JUST NEWS

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Justice Delayed in the Pat Finucane Case

Jane Winter, former Director of British Irish Rights Watch

Thirty-five years after the murder of lawyer Patrick Finucane in 1989, UK Secretary of State for Northern Ireland Hilary Benn has finally announced a public inquiry. The government has already admitted security force and intelligence collusion in this brutal killing, and apologised on behalf of the nation, but that has not stopped a series of cover-ups and behind-closed-doors investigations which cost millions and would have paid for a public inquiry several times over.

Since Pat's murder there have been seventeen Secretaries of State for Northern Ireland before Benn, and ten Prime Ministers, both Labour and Conservative, none of whom was prepared to allow a public inquiry into this ruthless murder, which took place in the presence of Pat Finucane's wife and three children. Instead, we have had an inquest; three police investigations by John (now Lord) Stevens; the trial of double agent Brian Nelson; Peter Cory's Collusion Inquiry, which recommended a public inquiry; and Desmond de Silva's paper review of the case. While each of these procedures brought new information to light, they only provided pieces of the jigsaw – they did not reveal the picture on the box. Lurking in the background, their role never fully revealed, were the intelligence services, and sheltering behind them were the politicians. Crucially, the family were not involved in any of these processes. They were not consulted about them, and they and their legal team had no opportunity to scrutinise the evidence or examine, let alone cross-examine, witnesses.

In order to have any traction at all, the family – like so many others in Northern Ireland – had to take matters into their own hands. They lobbied successive Irish and American governments. Their lawyers—many of whom had been personal friends of Pat Finucane—mounted judicial review after judicial review and took the case to the European Court of Human Rights. Amnesty International and American NGOs like Human Rights Watch and particularly Human Rights First (formerly the Lawyers Committee for Human Rights) sent delegations to investigate the case and produce reports. Local NGOs like CAJ and British Irish Rights Watch supported the family throughout and helped to facilitate the first-ever visit to the United Kingdom of a United Nations Special Rapporteur, who, like every international lawyer who ever examined the case, recommended a public inquiry. Journalists wrote articles and made television documentaries about the case.

Despite all this work, anniversary after crushing anniversary passed without any glimmer of justice. Like every unsolved and unresolved murder arising from the conflict, Pat's death left indelible marks on all those who loved him. Although information was coming to light, every new fact

raised further questions, and information without acceptance of responsibility and accountability does not deliver justice.

The passing of time produced, as was no doubt intended by those responsible for the inordinate delay, another impediment to justice. Many key witnesses, such as Brian Nelson, have died, and with them has died the opportunity to hear their evidence and put it to the test.

The turning point came in February 2019, days after the 30th anniversary of Pat's death, when the UK Supreme Court ruled unanimously that not a single one of the state-sponsored investigations, from the inquest to de Silva, had been in conformity with the requirement of Article 2 of the European Convention on Human Rights for an effective investigation when a life has been lost. It was to take another slew of judicial reviews, five long years, and a change of government before any action was taken in response to this historic judgment ([2019] UKSC 7).

There are many in Northern Ireland who will readily understand that the Finucane family's long fight for justice does not end with Benn's announcement of an inquiry; the battle is only just beginning. After so many years of grinding injustice, the family needs to be certain that the right person is chairing the inquiry, that the terms of reference are watertight, and that the Secretary of State will not use his powers under the Inquiries Act 2005 to interfere in any way with witnesses, evidence, or the way in which the inquiry is run.

Ironically, the long wait for justice means that a great deal is already known about the brutal murder of Patrick Finucane. Painstaking work by lawyers, journalists, and NGOs; the provision of information by former insiders; and investigations by the European Court of Human Rights and the UN have all played their part. As in every case where state collusion is involved, myths and rumours have abounded and have had to be eliminated. Yet despite all this endeavour, there remain many unanswered questions.

Some confusion still surrounds the details of the murder itself, and the precise role played by the infamous Force Research Unit, a military intelligence outfit that ran agents like Brian Nelson, but may also have actively promoted and even engaged in acts of terrorism. An even more pressing question is how far up the military, intelligence, and political chains of command did the decision go to kill a lawyer—a game-changer in the rules of engagement up until then. Then there is the greatest question of all: what is it about this particular death, among so many, that successive governments have been so anxious to hide? Unless the scheduled inquiry can answer that question, then justice so long delayed will truly be justice denied.

