

**PFC’s submission to the United Nations Committee Against Torture 6th Reporting Round May 2019**

**22 March 2019**

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**Submission from the Pat Finucane Centre (PFC) to the United Nations Committee Against Torture 6th Periodic Review for the UK**

**May 2019**

**Introduction**

1. The Pat Finucane Centre (PFC) provides advocacy support to families and individuals bereaved and injured as a result of the conflict on the island of Ireland. We are funded by the Department of Foreign Affairs, the Victims and Survivors Service and the European Regional Development Fund- PEACE IV and are a registered charity. The PFC is a non-party political, anti-sectarian human rights group advocating a non-violent resolution of the conflict on the island of Ireland. We believe that all participants to the conflict have violated human rights.
2. The PFC asserts that the failure by the British state to uphold Article 7 of the Universal Declaration of Human Rights, “all are equal before the law and are entitled without any discrimination to equal protection of the law”, is the single most important explanation for the initiation and perpetuation of violent conflict.
3. We provide an advocacy, advice and support service to families, who wish to engage with statutory agencies including the (now-defunct) Historical Enquiries Team (HET), the Office for the Police Ombudsman of Northern Ireland (OPONI) in Northern Ireland, and AnGarda Síochána in the Republic (through JFF).
4. The aim of our work is to assist families in establishing the facts surrounding the death/s of their loved one/s or physical/psychological injuries sustained. We are also engaged, on both sides of the border, in working with individual families in a project known as the Recovery of Living Memory Archive (RoLMA).
5. We currently provide this service to approximately 200 families across Ireland through four offices in Derry, Armagh, Belfast and Dublin (in partnership with Justice for the Forgotten). Many of these cases engage Article 2 European Court of Human Rights (“ECHR”) issues. The Centre currently employs 9 people at offices in Derry, Armagh, Belfast and Dublin (the latter through Justice for the Forgotten-a project of the PFC).
6. A focus of our advocacy and campaigning work over many years has been regular trawls through declassified documents in the archives at the National Archive in Kew, London (NAUK) and at the National Archives of Ireland in Dublin.
7. Documents that we have uncovered have been used in Police Ombudsman investigations, inquests, civil litigation and in Historical Enquiry Team reports. Information from declassified documents has also been central to a number of publications from the PFC including *Lethal Allies*, *A State in Denial, The UDR-The Hidden History* and *The Impact of the Parachute Regiment in Belfast 1970-1973*. We have also contributed chapters to a number of academic textbooks on the themes of torture and counterinsurgency.

**List of issues Committee may wish to raise with UK during this Review**

1. The PFC welcomes the 6th Periodic Report from the UK government as its obligation regarding regular scrutiny by the Committee against Torture (“the Committee”). This submission covers the following areas of overwhelming concern to the bereaved and injured families and friends still seeking answers to what happened their loved ones, both living and deceased, throughout the course of the conflict in Northern Ireland:

* Transitional Justice - Dealing with the Legacy of the Conflict in Northern Ireland (Articles 12-14)
* Transitional Justice – The Murder of Pat Finucane
* Transitional Justice – Waterboarding/Dealing with the Legacy of the Conflict in Northern Ireland (Articles 4 & 14)

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

1. The Committee recommended that the State party 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**.**
2. In May 2018 the Northern Ireland Office issued a consultation document[[1]](#footnote-1) *Addressing the Legacy of Northern Ireland’s Past* based on the proposals of the Stormont House Agreement (SHA), December, to which PFC submitted a response.[[2]](#footnote-2) The UK Government claims it is trying to find the best way to meet the needs of victims and survivors and to help people address the impact of the Troubles in the areas of information, justice and acknowledgement to help Northern Ireland transition to long term-term peace and stability. Recognising that this is necessary in order to support true reconciliation and healing at a societal level. Yet PFC has genuine concerns regarding the sincerity of the British government commitments to deal with the past in an open and honest way.
3. This consultation document proposed a number of over-arching measures recommenced in the SHA for dealing with the past including a Historical Investigations Unit (HIU); Independent Commission of Information Retrieval (ICIR); Oral History Archive (OHA); and an Implementation and Reconciliation Group (IRG). The PFC welcomed this consultation but responded raising a number of concerns. We currently await the consultation response.

