communities.

Amnesty International calls on all political leaders - 15 years on from that historic peace agreement and with Northern Ireland still facing violence and division - to establish an overarching mechanism capable of piecing together and dealing with the legacy of the past.

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