

**Submission from the Committee on the Administration of Justice (CAJ)
to the United Nations Committee Against Torture for follow up of the
66th Session on the Sixth Periodic Report of the United Kingdom of
Great Britain and Northern Ireland on compliance with the UN
Convention against Torture and Other Cruel, Inhuman or Degrading
Treatment or Punishment
(CAT/C/GBR/CO/6)**

May 2020

1. The Committee on the Administration of Justice (CAJ) is an independent human rights NGO with cross community membership in Northern Ireland and beyond. It was established in 1981 and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its international human rights obligations.
2. CAJ files this submission to the Committee against Torture as part of the follow-up procedure on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland on its compliance with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
3. CAJ notes the Concluding Observations on the sixth periodic report of the United Kingdom, adopted by the Committee at its 66th session (23 April – 17 May 2019). We wish to address in particular a number of areas of concern, in relation to which the Committee has specifically requested the state party provide information in response to its recommendations. Namely: accountability for conflict-related violations in Northern Ireland (para. 41 (a) and (d)–(f)).

Accountability for conflict-related violations in Northern Ireland (Articles 2, 12, 13, 14 and 16)

(a) In the absence of a functioning devolved government in Northern Ireland since January 2017, take urgent measures to advance and implement the Stormont House Agreement and to establish the mechanisms it contemplates for investigating conflict-related violations, particularly the historical investigations unit;

The Stormont House Agreement (SHA) between the British and Irish governments and the five Northern Ireland political parties in the NI Executive was published in December 2014¹. It provided for a new set of institutions to deal with the legacy of the Northern Ireland conflict, including a new Historical Investigations Unit (HIU) to conduct investigations into conflict-related deaths that are complaint with Article 2 of the European Convention of Human Rights (i.e. the right to life); an Independent Commission for Information Retrieval (ICIR); an Oral History Archive (OHA); and an Implementation and Reconciliation Group (IRG). The SHA also provided for measures to maintain and make legacy inquests Article 2 ECHR compliant. In 2018, draft legislation was finally made subject to public consultation. In July 2019, the UK issued a document summarising the views of consultees.² This document did not set out the UK's response to the consultation and no commitment was given to expand the role of the HIU to also cover conflict related cases of torture.

A new UK Conservative government entered office following the UK General Election on 12 December 2019. On 19 December 2020, the new government set out its legislative programme - this committed to 'prompt implementation' of the SHA. In a section on "The Armed Forces", a subsection entitled "Historical allegations/Vexatious litigation" provides the following commitment:

To deal with NI legacy issues we will seek the prompt implementation of the Stormont House Agreement in order to provide both reconciliation for victims and greater certainty for military veterans.

However, the next paragraph, in contradiction, goes on to state:

In parallel with the Stormont House Agreement institutions we will tackle the inappropriate application of the Human Rights Act to issues that occurred before it came into force.³

On 9 January 2020, the British and Irish governments published the 'New Decade, New Approach' agreement (NDNA) following negotiations with the NI political parties as a basis for which the power sharing government in Northern Ireland would be restored. Consequently, the devolved Northern Ireland Assembly and Executive have now been re-established.

¹ <https://www.gov.uk/government/publications/the-stormont-house-agreement>

² Northern Ireland Office *Addressing the Legacy of Northern Ireland's Past: Analysis of the consultation response*, July 2019

³ *The Queen's Speech Dec 2019: background briefing notes*, Prime Minister's Office, page 128

There was a clear commitment in the NDNA agreement to introduce the SHA bill into the UK Parliament by April 2020, and to initiate an ‘intensive process’ with the NI parties and Irish government to obtain ‘broad consensus’ on any changes to the legislation. However, this did not happen and instead, on 18 March 2020, the UK, through a Written Ministerial Statement (WMS) to the UK Parliament, signalled the unilateral abandonment of the commitment to implement the Stormont House Agreement.⁴

The WMS signals that the UK will instead adopt an unclear alternative ‘fast track’ information recovery approach that would not involve discharge of the UK’s duties to independently investigate conflict related deaths under the ECHR. The Irish government, the other state party to the SHA, strenuously objected to the announcement.⁵ The WMS was intentionally made on the same day as the UK government introduced the *Overseas Operations (Service Personnel and Veterans) Bill* into the UK Parliament.⁶ This bill would introduce a qualified presumption against prosecution against members of the British armed forces serving abroad after a five year period. CAJ shares the grave concerns of other human rights organisations that the bill will facilitate a level of impunity for the UK military for war crimes abroad, including torture.