Not every family in Northern Ireland who deserve a public inquiry will be given one. Since the infamous Widgery Inquiry, which blamed the victims for the 1972 deaths on Bloody Sunday, there have been only a handful of public inquiries into disputed deaths arising out of the conflict, including the enormously lengthy and costly second inquiry into Bloody Sunday, as well as more modest inquiries into the deaths of Robert Hamill, Billy Wright, and another lawyer, Rosemary Nelson. These were all landmark cases, as is that of Pat Finucane. Many families who will never see a public inquiry into the death of their own loved ones will be watching the inquiry into Pat's death keenly. It is hoped that those who conduct the inquiry understand the iconic and symbolic importance that has attached itself to the Finucane family's quest for justice over the years. Whatever certain politicians may say with their knee-jerk "whataboutery", people on all sides of the community in Northern Ireland were affected by the policies and practices which led to Pat's murder. The Finucane family know this, and they have received messages of support from all quarters, as well as being the victims of threats from those who are mired in the dark past. It takes great courage and steadfastness to fight for justice for three and a half decades, as other families know who have fought, and are still fighting, similar long campaigns. If the state cannot deliver justice now—however late and however imperfect by reason of its tardiness—for the Finucanes, then many beyond those immediately concerned will lose all faith in justice itself.

The new Labour government finally thought again about the Finucane case and about the last government's disastrous Northern Ireland Troubles (Legacy and Reconciliation) Act 2023, which sought to close down almost every route to investigating "historic" cases (historic only in the sense that they happened some time ago—for the survivors they are an ever-present reality). However, Hilary Benn has made it clear that he intends to retain the almost universally rejected Independent Commission for Reconciliation and Information Recovery. He should listen to the voices of the survivors of the conflict, who have lost those they loved in disputed circumstances. He has, belatedly, done right by the Finucanes. It is not too late to think again about imposing an unwanted, unworkable, Northern Ireland-only solution to a set of problems caused by the policies of successive British governments. The Finucanes would be the first to say that they are not the only family still waiting for justice.

Best International Practices and Precedents on Investigations related to Conflict and Transitions

Fionnuala Ní Aoláin, University of Minnesota Law School and Queen's University Belfast School of Law

Much has been written in the past two years on the challenges, independence and reform of the the Independent Commission for Reconciliation and Information Recovery (ICRIR). Academic and policy attention has mostly focused on the compatibility of the ICRIR with the European Convention on Human Rights (ECHR), and specifically the standard setting of the Court over many decades on state obligations under Article 2 of the ECHR. Here I reflect more broadly on what international law requires of commissions of inquiry and investigative bodies whose mandate extends to controversial deaths, and the evolving global standards stretching back over decades.

It is worth noting that there is international law on investigations stretching back to 1919 with the creation of the *Commission on the Responsibility of Authors of the War and on Enforcement of Penalties* post-World War I, and over two decades later the establishment of the *United Nations War Crimes Commission* (1943-45). While both bodies had their historical and practical limitations, their very existence, the list of punishable offences they established, and the flexibility of their approaches to post-conflict investigations underscore the point that commissions of inquiry have had both an historical role as a dispute

settlement tool and expanded their accountability functions over time. While the Cold War intervened and limited the development of international criminal justice mechanisms and broader accountability tools, some principles emerge early in the global conversation about investigation in disputed conflict and post-conflict settings. Following the Cold war, international mechanisms not only widened and expanded but the principles and norms that underpin investigations internationally and nationally come into sharper focus and agreement.

Consensus emerges through multiple UN Security Council Resolutions, Human Rights Council Resolutions, regional and international judicial oversight and evolving soft law standards. Moreover, the proliferation of 'inquiry' bodies, fact-finding missions, high-level expert panels at the international and regional level has sharpened international law standards on the compliance of such bodies with international norms. [1] In turn, the turn to inquiry in international law has sharpened expectations of State practice domestically, and particularly in the conformity of domestic inquiry and investigatory mechanisms with international law. Core expectations for both global and domestic investigations include:

- **Sufficiently robust terms of reference** to enable adequate, effective and meaningful investigations to be carried out.
- **Actual and perceived independence**, impartiality and objectivity for investigatory bodies including their officials and personnel.
- **Sufficient powers to summon** relevant witnesses and access documents.
- **Diversity in the leadership** of such bodies along intersectional lines.
- **Capacity to clarify** disputed facts.
- **Establish a clear and accurate** historical record**.**
- **Make determinations about alleged violations of** national and/or international law.
- **Adequate funding** to carry out their terms of reference.
- **Victim centered justice** so that victims are not ancillary or leveraged by investigation ends but are included, supported, and autonomous actors in the investigatory process and its aftermath.
- **Procedural safeguards to the rights of those implicated** by investigations, and adherence to fundamental rule of law based and human rights.
- **Capacity to provide meaningful remedy** to victims.