**Concerns regarding Historical Investigations Unit (HIU)**

16 While we welcome the inclusion of statutory duty on the British government and its agencies to provide “full information disclosure” to the HIU, we remain sceptical that the security services and Ministry of Defence will comply with this requirement.

17 PFC are genuinely concerned that the proposed ‘National Security’ veto would be abused by the British government and its agencies to hide evidence of criminal wrong-doing and/ or information that could cause them embarrassment. This veto power vests with the Secretary of State, and families we support have expressed alarm that information relating to the death of their loved one(s) could be withheld through ministerial discretion, on the basis ‘National Security’, a concept not defined in the Stormont House legislation or any other UK domestic law. Although there is an appeals mechanism outlined in the legislation, PFC does not believe it is adequate to protect the legitimate rights of families seeking the truth.[[3]](#footnote-3)

18 PFC also have concerns that the draft legislation as it stands would not meet the British government’s procedural obligations under Article 2 of the ECHR as they do not include adequate safeguards to ensure independence. However, our response to the consultation provide recommendations of steps that could be taken to ensure this obligation is enforced including a prohibition on the recruitment of former member of the RUC, whether retired or now serving within the PSNI, to the body proposed to carry out investigations into conflict-related deaths, the Historical Investigations Unit.[[4]](#footnote-4)

19 Correspondence from the NIO suggest that the responses are generally in support of the SHA structures, but there are calls for some changes and NIO officials are working out the best way to move forward[[5]](#footnote-5). PFC are concerned that any further delay will undermine confidence of victims and survivors and could jeopardise the SHA mechanisms being established at all.

20 In the interim period the Police Service of Northern Ireland (PSNI) Legacy Investigations Branch (LIB), the Office of the Police Ombudsman for Northern Ireland (OPONI) and legacy inquests are the current mechanisms utilised to address the British government’s procedural obligations arising from Article. 2. PFC submit that these, even taken together, fail to fulfil this obligation.

**Concerns regarding the Office of the Police Ombudsman (OPONI)**

21 The PFC would like to draw attention to the inadequate funding provided to the Office of the Police Ombudsman of Northern Ireland (OPONI) which currently stands at 0.197% of the NI criminal justice budget. We remain deeply concerned that OPONI, with a caseload of over 400 cases within the History Directorate, is chronically under-resourced impeding the Office’s ability to investigate allegations of police wrong-doing within a reasonable time. This is a view shared by Mr Justice Maguire in a legal challenge brought by the family of Patrick Murphy who was murdered in 1982. The Murphy family lodged complaints with the Police Ombudsman about the handling of the murder investigation in 2004 and in 2009. However, in 2014 they were told that reduced staffing levels meant the Ombudsman’s investigation would not be complete until 2025. Justice Maguire held that the Department of Justice had acted unlawfully by failing to provide a sufficient level of funding to enable the Ombudsman to carry out its statutory obligation to investigate the family’s complaint within a reasonable time. Mr Justice Maguire commented that the “…source of the problem besetting the police ombudsman’s office lies with the failure of government.”

22 PFC believe that the underfunding of OPONI is a deliberate, political policy aimed at obstructing investigations that will uncover and evidence instances of police collusion with paramilitaries in wrong-doing and criminality (including murders) during the conflict.

23 PFC are deeply concerned to learn in February 2019 from the Police Ombudsman, Dr Maguire, that a PSNI computer system containing ‘significant and sensitive information’ relating to a number of murders was not made available to the OPONI. Disclosure of this information was a legal requirement and we remain sceptical of reassurance from the PSNI that they will provide OPONI with unfettered access to information in the future.

24 PFC support families directly and indirectly impacted by this development. Those directly affected have been informed that the report relating to their investigation, that was ready for publication, will now be delayed until the significant relevant information in the database is examined. Families awaiting investigations to begin have been told that there will be further delay as a result. This includes the family of elected representative, Councillor Eddie Fullerton, who was murdered in his home in Buncrana in 1991. The report concerning Mr Fullerton’s death will now be delayed pending further investigations.