The bill would also qualify the incorporation of the ECHR in UK law, in conflict with the Convention against Torture (UNCAT) and the Good Friday Agreement. It is clear to CAJ that both sets of changes are driven by a desire to shield the armed forces from scrutiny and accountability and are incompatible with UNCAT other the UK human rights obligations. Any changes to the prosecutorial system, which has been reformed further to the Good Friday Agreement, would reverse the reforms of the Northern Ireland peace settlement.

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

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

In the absence of the SHA, residual justice mechanisms, namely civil inquests into deaths, the Police Ombudsman (for violations at the hands of the police) and the Police

⁴ Secretary of State for Northern Ireland, Addressing Northern Ireland Legacy Issues: [Written statement - HLWS163](#) (18 March 2020)

⁵ <https://www.dfa.ie/news-and-media/press-releases/press-release-archive/2020/march/statement-by-tanaiste-on-uk-government-legacy-announcement.php>

⁶ You can read the full bill [here](#)

Service of Northern Ireland are the bodies responsible for carrying out some legacy investigations.

Concerns have been raised about the capacity of these institutions to carry out effective investigations. Next of kin have resorted to civil litigation and judicial review of these public authorities to remedy the ongoing failure to carry out effective and independent investigations. The Court of Appeal of Northern Ireland found that the PSNI's Legacy Investigation Branch lacks the requisite independence to perform Article 2 ECHR investigations into conflict related deaths.⁷

A review of outstanding legacy inquests has been carried out by the Presiding Coroner and a Legacy Inquest Unit has been established. This followed a long period of the UK withholding funding to obstruct the establishment of the Legacy Inquest Unit, which the head of the judiciary had sought to establish back in January 2016 to ensure compliance with UK human rights obligations.⁸ There continue to be concerns that the Ministry of Defence and Police Service of Northern Ireland in particular are failing to promptly discharge their disclosure obligations to these inquests given the excessive delays experienced to date.

Legacy investigations being carried out by the Police Ombudsman are chronically underfunded, leading to continued excessive delays. There have also been long running problems of delayed disclosure of records by the police to the Ombudsman in legacy cases. The Chief Inspector of Criminal Justice in Northern Ireland, Jacqui Durkin, called on the PSNI and Ombudsman to strengthen trust and repair damage to public confidence following the PSNI's failure to disclose sensitive information linked to a historic case in late 2018 to the Ombudsman.⁹

Patrick Finucane

On 27 February 2019, the UK Supreme Court (UKSC) delivered its judgment in the application for judicial review taken by Geraldine Finucane. It found that "there has not been an Article 2 compliant inquiry into the death of Patrick Finucane", and indicated that the state now has to decide what form of inquiry is required to meet its Article 2 ECHR obligations.¹⁰

In its 51 page judgment, the UK Supreme Court (UKSC) examined in great detail the previous inquiries into this murder and has held that they, together with the De Silva review, do not discharge the Article 2 ECHR procedural requirements. The court held that it was for the state to decide what form of investigation, if now feasible, was required to meet the requirements under Article 2 ECHR.