The point I make here is **not** that the establishment of various forms of investigation and inquiry over the past several decades has been entirely unproblematic from either a human rights or rule of law perspective. Plenty of mistakes have been made. They include over-optimism about the capacity to meet victims' needs and address the totality of the harms caused by violence and violations. Deep and painful critiques have included lack of funding for these bodies to conduct their work adequately, lack of cooperation by territorial and other states, an inability to ensure the safety of victims, investigators and witnesses, and the challenges of excavating forensic and other evidence for violations that have occurred in the distant past.

Nonetheless, a substantial body of practice has emerged affirming fundamental rights to redeem non-derogable rights such as the right to life and the right to be free from torture. Fundamentally, the establishment of these bodies serves as an example to States, including Ireland and the United Kingdom, that disputed deaths and the resolution of state responsibility for violations committed by state actors and non-state actors alike is a core obligation under international law. The obligations cannot be ignored or shrugged off. These obligations take concrete form and in discharging them by creating domestic investigatory mechanisms, international law has something to say. Specifically, these international models demonstrate the minimal and maximal obligations of States to 'do' investigation well. For the United Kingdom and Ireland, international law obligations include, but are not limited to, their regional human rights treaty obligations. So, in establishing the ICRIR the United Kingdom must take account of its European Convention obligations, but not only that treaty is at stake. More broadly, the general practices and human rights standards that have evolved in investigatory bodies established by the Security Council and Human Rights Council are also necessary to account for when assessing the compliance of the ICRIR with international law broadly defined.

Put another way, there are multiple UN processes with stake in the game on the ICRIR, because whether through treaty body, Universal Periodic Review or United Nations Special Procedure review its compatibility with international law will be tested. In this moment of ICRIR revision, the requirements of international law broadly defined under the ICCPR, Geneva Conventions and compelling soft law such as the Minnesota Protocol on the Investigation of Potentially Unlawful Deaths should be considered.[2] For officials, such work may seem cumbersome but the costs at the backend of establishing a body that fails to meet the essential requirements outlined above that have consolidated over decades of state practice on investigation and accountability are substantial. For the families as well as the UK government the goal should be to do it right—not only because the victims need it to be right but because the precedent to set is a global one, that reaches far beyond Northern Ireland. It sends a signal that we have the capacity to meet the moment and advance rather than backslide on international law.

Armed Groups, Information Recovery and Dealing with the Past

Professor Kieran McEvoy, Queen's University Belfast

Within the human rights community, there has been an understandable focus on the closure of police investigations, police ombudsman, civil actions and inquests as a result of the Legacy Act coming into force in May 2024. Human rights activists have also concentrated on the apparent lack of public trust or confidence in the Commission which was established to replace these legal processes. Regretfully, another feature of current processes which has passed under the radar is the failure to establish a mechanism to encourage information recovery from armed groups.

When the Stormont House Agreement was concluded in 2014, as well as constituting an investigative mechanism, it included provisions for the establishment of an Independent Commission for Information Retrieval (ICIR). Based on the success of the Disappeared Commission (the Independent Commission for the Location of Victims' Remains), the ICIR was designed to secure information for victims who wished to use it via the deployment of interlocutors to armed groups and former state actors. As with the Disappeared Commission, a limited form of immunity was provided so that none of the information garnered could be used for prosecutorial purposes – although prosecutions would still be viable via other routes. Even though the UK government signed a treaty with the Irish government to allow this body to operate on a cross-border basis, former Prime Minister Boris Johnson's government abandoned it when introducing the Legacy Act.