25 Families have expressed their continued support of the Police Ombudsman’s office but are deeply disturbed by the actions of the PSNI in dealing with legacy related issues/ investigation as outlined below.

**Concerns regarding the Police Service of Northern Ireland- Legacy Investigations Branch (PSNI-LIB)**

26 PFC are concerned that the PSNI are currently tasked with investigating conflict-related deaths, as they do not have the requisite independence to ensure compliance under Article 2. In 2017 the High Court determined in the Jean Smyth case that the PSNI LIB “lack the requisite independence required to perform an Article 2 compliant investigation in respect of (Miss Smyth’s) death.” This was upheld by the Court of Appeal in their Judgement on 19 March 2019.[[6]](#footnote-6) PFC submit that this is also the case in relation to other conflict-related deaths involving state actors.

27 PFC are also concerned regarding the actions of the Chief Constable/ PSNI regarding other legacy cases. We support a number of families who have challenged the actions/ inaction of the PSNI through the domestic courts. For example, the family of Patrick Barnard, a thirteen year old boy who was killed by a bomb planted by the ‘Glenanne Gang’ in Dungannon, 1976. The ‘Glenanne Gang’ This gang included loyalist paramilitaries and members of the security forces, including the Royal Ulster Constabulary and the Ulster Defence Regiment.

28 The Barnard family brought judicial review proceeding JR to compel the PSNI to put in place a mechanism to complete a promised ‘Overarching Thematic Report’ into what has commonly become known as the ‘Glenanne series’ of killings. According to the Historical Enquiries Team (HET) this involved 89 linked cases. The HET had promised this report to the families before it was disbanded in 2013. A decision was taken at senior level within the PSNI that the ‘Overarching Thematic Report’ would not be completed. In his judgement of 28 May 2017, Justice Treacy stated that “The frustration of the HET commitment communicated by the Assistant Chief Constable completely undermined the “…primary aim [of the HET] to address as far as possible, all the unresolved concerns that families have”.”

29 There was an initial hearing on 2 February 2015 and two days of hearings on the 7 and 8 May 2015 with Tracey J giving his judgement in favour of Mr. Barnard in May 2017. Tracey J further issued an ‘Order of Mandamus’ in November 2017. The Chief Constable appealed the judgement and there were further hearings before the Court of Appeal on the 10 and 11 April 2018. The outcome of this appeal is still pending despite assurances to the Barnard family that the judgement would be handed down before the end of June 2018. It is of note that Justice Treacy also held that the PSNI lacked the requisite independence to investigate this groups of cases in his judgement.

30 Since the first hearing on the 2 February 2015 until now 15 close family members connected to the ‘Glenanne Series’ of attacks have died without any resolution of their case, without state acknowledge of its role in the murders, without apology or reparations. We anticipate judgement from the Court of Appeal in the next few weeks but there may also be further delay.

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

**Concerns regarding Legacy Inquests**

1. Any issue of excessive delay in the Coroner’s inquest system in legacy (conflict or historical related cases) has been remedied somewhat in the announcement of 150 million pounds to set up new Legacy Inquest Unit within the Coroners Service to process legacy inquests, under the remit of the Lord Chief Justice. This will be supported by additional officials from the PSNI, Public Prosecution Service and other justice agencies.
2. However, in the PFC’s response to the consultation on the *Addressing the Legacy of Northern Ireland’s Past* we raised concerns in relation to the Coroner’s legacy inquest system. There has been criticism of the senior coroner’s ability to deliver an inquest into the deaths of six unarmed men, in jeopardy due to continued delays by the PSNI to disclose materials.[[7]](#footnote-7) There have been ongoing issues around the failure of the PSNI to disclose the existence of a military database, in their possession for over a decade, to the coroner.[[8]](#footnote-8) And in the treatment of families and the Coroner’s court by the MoD with regards to obtaining critical material form the Ministry of Defence with regards to current ongoing legacy inquests.[[9]](#footnote-9)
3. The PFC has some concerns regarding provisions within the SHA Bill to limit the role of legacy inquests. The draft Bill states that once the HIU is up and running a coroner would be prevented from holding a legacy inquest until the HIU has completed an investigation into the death (or the HIU closes) and would only have power to proceed with the inquest if there were ‘compelling reasons.’[[10]](#footnote-10)
4. Legacy inquests form part of the package of measures arising from the *Mc Kerr[[11]](#footnote-11)* group of cases, and PFC submit that those inquests that have been already been granted by the Attorney General must proceed. Families have a legitimate expectation that the inquest will be heard, and it would be unfair to deny this. It is also imperative that those families who have never received an inquest should do so without delay, for example the case of murdered GAA official Sean Brown.[[12]](#footnote-12) PFC submit that the proposed reforms of the coronial system as outlined by the Lord Chief Justice must be implemented expeditiously and legacy inquests should proceed until the HIU is operational and thereafter.

