

Submitted Testimony to the Helsinki Commission US Congressional Hearing (March 22nd 2012) by Mr. Mark Thompson, Director, Relatives for Justice, Ireland

Pre-requisites for Peace in N. Ireland

The absence of violence does not necessarily mean peace and for many years we had what was described as an imperfect peace. In many ways this is understandable, violence had stopped and the imperative then was to ensure that this was maintained.

18-years on from the first cessations of violence in the north, and 14-years on from the peace agreement, our society has undoubtedly been transformed for the better. Violence has largely been absent and the militarization of our communities comparatively is a world apart. The visible manifestations of war and all of its paraphernalia are thankfully gone.

The sharing of power by traditional political opponents, once unthinkable, is as natural a thing as if it were always the case.

We have much to be thankful for, especially those of us who have been so adversely affected by violence.

Many observers of Irish affairs could be forgiven for believing that this somehow signifies that everything has been resolved and that the focus, the concentration once given, is no longer required. However, this could not be further from reality.

Of course the excellent work of the Helsinki Commission is an exception in maintaining its focus on human rights in the north and we are gratefully indebted.

Arguably the most contentious issue of who did what to whom during the conflict; that of responsibility, culpability and accountability requires addressing in a structured, resourced and independent way. The failure to do so thus far casts a shadow not only over the lives of many victims and survivors but also society too.

The hurts of the past are as present as the past is.

Hardly a week goes by without mention in the mainstream media and within civil society of an atrocity whereby the bereaved and injured, of all persuasions, give public voice to their experience and to their current will to have legitimate resolution of human rights abuses.

Families are seeking truth, acknowledgement and recognition of their loss and injury; they are now telling publicly what for them were once unspeakable truths. They are breaking the silence after many years and have taken courageous steps towards addressing injustice. All parties to the conflict have been rightly confronted and challenged by these developments. The bereaved and injured bear witness, testimony and now seek answers. They want truth and justice.

This past week I have been part of a delegation of relatives visiting the US that have witnessed the murders of 15 of their loved ones and the injuring of 14 in three separate incidents. As part of this important hearing I have placed into the record reports by Relatives for Justice (RFJ) into these killings; those of Loughinisland in County Down where 6 men were killed as they watched the opening game of the 1994 World Cup, hosted here in the US, when Ireland played Italy; the atrocity at Sean Grahams bookmakers shop on the Ormeau Rd, Belfast, in 1992 where three men and two boys were killed; and at Clonoe, Coalisland, County Tyrone also in 1992 when the SAS ambushed and killed 4 men.

These particular killings present challenges for the British authorities and as a sovereign government there are certain standards and legal obligations that must be met.

The killings identify thematic patterns of collusive acts on the part of the authorities implicating members of the then RUC Special Branch and British Military Intelligence. In the words of Sir John Stevens these actions undoubtedly fuelled and sustained the conflict¹. Also identified are direct state killings where the use of excessive force was favoured rather than making safe and effective arrests within the rule of law.

Unfortunately these killings are by no means unique. Rather they are symptomatic of numerous acts of violence that maimed and killed hundreds of people, in which those responsible are immune from accountability and prosecution². Collectively these actions constitute a policy that was structured, resourced, and relentlessly pursued with devastating consequences.

Institutional avoidance, prevarication and obfuscation sum up the official response to these killings and perfunctory processes exist that are presented as models for resolution by a British Secretary of State who has abdicated his governments responsibility concerning acknowledgement and accountability³. These predictable outcomes, the result of vested interests, underline the internationally accepted norm that those responsible for violations cannot examine those same violations.

Politicking and double standards also exist on the part of the British government when concerning non-state groupings to the conflict juxtaposed to investigative bias for state actors. Impartiality and independence are consequential casualties too.

No doubt the British government will present that the PSNI are one of the most regulated police services in the world. They will justify this with the oversight

¹ 19-page statement On April 17th 2003, after 14 years and three enquiries, Sir John Stevens released at a Belfast press conference. It was during that press conference that he made the comment attributed to him in this submission. A copy of his report is also available at:

<http://cain.ulst.ac.uk/issues/collusion/stevens3/stevens3summary.htm>

² http://www.ppsni.gov.uk/Site/1/Documents/Publications/FINAL_PPS_statement_25.6.07.pdf

Also see bibliography ref in Carroll family statement of amnesty to 11 RUC officers

³ Belfast Telegraph article re British Secretary of State Owen Patterson's comments dealing with the past

role of the Police Ombudsman and that the PSNI's Historical Enquiries Team (HET) is a unique initiative reviewing all conflict related deaths. However, scratch the surface and much is revealed that tells a very different story.

The retrospective remit of the Police Ombudsman's office, successfully secured under Nuala O' Loan and which specifically pertains to these killings, has been effectively hollowed out⁴. Processes of external interference combined by a lack of resources, which can only be viewed as deliberate, have contributed to this. It is also no accident that the office also controversially abandoned its working definition of collusion. These definitions had been set out by Justice Cory and by Lord Stevens⁵. That this occurred during the publication of the report into the Loughinisland Massacre of June 18th 1994 where collusion is undoubtedly evidenced is no coincidence.