The previous UK government claimed that the power of the Legacy Act Commission—chaired by Sir Declan Morgan—to grant an amnesty meant that the ICIR was no longer necessary. However, since the amnesty provisions of the Legacy Act have now been found to be unlawful by the 2024 *Dillon* judgement and the UK government has indicated it will remove these provisions via a parliamentary remedial order, there is no mechanism in place to secure information from armed groups.

This lacuna was one element of a recent seminar I organised at Queen's University Belfast as part of an ongoing Leverhulme Major Research Fellowship on how armed groups should address past harms. I argued that addressing the past requires armed groups to 'step up' to address past harms. I maintained that interlocutors with credibility are the only route to secure such information, those interlocutors need legal protection, there needs to be a process for sensitive engagement with victims and verification of the information provided and the process needs to be entirely separate and independent from investigations—all of which was provided for in the Stormont House Agreement.

The Disappeared Commission

Geoff Knupfer, a former detective chief superintendent and previously lead investigator for the Disappeared Commission, reflected on his experiences at our recent seminar. That Commission has helped to recover the remains of 13 of the 17 disappeared. Paying tribute to the resilience of the victim families, Geoff also noted that the limited immunity in the Disappeared legislation was absolutely crucial in securing the buy-in and cooperation of the Republican Movement, paying 'particular tribute to our intermediaries and interlocutors'.

ETA Decommissioning

Former Senior NIO official Chris Maccabe also spoke about his own direct experience of being a peacemaking interlocutor overseeing the process of decommissioning by the Basque separatist group ETA. Given that the Basque peace emerged in the face of hostility from the then right-wing government in Madrid, Chris recounted how he was handed a summons to appear before a court for 'your actions in conspiring with the terrorist group known as ETA.'

Victims and the Question as to whether Armed Groups will 'Step Up.'

During the seminar a range of issues were discussed including organisational capacity, political will and legal protections for interlocutors. Amongst those who made interventions was a victim who had engaged in a lengthy and ultimately successful process of information recovery where he sought and received information about the murder of his father through an interlocutor to the UVF.

There are obvious variances in terms of capacity and political will between different armed groups. A former IRA prisoner and leading Sinn Féin activist spoke about his experience of being involved in the negotiations of the Stormont House Agreement on legacy, including the proposed mechanism to facilitate information recovery from armed groups. He said: 'During those [Stormont House] negotiations the Sinn Féin delegation was asked will you get buy in for these mechanisms. We replied if the mechanisms are there with all the legislative safeguards that Kieran was referencing republicans shall not be found wanting. That remains our position on this issue.'

A prominent loyalist also intervened from the floor. Noting that Irish government also need to establish parallel mechanisms to the UK and that 'without fundamental changes, such as the introduction of protections or safeguards for interlocutors, who is going to give the information? People in the community I come from just won't come forward.'

Conclusion

This was an important event which spoke to the viability of information recovery from armed groups if the right combination of political and organisational will is matched by an appropriate legal framework to protect interlocutors and test the veracity of the information being provided. Such a mechanism must be distinct from legacy investigations. Such a route to informational recovery option should be available to those victims who wish it.

Universal Human Rights and Paramilitary Transition in Northern Ireland

Professor Marie Breen-Smyth, former Independent Reviewer of National Security Arrangements in Northern Ireland

Those living in communities where paramilitaries operate have the right to live free from fear, intimidation and threat. That is incontestable. Ending paramilitarism has been a priority for government for almost a decade now.

On 19 October 2015, the Secretary of State published MI5 and the PSNI assessment of the 'structure, role and purpose' of paramilitary groups in Northern Ireland. It concluded that 'all the main paramilitary groups operating during the Troubles remain in existence. They held that, in spite of being illegal organisations, they maintained a 'relatively public profile'. Yet the most serious threat at that time was assessed as not posed by these groups but by dissident republicans.

Back in November 2015, the UK and Northern Ireland governments signed the Fresh Start Agreement which, amongst other things, undertook to end paramilitarism. That Agreement committed both parties to:

- Work collectively to achieve a society free of paramilitarism;
- Support the rule of law unequivocally in word and deed and support all efforts to uphold it;
- Challenge all paramilitary activity and associated criminality;

- Call for, and work together to achieve, the disbandment of all paramilitary organisations and their structures;
- Challenge paramilitary attempts to control communities;
- Support those who are determined to make transition away from paramilitarism; and
- Accept no authority, direction or control on our political activities other than our democratic mandate alongside our own personal and party judgment.