Despite the unanimous UKSC decision, the UK continues to obfuscate and undermine the rule of law by refusing to commit to the establishment of an Article 2 ECHR compliant public inquiry without further delay. In light of the UKSC ruling, and pursuant to execution of the judgement in *Finucane v the UK*, the Council of Europe's Committee

⁷ See [this judgment](#)

⁸ See this [CAJ submission](#) to the Committee of Ministers for further information

⁹ <http://www.cjini.org/TheInspections/Inspection-Reports/2020/January-March/Disclosure>

¹⁰ <https://www.supremecourt.uk/cases/docs/uksc-2017-0058-judgment.pdf>

of Ministers have twice set deadlines (December 2019 and March 2020) for the UK to set out how it intends to now ensure an independent, effective investigation is taken forward. The UK has ignored both deadlines and continues not to respond.¹¹

Due to the ongoing failure of the UK to comply with its international human rights obligations Geraldine Finucane has been required to litigate once again in the Northern Ireland courts. On 31 January 2020, she was granted leave to apply for judicial review regarding the delay by the Secretary of State in deciding upon a mechanism fit to comply with Article 2 ECHR. Following previous cancelled meetings by the Secretary of State, a meeting took place with Geraldine Finucane on 21 February 2020, though no assurance of a public inquiry was provided.¹²

The Committee may wish to ask the UK how it intends to comply with its obligations to hold a public inquiry into the murder of Patrick Finucane, in response to the 2019 Supreme Court judgment, without further delay.

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

There are no proposals address allegations of torture, sexual violence and disappearances committed during the conflict despite calls for the remit of the Stormont House Agreement mechanisms to be extended to comply with international human rights obligations, in particular Article 14 UNCAT (effective redress for victims of torture or their relatives). There has been a failure to adequately address the gendered impact of the conflict and post-conflict legacy needs of women, as detailed in a report to which CAJ contributed.¹³ The UK government statement of 18 March 2020, on an alternative legacy process, makes no reference to ‘reviews’ beyond those into deaths.

As the Committee will recall, in 1978 the European Court of Human Rights, in *Ireland v UK*,¹⁴ found that detainees in Northern Ireland who had been subjected to ‘in-depth interrogation’ techniques in 1971¹⁵ suffered inhuman and degrading treatment, but not torture. This has been interpreted by many governments, incorrectly, to justify actions that might otherwise be considered to come within the definition of ‘torture’ in international law including in Iraq, Afghanistan and around the world.

In December 2014, the Irish government lodged an application before the European Court of Human Rights (ECtHR) seeking a revision of this judgment. It was submitted

¹¹ For further details, see this [CAJ submission](#)

¹² See [here](#) and [here](#)

¹³ [Gender Principles for Dealing with the Legacy of the Past](#), published Sept 2015

¹⁴ *Ireland v UK* app no. 5310/71 (18/01/1978)

¹⁵ Which included ‘five techniques’ of wall standing, hooding, being subjected to ‘white noise’, starvation, and sleep deprivation.

that the UK Government deliberately misled the Court when the case was first heard by it, which could have led to the Court finding that the treatment being considered in fact constituted torture.¹⁶ In September 2018, the ECtHR Grand Chamber rejected this request.¹⁷

Following the discovery of the new material at the British National Archives, a number of the 'Hooded Men' and next of kin initiated judicial review proceedings before the domestic courts claiming a violation of Article 2 ECHR and Article 3 ECHR (right to be free from torture) given that there has been no effective investigation into the treatment of these men.

Since the examination by the Committee in 2019, the Court of Appeal has delivered its judgment in this case (in which CAJ represents one of the next of kin)¹⁸. It held that it was satisfied that the treatment to which Hooded Men had been subjected to would if it occurred today properly be characterised as torture and upheld the decision of the High Court in 2017 to quash the PSNI's decision not to take further steps to investigate the question of identifying and, if appropriate, prosecuting those responsible for criminal acts arising from their interrogation.¹⁹ The PSNI and Department of Justice (DoJ) are seeking to appeal this judgment in the Supreme Court.

As well as failing to properly investigate the use of 'interrogation in depth' techniques on the Hooded Men, the state party continues to be in dereliction of its duty by failing to investigate further allegations of the use of torture by the Parachute Regiment of the British Army and the former police service - the Royal Ulster Constabulary (RUC) in Northern Ireland.