**The Committee may wish to ask the UK Government (if the consultation on *Addressing the Legacy of Northern Ireland’s Past* outcomes have not been published at the time of the UK review) to guarantee that the Legacy Unit of the Coroner’s Service will be a parallel mechanism to the HIU and one will not impede the other in any legacy process?**

**Recent Developments**

1. PFC is also gravely concerned about the statement made by Karen Bradley, Secretary of State for Northern Ireland, that security forces killings during the Troubles were ‘not crimes’ and that they were "fulfilling their duties in a dignified and appropriate way".[[13]](#footnote-13)This was particularly upsetting to families who were waiting to hear about potential prosecutions of soldiers on Bloody Sunday, where 14 people were killed on 30 January 1972 by the members of the Parachute Regiment. Criticism was also forthcoming from the Irish government.
2. PFC is also deeply perturbed that prior to the announcement of Bloody Sunday prosecutions that the Defence Secretary Gavin Williamson MP announced that he was bringing forward a Bill to protect the Military from historic charges, saying that the ‘Bloody Sunday case highlights the need to act’. This was deeply offensive to families at this time and we are concerned that the minister is actively seeking to prejudice the independent decision making role of the Prosecution Service.
3. As requested by a number of families the PFC put the Speaker of the House of Commons on notice (13.3.19) with regards to members flouting their parliamentary procedure in respect of live legal proceedings that should not feature in parliamentary debates. A number of conservative backbenchers put false information on the parliamentary record in respect of the shooting of John Pat Cunningham, one of our cases, in previous parliamentary debates.
4. At a subsequent meeting with Secretary of State Karen Bradley and the Northern Ireland Office (NIO) we were assured that the UK government believes in in due process and that there would no statute of limitations for prosecution of crimes that were committed by Security Forces during this period. But comments by the Defence Minister Gavin Williamson MP on the same day clearly contradict this.

**The Committee may wish to ask the UK government whether or not it has been aware of such parliamentary interference and how it will ensure that due process and independence of the prosecution services in relation to legacy cases are upheld?**

**The Murder of Pat Finucane**

1. 2019 marks the 30th Anniversary of the murder of Pat Finucane. The British Government has to date refused to establish an independent inquiry into Pat’s murder as promised in the Weston Park Agreement.
2. Pat Finucane was a solicitor in Belfast. On 12 February 1989, gunmen burst into his home and brutally murdered him in the presence of his wife and three children. It has emerged that there was collusion between the loyalist murderers and members of the security forces. Despite a number of investigations into Mr Finucane’s death, none of these has uncovered either the identity of the members of the security forces who engaged in the collusion or the type of assistance provided to the murderers.
3. In March of this year a Supreme Court Judgement[[14]](#footnote-14) held that Mrs Finucane had *a legitimate expectation that there would be a public inquiry* into Mr Finucane’s death (italics added). The Supreme Court also made a declaration that there has not been an Article 2 compliant inquiry into the death of Mr Finucane. It is now for the UK government to decide, in light of the incapacity of all the reviews and inquiries which preceded it to meet the procedural requirement of article 2, what form of investigation will take place.