The multi-agency Paramilitary Crime Task Force, composed of the PSNI, the National Crime Agency and HM Revenue and Customs was formed and funded to tackle 'all forms of criminality linked to paramilitarism' and an Independent Reporting Commission (IRC) was set up to monitor and report on the status of paramilitarism. It has repeatedly recommended an interlocutory route to ending paramilitarism. Even a cursory review of the paramilitary crime statistics illustrate that policing alone can only contain paramilitarism

Almost a decade has passed, and paramilitarism remains a feature of life here. The assessment of the structure role and purpose of these groups remains broadly the same in the present day.

There has been some success in reducing the violence of dissident republican groups, (classified as National Security attacks) who were responsible for 16 attacks at the time of the Fresh Start Agreement, this reduced to two attacks in 2023.

In 2021, the IRC reported (p5) that there were various degrees of involvement in paramilitarism, from 'dormant' members, those who wish to step away from paramilitarism, those who remain involved in paramilitarism for political and identity reasons originating in the Troubles, yet others who have been caught up in paramilitarism due to socio-economic disadvantage, to yet others who are primarily involved in "extortion, drug dealing, threats, trade in counterfeit goods, money laundering, illegal money lending, sexual exploitation and other illegal activities." Paramilitaries also carry out violent paramilitary attacks up to and including murder. In their sixth report in 2023 the IRC concluded that whilst law enforcement had achieved a significant amount in tackling paramilitary crime, policing alone is insufficient to end paramilitarism. The law requires that in order to convict and punish people, evidence must be made available to the courts of law breaking. Yet, as the IRC pointed out, no such evidence can be obtained against many members of paramilitary groups. Thus, in their sixth report, the IRC once again recommended a formal process of transition led by an officially appointed interlocutor.

Current discussions about paramilitary transition are bedeviled by number of assumptions: that transition means paying paramilitary groups to transition; that policing alone, the arrest and imprisonment of paramilitary members can end paramilitarism; that they had their chance long ago and any tale of transition now is insincere, dishonest and manipulative; that those in the voluntary sector who advocate transition are naïve or pawns of the paramilitary groups.

Group transition should not involve paying paramilitary groups. Rather, group transition involves taking weapons and possibly assets out of the hands of proscribed organisations and possibly de-proscription or disbandment consistent with international law standards. All of this would require verification and interaction with the authorities. Of course paramilitaries should have gone out of business decades ago, but they didn't. We are where we are and pointing to what should have been gets us nowhere. And those who now advocate paramilitary group or sub-group transition are as naïve as John Hume was when he began talking to the IRA back in the 1990s. Naivete is the cornerstone of innovation and progress.

The current condemnation and the moral certitude of the mainstream is untroubled by the complexities of the situation. According to PSNI statistics, from 1998 to 2023 there were 2064 Loyalist and 1196 Republican paramilitary style attacks. Of these, 1247 (60%) of attacks have been conducted in the postal districts BT1-15, the Belfast area. Yet the Belfast area contains only 18.1% of the population of Northern Ireland. Paramilitary violence is concentrated in Belfast. Of these attacks in Belfast, 695 have been carried out by loyalists and 552 by republicans. Since the 2015 Fresh Start Agreement initiative designed to end paramilitarism, there have been 578 attacks, 212 of these have been conducted by Republicans and 366 by Loyalists.

In many communities, especially those outside Belfast, the threat and danger emanates from drug dealers, drug gangs and addicts, who often operate outside of paramilitary structures. Significant numbers of those in paramilitaries and who wish to transition are regarded as gatekeepers in their communities. In the context of a widespread lack of community confidence in the ability of the PSNI to stop drug-dealing and usage, especially in loyalist working class areas, people turn to paramilitaries in utter desperation. Drug gangs in some areas tend to pay attention to paramilitaries, who continue to hold weapons, even if they don't use them. Those paramilitaries who perform this function fear that if they formally step down, which they wish to do, the resultant vacuum will fill quickly with more and more gang-based criminality. They want to 'leave the field' responsibly yet minimise the capacity for others to move into that vacuum. Simply walking away as individuals will not serve this purpose. And even those who walk away continue to hold a particular kind of status—or stigma—depending on the eye of the beholder.