Declassified official British documents²⁰, established that 'water boarding' and other torture techniques were used against a number of individuals in Northern Ireland in the 1970s, allegedly with the knowledge of the then UK Prime Minister Edward Heath. Some of the most serious allegations include detainees being subjected to water boarding; anal rape of male detainees; electric shock on genitals; detainees being encased in a coffin underground; and being suspended upside down by the feet over a lift shaft in an RUC station.²¹

The Committee may wish to ask the UK to detail how it intends to discharge its investigative obligations in relation to acts of torture, inhuman and degrading treatment arising from the conflict in Northern Ireland.

¹⁶ 'Ireland to clash with UK at human rights court over Hooded Men judgment', *The Guardian*, 2 Dec 2014

¹⁷ [https://hudoc.echr.coe.int/eng-press#{"fulltext":\["5310/71"\],"itemid":\["003-6185884-8022502"\]}](https://hudoc.echr.coe.int/eng-press#{)

¹⁸ See this *Irish Times* [article](#)

¹⁹ Judgment available [here](#)

²⁰ <https://www.patfinucanecentre.org/state-violence/evidence-waterboarding-belfast>

²¹ <https://www.channel4.com/news/waterboarding-claims-in-northern-ireland>

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

As alluded to above, the UK set out a changed approach to dealing with Northern Ireland legacy matters in a Written Ministerial Statement (WMS) by the NI Secretary of State on 18 March 2020. The new proposals are lacking in detail, but commit the UK to shifting “the focus of our approach to the past” to information recovery, whilst stating there will be a route to justice in a small number of cases, with a suggestion that this will assist reconciliation and deliver for victims. At the same time, the WMS commits the UK to the conducting quick police investigations in select cases where there is “new compelling” evidence and a “realistic prospect of a prosecution”. There is no mention of grave or serious security force misconduct being investigated, as is presently the case. Once such ‘quick’ investigations are completed, there would be a statutory bar on the same case ever being investigated again.

It is proposed that “one independent body” will oversee and manage the information recovery and investigative aspects of the legacy system, providing “every family” with a Family Report for each death. The WMS is essentially silent on the fate of the Historical Investigations Unit, the Oral History Archive, and the Independent Commission on Information Retrieval, which were proposed under the Stormont House Agreement (including the international treaty which gives rise to the latter).²²

We are concerned that with too high a threshold for the use of police powers to investigate, and an obligation to close cases forever once the process is completed, the process would not adequately expose human rights violations, and thus would not facilitate guarantees of non-recurrence, justice, or truth recovery. This raises the prospect of no investigations into grave and serious security force misconduct, in a context where evidence of official criminal wrongdoing will likely have been destroyed, therefore precluding investigation.

The language suggests the ‘new evidence’ trigger will be set higher than the threshold required by the EHCR. In addition, the subsequent blanket ‘closed cases’ procedure prevents investigation when there is subsequently new evidence, however ‘compelling’ it may be.

It should be noted that the WMS is among a further group of around half a dozen proposals that have emerged since the SHA. Many of these proposals have been drafted, at times explicitly, with a view to shielding the armed forces from scrutiny in Northern Ireland legacy cases. In April 2020, CAJ, along academic colleagues in Queen’s University Belfast, published a critical analysis of these proposals examining their compatibility with the European Convention on Human Right and UN standards; the Stormont House Agreement; and the Belfast/Good Friday Agreement.²³

There is also a significant risk that the *Overseas Operations (Service Personnel and Veterans) Bill* will also be amended to cover Northern Ireland legacy cases and thus

²² See [this agreement](#) on the establishment of the ICIR (signed 15 Oct 2015, not yet in force)

²³ <https://caj.org.uk/2020/04/09/prosecutions-imprisonment-and-the-sha/>

provide a statute bar on criminal proceedings most legacy cases, including those relating to torture.

The Committee may wish to urge the UK not to introduce such statute bars for the military or other state actors in relation to investigation of conduct prohibited under the Convention.