The HET is not independent⁶. In the last correspondence that was publicly available, of the 133 staff, 67 were former RUC officers. That figure included members of RUC Special Branch. Figures were not made available for the number of former British soldiers working in the HET. At the heart of the HET sits a Command and Intelligence unit that determines those cases meriting further actions and possible prosecutions. These determinations are then passed onto the PSNI's Crimes Section 2 (C2). C2 sits alongside C3, which has responsibility for intelligence and agent handling.

Working alongside this framework is the PSNI's Legacy Unit. The Legacy Unit had responsibility for providing information to inquiries. It has ongoing responsibility for providing information to inquests and in other judicial matters pertaining to legacy cases arising from the conflict.

Recently it was revealed that a former Special Branch officer was re-employed by the PSNI to assist the Legacy Unit. It was also revealed that this same person had previously sought to overturn the findings of the Police Ombudsman in respect of a case involving collusion.

Because this person is employed as a civilian worker he is not accountable to the Police Ombudsman.

It has been reported that having taken the Patten severance payments some 300 former RUC officers have been re-employed as civilian workers⁷. A significant proportion, just fewer than 70, are former Special Branch. They too avail of this technical loophole of not being accountable to the Police Ombudsman⁸. As do the PSNI's HET.

⁴ Report by the criminal Justice Inspectorate for NI 2011 September 2011

⁵ <http://cain.ulst.ac.uk/issues/collusion/cory/cory03finucane.pdf>

⁶ RFJ Submission to the Committee to the Council of Ministers of Europe on the HET available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD\(2012\)244&Language=lanEnglish&Site=CM](https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD(2012)244&Language=lanEnglish&Site=CM) -

⁷ It was widely reported that in the region of £60 million was spent on re-hiring former RUC officers in this capacity

⁸ Former Special Branch officers are now employed within the PSNI as 'consultants' and 'civilian staff' and in this capacity are not accountable to the Police Ombudsman NI (PONI). Importantly the Legacy Unit of PSNI that deals with historic cases has engaged a former Special Branch officer as a 'Consultant'. This 'Consultant' was at the center of controversy when as a Special Branch officer he sought to overturn findings of an investigation by the PONI in which collusion was established - see reports by Vincent Kearney of the BBC NI November 29th 2011 and January 17th 2012

<http://www.bbc.co.uk/news/uk-northern-ireland-15952518>

<http://www.bbc.co.uk/news/uk-northern-ireland-16600069>

The PSNI's C2 have made a number of arrests in respect of the HET's work and prosecutions have been initiated with some concluded. Not surprisingly none of these arrests and prosecutions involves members of the states security and intelligence forces.

In the submitted report to this Commission into the 1992 February 5th killings of three men and two boys, and the injuring of 7 others who were left for dead, at Sean Grahams bookmakers on the Ormeau Rd, Belfast, one of the weapons used in the atrocity, a 9mm browning pistol, was provided by RUC Special Branch through their agent William Stobie. Ken Barrett 'allegedly' stole the weapon from a British army barracks before then passing it onto Stobie, who in turn handed it to Special Branch, who then returned it back to Stobie.

This weapon was then used to murder 22 year-old Aidan Wallace on December 22nd 1991 and then several weeks later again used at Sean Grahams bookmakers. The other weapon used, a VZ 58 automatic assault rifle, was part of a shipment of weapons imported into the north by MI5 using their agent Brian Nelson⁹ and then distributed to loyalist paramilitaries. The fatalities related to these weapons and other collusive acts were documented by RFJ in September 1995 and at that time accounted for 229 killings. This document too has been submitted as part of this hearing¹⁰. Since that period the weapons have claimed many more lives and were used during internal loyalist feuds.

In the RFJ report into the Sean Grahams bookmakers atrocity we reference the HET report. It states that previous information concerning the retrieval of the weapon provided by Special Branch and the arrests of two persons in possession of it had been 'disposed of'. This is a totally false claim. RFJ along with lawyers Kevin R Winters & Co obtained these same documents through the Public Records Office. The documents are all revealing in relation to the weapon and those arrested¹¹.

The HET spoke to only to one relative out of the 50 plus relatives affected in this atrocity. They did not speak to any witnesses.

Overall the bereaved and the injured of the conflict want and deserve the truth and they are entitled to that truth. They want validation of being wronged rather than vilification for standing up and speaking out about their experiences. The

⁹ BBC Panorama a license to murder - pt1 & pt2
<http://news.bbc.co.uk/1/hi/programmes/panorama/2019301.stm>

¹⁰ www.relativesforjustice.com Collusion Report 1990 -1994 Loyalist Paramilitary Murders in North of Ireland

¹¹ The son of an RUC officer was one of those arrested in possession of this weapon. When Sir John Stevens investigated the Stobie link and uncovered that Special had handed back the weapon, including that it had been used in two separate attacks, Special Branch then claimed that they had 'deactivated' the weapon. However, if this was the case then they did not act after the killing of Aidan Wallace to retrieve the weapon. The file that the HET claimed was 'disposed of' also contained a forensic report of the weapon which showed it to be 'mechanically sound'. There was no evidence of interference with the weapon. Attention to the weapon was only as a result of Judge Cory's report, page 86 and over a decade after the atrocity, which referenced the killing of 18 year-old Peter Magee killed at Sean Grahams bookmakers.