Of course in other areas, notably in certain Belfast districts, it is the paramilitaries themselves who are peddling drugs and operating various criminal enterprises for personal gain. Many in the old guard, men – and they are almost exclusively men – who have been members of these groups since the 1970s and 80s, are appalled by this and see it as a sullying of the political cause they purport to serve. We have seen moves on the part of leadership in some organisations to expel or distance themselves from what has become purely criminal elements operating under political flags of convenience.

If those individuals who are heartily sick of violence and paramilitarism leave their organisations—presuming the organisation, often headquartered outside their area, allows them to do so—what are the consequences for the organisation? It remains intact, the doves have left, and the hawks are in charge of whatever weapons the group holds. This is a retrograde step. In the past in this country and in many others enduring non-state armed violence, the decommissioning or surrendering of weapons has been central to any successful move to demilitarisation. Leaving guns in circulation, as they did in South Africa creates new opportunities for criminal gangs.

There can be no financial compensation for paramilitaries to transition. Quite the reverse. Support for work at community level to address the dire housing conditions, educational vacuums, drug and alcohol dependency, domestic violence and hopelessness in which paramilitarism arose in the first place is urgently required. Those who work at grass roots level to change these things deserve public support, irrespective of whether or not they have a paramilitary past. The weapons and assets held by paramilitary groups must be included in the discussion about the form any future transition should take. Taking weapons out of circulation prevents them from falling into the hands of criminal gangs or spoilers. The most effective, internationally acknowledged and time tested method of taking weapons out of circulation is by negotiation with the leadership of armed groups. The authority of the leader and the chain of command of an armed groups is a valuable asset in achieving this.

In any future group transition process, those paramilitants who are unwilling to transition consign themselves to the criminal category, devoid of any political cover-story. Politics in this place must rise or fall on the power of the argument and the plebiscite, not the gun.

Launch of Policing the Protestors: A Narrative Report of PSNI Policing of Environmental Protest in the Sperrins

The link between environmental rights and human rights is going to become increasingly urgent as the climate crisis deepens over the next ten to twenty years. The impact of climate change is likely going to dramatically exacerbate global human rights issues, from increased displacement and migration to scarcity of resources resulting in war and conflict.

In this context, CAJ has begun exploring how our work can support environmental rights. We were approached by Friends of the Earth to examine police conduct in relation to a small group of environmental activists (who prefer to be known as protectors) specifically around the issue of goldmining in the Sperrin Mountains.

On 10 September 2024, CAJ launched the product of this engagement in the form of an independent report titled "*Policing the Protectors: A Narrative Report of PSNI Policing of Environmental Protest in the Sperrins*". The report launch event included a recorded keynote address from Michel Forst, the UN Special Rapporteur on Environmental Defenders under the Aarhus Convention. Michele Forst has previously highlighted that the legislative measures passed in the UK restricting the right to peaceful protest are some of the most concerning he has ever seen.

The CAJ report examined allegations raised by the protectors under three main areas, namely that:

1) The Police Service of Northern Ireland (PSNI) had not adequately investigated offences that had been reported to them as crimes by protectors.

2) The PSNI had unduly sought to deter protectors from taking part in lawful expressive protest activities; and

3) Of undue criminalisation of protectors for legitimate acts of protest

As CAJ is not an investigative body, we have no powers to compel the disclosure of documentation, or to interview police officers. Therefore, the report is essentially limited to a paper-based assessment of the extent to which the incidents alleged would, if proven, be in breach of human rights standards and related PSNI policy. We used interviews, written testimony, and subject

access requests to inform the allegations. Unless explicitly stated in the report, we did not verify the accuracy of the facts alleged.

The report starts with an overview of relevant human rights standards, including the right to peaceful assembly, freedom of association and freedom of expression. The report discusses how rights to protest place both negative and positive obligations on public authorities, including the police, to ensure that these rights can be exercised in practice. This includes a positive obligation to *facilitate and protect* free assembly.

The report includes an overview of the relevant PSNI legal and policy framework and the practical outworkings and limitations of the general duties of police officers, including the duty to protect life and duties to investigate. There is discussion of the use of informants in a protest context, and how the Covert Human Intelligence (CHIS) draft revised Code of Practice limits the use or conduct of a CHIS by public authorities. The remit of lawful restrictions on protest by the police is examined, including the regulatory regime on parades and marches, and restrictions that can be imposed on static protests.