**The Committee may wish to ask the UK government to indicate, in light of the Supreme Court findings, when is there going to be a full and article 2 compliant inquiry held into the murder of Pat Finucane?**

**‘Waterboarding’ as a form of torture in Northern Ireland**

1. In his report of November 2016 the then UN Special Rapporteur on truth, justice, reparation and guarantees of non-recurrence[[15]](#footnote-15) Pablo de Grief note that ‘all investigatory and truth-recovery processes focus on killing or suspicious death: consequently, persons physically or psychologically injured as a result of…*torture or ill-treatment*…are excluded from historical investigations. The majority of abuses relating to the Troubles therefore remain largely unaddressed’ (italics added).[[16]](#footnote-16) One of the recommendations was that the UK Government should expand their focus beyond cases that just related to death and include those who suffered other harms including torture and ill-treatment.[[17]](#footnote-17)
2. Also in 2016 the PFC discovered both official and unofficial historic documents disclosing evidence of *waterboarding* by both British military and RUC Special Branch in and around Belfast in the early 1970s[[18]](#footnote-18). One allegation of waterboarding however stems from a later period-1978[[19]](#footnote-19). The newly discovered materials were obtained after release by the National Archives, Kew and the unearthing of a hitherto closed depository of original statements of evidence and reports of the Association of Legal Justice (hereafter the ALJ) in the Cardinal O Fiaich Library in Armagh, Northern Ireland.
3. Horrific incidences described in multiple statements by young men confirm that they had, along with other forms of abuse, wet towels placed over their heads and water poured over it where they then felt like they were going to suffocate, be smothered or drown causing them great distress. Some of them have never recovering from this. In one case a young man took his own life during the same investigation reported by one of these young men.[[20]](#footnote-20)
4. In view of the above PFC submits that these allegations are credible particularly in light of the fact that the victims were unaware before their interrogation that ‘waterboarding’ existed as a form of torture. Public awareness of the practice did not exist until the so-called ‘war on terror’ following the Al Qaida attacks in the US.
5. The PFC has also obtained copies of declassified Ministry of Defence correspondence in a number of cases where ‘Out of Court’ (no admission of responsibility and no publicity) settlements were recommended with evidence from medical reports over riding accounts from soldiers to confirm the abuse.
6. On February 1 2017 the highly respected London based Channel 4 News broadcast details of the allegations of waterboarding referred to above on its one hour national news broadcast. PFC facilitated anonymised interviews with some victims. The following day the Irish Times carried reports of the story in its online and print editions.[[21]](#footnote-21)
7. The then Secretary of State for Northern Ireland, Mr James Brokenshire MP was asked what steps he had taken to investigate these allegations that members of the armed forces and the RUC were involved in waterboarding detained persons in the1970’s.[[22]](#footnote-22) The official British response is for anyone who has evidence of wrongdoing they should be brought to the attention of appropriate authorities. PFC has evidence that these allegations were reported to the appropriate authorities at the time and that no investigations took place, or that there were out of court settlements.
8. For the victims we work with these are not ‘historical cases’ but are continuing human rights violations. They continue to suffer the long-term effects of their treatment and the trauma they have suffered is mirrored in their family and friendship circles. Given the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment in international law, it is essential that these allegations receive urgent attention. The fact that this was covered up over four decades has profound implications for upholding the rule of law, guarantees of non-recurrence and the prevention of impunity.

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

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

 

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1. <https://www.gov.uk/government/consultations/addressing-the-legacy-of-northern-irelands-past> [↑](#footnote-ref-1)
2. PFC submission to the NIO Consultation on *Addressing the Legacy of Northern Ireland’s Past* at <http://www.patfinucanecentre.org/truth-recovery/pfcs-response-consultation-deal-legacy-past> [↑](#footnote-ref-2)
3. See Section D p. 23 of our Submission to the NIO Consultation on *Addressing the Legacy of Northern Ireland’s Past* at <http://www.patfinucanecentre.org/truth-recovery/pfcs-response-consultation-deal-legacy-past> [↑](#footnote-ref-3)
4. Ibid p.11 [↑](#footnote-ref-4)
5. Email correspondence from NIO official, dated 11.02.19 [↑](#footnote-ref-5)
6. https://www.belfasttelegraph.co.uk/news/northern-ireland/police-legacy-unit-lacks-independence-to-probe-1972-belfast-killing-of-jean-smyth-rules-court-37929674.html [↑](#footnote-ref-6)
7. Madden & Finucane Solicitors press statement, Coroner warns PSNI delays threatens his ability to hold