British government has sought to make standing up for justice a negative concept when the focus is on them.

The right to truth – the right to know – is now an emerging and developing legal right and was first adopted by the Office of the High Commissioner for Human Rights (OHCHR) in April 2005 (Human Rights Resolution 2005/66). Previously the OHCHR set out key principles aimed at combating impunity concerning violations where conflict occurred¹².

We live with the legacy of impunity – state impunity. Challenging impunity is a necessary pre-requisite to rebuilding a society and in creating the promotion and protection of human rights and in the administration of justice. In a recent report by the World Bank¹³ they linked development and security to justice. Truth informs positive change and reform, justice is the bedrock of democracy.

We welcome the announcement recently by the UN Human Rights Council of the appointment of a Special Rapporteur on Truth and await with interest the appointment. Already we have taken steps to invite the Rapporteur to Ireland to meet directly with the bereaved and injured.

In the absence of a proper independent truth process many victims and survivors, dissatisfied with the lack of official response to their efforts, are increasingly seeking legal redress and remedy by launching civil proceedings, taking judicial reviews, and seeking to make application to reopen inquests. Many victims and survivors are active and their proactive efforts resemble global trends post conflict and from which we can learn and inform elsewhere. That is why the New York based International Center for Transitional Justice (ICTJ) is an important NGO and one, which we have engaged with.

However, even within the judicial system there are delaying tactics and stalling and particularly so concerning inquests into some of the most controversial killings of the conflict¹⁴.

We are supporting many families bereaved and people injured, people with life diminishing injuries. In our last financial year our three main offices had contact with and supported almost 3,000 victims and survivors. Truth, justice and addressing the past are priorities for these families. Developing strategies towards that aim is an obvious priority for RFJ. Reaching out to the international community for support is imperative.

We are further away from the beginning of the conflict in the north than that period was from the ending of the Second World War. People are dying without truth and without justice and we owe it to them to collectively address the legacy

¹² Set of Principles for the protection and promotion of human rights through action to combat impunity UN ref: (E/CN.4/Sub.2/1997/20/Rev.1, annex II) & updated version of these principles (E/CN.4/2005/102/Add.1)

¹³ The World Development Report 2011: Conflict, Security, and Development

¹⁴ Statement from the family of Roddy Carroll concerning shoot-to-kill inquests whereby Chief Constable stalls yet again in the provision of material to the court March 9th 2012

of the past in a progressive way that delivers truth, accountability and transitional justice through an agreed truth recovery process. A process that consolidates the peace and heals the wounds. We also owe it to future generations. The cost of not doing so is too great. The quote “Those who forget the past are condemned to repeat it”¹⁵ has never been more present.

Such a process must be underpinned by key values and principles of independence and inclusiveness.

International law also makes the case that states undergoing transition are faced with certain legal obligations, including: the provision of independent investigation of past violations, upholding victims’ rights, providing adequate reparations to victims, preventing future abuses, and preserving and enhancing peace. We also now have the right to truth and the right to know.

An independent international truth commission could provide the best opportunity for truth recovery for the greatest number of those affected by the conflict. We believe this will contribute to individual and societal healing and recovery, dealing with the legacy of the past in a positive way and building a better future for everyone.

Narrowing the permissible amount of lies, securing truth and transitional justice and accountability is the only fitting memorial to those killed and for those injured.

All of the key issues within the peace process have required an international role and remit; chairing the political talks, policing, prisoner release, and decommissioning being some examples. Dealing with the past is the last piece of the jigsaw of the peace process and arguably it is the most contentious and challenging. We therefore require international assistance and not perfunctory processes that politicise, conceal and prevent the truth from emerging. No organization, no government, no party to the conflict with a vested interest in the outcome should determine, lead and drive processes that address past violations, rather they should be subject to an independent process.

As stakeholders and beneficiaries victims and survivors need to help shape and inform the development of a truth recovery process and not be excluded.

The reality is that children are growing up with a narrative of injustice rather than a narrative of hope. The transgenerational effects and impacts of this are increasingly seeing new generations energized and pursuing truth and justice. This too is an international experience of post conflict and unresolved violations.

The issues are far from going away, if anything they are growing and they will not be brushed under the carpet. Mona Ashrawi, UN Assistant High Commissioner for Human Rights, recently said: ‘people don’t forget they keep their loved ones close¹⁶.’ Facing the truth is the only option. We need to face the

¹⁵ George Santayana (1905) Reason in Common Sense, volume 1 of The Life of Reason

¹⁶ Address to Nottingham University on Human Rights, truth, justice & accountability February 2012

past and the unpalatable truths otherwise they will have a negative and corrosive effect on our body politic and within civil society.

Individual, communal and societal healing, recovery and reconciliation can only take root within the context of such a process.

We will be a better and stronger society for it.

Thank you