Finally, the report examines the oversight and accountability measures that the PSNI are subject to, including the role of the Police Ombudsman for Northern Ireland and the Northern Ireland Policing Board.

The main section of the report addresses the three thematic areas of allegations. The first section includes concerns expressed by protectors that their reports of various alleged assaults, harassment, and intimidation they experienced as a result of their opposition to the gold mining have not been adequately investigated as criminal conduct, resulting in a lack of trust and confidence in policing. By contrast, protectors are concerned that allegations of criminal activity made against them are allegedly swiftly investigated, despite a lack of evidence to substantiate them. This has led to a perception that the police are not impartial.

The allegations listed in the report include death threats, harassing phone calls threatening protector's children, hit and run incidents, being accused of involvement in paramilitary activity, online abuse, and more. Many of these incidents were reported to the police, but others were not.

The report states that if the allegations of protectors set out in this report were substantiated, the lack of communication with victims regarding the status of the investigations (and failure to collect evidence) in some instances (but not others) and by contrast the prompt investigation of allegations of harassment when made against protectors, would not be compatible with the PSNI Code of Ethics and may indicate a pattern of differential policing between protectors and those in support of goldmining. The reported failure to adequately investigate the threats to kill and hit and run incidents would be particularly concerning given the severity of the incidents and the positive obligations arising under Article 2 of the European Convention on Human Rights (right to life). If, after informing the protectors about threats to their lives, the police did not investigate the potential offence(s), this may be considered a breach of the PSNI Code of Ethics.

The second thematic area is that the PSNI sought to deter protectors from participating in lawful expressive protest activities. The allegations in this section were primarily involving one protector who alleged a pattern of issues around PSNI actions, including threats to family members, being offered money to inform on the campaign, and being told that others in the campaign were informants.

The report states that the allegations would raise serious concerns about the impartiality and proportionality of the policing of protectors involved in the anti-goldmining campaign and hence compliance with the PSNI Code of Ethics. The impact of such actions could deter protectors from taking part in lawful expressive protest activities, and hence conflict with the positive obligations of states to facilitate and protect the exercise of the right to protest. If the allegations of attempted infiltration were substantiated, it is likely that attempting to recruit a CHIS to obtain, provide access to or disclose information about lawful protest activity would a breach of the necessity and proportionality test in the ECHR and conflict with the Regulation of Investigatory Powers Act (2000) Code of Practice. Additionally, the allegation that an officer falsely claimed to a protector that oth-

er people in the campaign were informants (or, alternatively, disclosed the identity of an informant), if substantiated, would conflict with ECHR rights.

The last main thematic area concerned allegations of disproportionate criminal sanctions being used against protectors for exercising their legitimate right to protest. The allegations included protectors being offered a caution two years after staging a peaceful sit-in at a council building; being charged with aggravated trespass for chaining themselves to a gate, and having to appear in court over 14 times on the same charge; protectors charged with criminal damage for cutting two cable ties on a fence; and being charged with harassment months after a cordial public meeting with an individual (but two days after the protector's complaint against the goldmining company to the Advertising Standards Authority was upheld).

The report states that while CAJ is unable to verify the accuracy of the allegations in this section, if substantiated, the complaints of criminalisation of protest activity, and disproportionate use of policing and criminal justice powers against protectors raises questions of proportionality and impartiality in the policing response. This is particularly the case when viewed thematically, as it may be indicative of a pattern of differential policing.

The report concluded that the patterns that emerged in this report from the testimony of the protectors do give cause for concern regarding practices in the policing of environmental protests in the Sperrin mountains, in particular regarding the proportionality of the policing response and questions of differential treatment. In this context, we urged the Northern Ireland Policing Board or the Police Ombudsman for Northern Ireland to consider a thematic review into the policing of the groups and individuals opposed to goldmining in the Sperrin Mountains, including reviewing the questions of differential treatment and the proportionality of criminal sanctions for protectors.

The report highlights that part of the concerns expressed by protectors are beyond the capacity and remit of the PSNI and oversight bodies to address and are related to broader issues around holding corporations and individuals accountable for breaches of environmental law and best human rights practices for businesses. Protectors have expressed concerns that the policing and justice system is set up to investigate and punish people who damage private property, but not with people who pollute and breach environmental law. The purpose of this report was not to review environmental regulation and enforcement bodies in NI, but it is worth noting that serious concerns have been consistently raised about the quality and robustness of environmental enforcement and oversight in NI. There are systemic issues with our oversight bodies that not only fail to prevent environmental crime but seem distinctly unmotivated to address evidence of criminality when it is presented to them.