   proper inquiries, 31 May 2013, Available at: https://madden-finucane.com/2013/05/31/coroner-warns-psnidelays-

   threatens-his-ability-to-hold-proper-inquiries/ (Accessed 14 August 2018) [↑](#footnote-ref-7)
8. Morris, A., PSNI did not disclose military database files to Troubles inquests, 31 January 2018. Available at:

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

   possession-for-decade-was-not-searched-for-inquests-1245648/ (Accessed 10 August 2018) [↑](#footnote-ref-8)
9. Inquest of Kathleen Thompson, where family and Court treated with ‘contempt’ <http://www.patfinucanecentre.org/state-violence/mod-treating-kathleen-thompson-family-contempt>; the MoD to date still had not provided log books for 2nd Battalion Parachute Regiment for August 9th 1971 where 10 people were shot dead at Ballymurphy Belfast to the Ballymurphy Coronial Inquest currently running in Belfast, Northern Ireland. [↑](#footnote-ref-9)
10. See Section D, p. 28 of our submission to the NIO Consultation on *Addressing the Legacy of Northern Ireland’s Past* http://www.patfinucanecentre.org/truth-recovery/pfcs-response-consultation-deal-legacy-past [↑](#footnote-ref-10)
11. The group of historic cases from Northern Ireland concerning the inadequacy of the investigation of the use of lethal force by State agents (the so-called "McKerr Group", which comprises six cases: *McKerr, Jordan, McShane, Shanaghan, Kelly and Finucane*). [↑](#footnote-ref-11)
12. BBC news, Sean Brown murder: Inquest postponed indefinitely, 12 May 2015, Available at

    https://www.bbc.co.uk/news/uk-northern-ireland-foyle-west-31435038 (Accessed 13.02.19) [↑](#footnote-ref-12)
13. ] <https://www.bbc.co.uk/news/av/uk-northern-ireland-47473732/security-force-killings-were-not-crimes-bradley> [↑](#footnote-ref-13)
14. <https://www.supremecourt.uk/cases/docs/uksc-2017-0058-judgment.pdf> [↑](#footnote-ref-14)
15. http://www.ohchr.org/Documents/Issues/Truth/A\_HRC\_34\_62\_Add\_1\_en.docx [↑](#footnote-ref-15)
16. Ibid para. 39. [↑](#footnote-ref-16)
17. Ibid para.126. [↑](#footnote-ref-17)
18. Minutes of meeting between British Prime Minister Edward Heath MP and Taoiseach Jack Lynch on 24 November 1972; Information in statement provided in statements to the Association of Legal Justice (ALJ) regarding an incident of waterboarding that occurred on August 1st 1972, 30 September 1972; 11th September 1972; a further statement of 2 October 1972 after an arrest on 30September 1972 where paratroopers waterboarded a young man [↑](#footnote-ref-18)
19. http://www.patfinucanecentre.org/state-violence/waterboarding-claims-northern-ireland [↑](#footnote-ref-19)
20. Brian Maguire who was connected in connection with the same investigation at Castlereagh and took his own life while in Custody 10 May 1978. See Lost Lives, Mainstream Publishing, 2001 edition, p. 755. See also BBC report <http://news.bbc.co.uk/1/hi/northern_ireland/558850.stm>

    <https://www.theguardian.com/uk/2010/oct/11/inside-castlereagh-confessions-torture> [↑](#footnote-ref-20)
21. https://www.irishtimes.com/news/crime-and-law/papers-alleging-british-army-waterboarding-in-ni-uncovered-1.3133074 [↑](#footnote-ref-21)
22. Tabled on 27 February 2017 [↑](#footnote-ref-22)