In the absence of effective enforcement bodies, protectors rely more heavily on policing and judicial remedies to address breaches of environmental law. Considering this, police have a heightened responsibility to ensure that their actions remain impartial, that peaceful protest is facilitated, that alleged crimes reported by protectors are robustly investigated and allegations made against protestors are handled fairly and proportionately.

Twenty-five years of Women, Peace and Security in Northern Ireland and the World

Professor Catherine O'Rourke, Durham Law School, Former Director of Ulster University's Transitional Justice Institute

The jamboree at UN Headquarters around the 25th anniversary of Resolution 1325 on Women, Peace and Security (WPS) will no doubt be more subdued this year, falling as it does during escalating conflict in the Middle East, ongoing conflict in Ukraine and so close to the US presidential election. Perhaps a more muted anniversary is no bad thing. As it happens, the anniversary falls during Russia's rotation at the presidency of the UN Security Council. With this coincidence, it is hard to imagine a more pointed reminder of the compromises involved in bringing the WPS agenda to the Security Council, and in keeping it there.

But to focus only on the UN Security Council and states to evaluate the resolution and its impact would be unduly narrow. Resolution 1325 is rightly viewed as an outcome of transnational women's activism and the resolution has always had a dual life as both a Security Council resolution *and* as a mobilising framework for women's activism. Through this latter lens, we can see major significance for the resolution in Northern Ireland. Resolution 1325 is often discussed in terms of "the 4 Pillars", namely Participation, Protection, Prevention, and Relief and Recovery. In terms of Participation, the Assembly includes an All-Party Group on Women, Peace and Security. This APG has provided an ongoing space for women's civil society in Northern Ireland to access political decision-making in the jurisdiction. On the question of Protection, we can see signs of progress also. For example, due to substantial work by women's organisations to educate, inform and provide evidence to policy-makers, official efforts to address ongoing paramilitarism has worked with more complex notions of violence that include also less visible and less overt forms of violence, including coercive control and intimidation of women by family members.

On Relief and Rehabilitation, this pillar is typically where we consider the vexed question of accountability for past violations and transitional justice. Whilst official efforts on this front do not inspire confidence, here also we can find reasons for optimism in at least popular understandings of demands and needs for past-focused accountability and reparations to victims that are gender-inclusive. On Prevention, in many ways the pillar with the greatest potential for transformative outcomes, years of advocacy for a violence against women strategy have not yet borne fruit. The Gillen reforms remain largely unimplemented. Indeed, the measures put in place to ensure political power-sharing remain a powerful implement to the wider social transformation, particularly in health and education, for which many women's organisations have been to the forefront of demands.

Ongoing discussions about the application of Resolution 1325 reflect more fundamental debates about both the nature of the resolution itself and about the objectives of peacebuilding in Northern Ireland. There remains a fundamental question about the extent to which Resolution 1325 was ever intended to enable a broader process of social transformation. It seems that women's organisations, locally and globally, have lived these contradictions. In a global context, in which so much of the

promise of WPS has been betrayed by those with the greatest responsibility for its implementation, one continues to find hope in the women's activism that inspired the resolution in the first place, that continues to hold that power to account, and that constantly works to re-negotiate the terms on which both peace and security are offered.

More Human Rights: Protocol 4 of the European Convention on Human Rights and the Human Rights Act 1998

John Wadham, Human Rights Advisor to the Northern Ireland Policing Board

Fiona Byrne, Independent Human Rights Consultant and previously Human Rights Officer at the Northern Ireland Policing Board

The European Convention on Human Rights (ECHR) Additional Protocols 4, 7 and 12 have never been ratified by the UK and are not included in the schedule to the Human Rights Act 1998. The absence of comprehensive equality law in Northern Ireland makes the ratification of Protocol 12 all the more important.

In the run up to the 1997 general election and during the drafting of the Labour Party's policy on what was to become the Human Rights Bill there were discussions within the Shadow Cabinet about whether or not the remaining Protocols 4, 6 and 7 to the European Convention on Human Rights should be signed and ratified and, as a result, bind the UK at an international level.

The new Labour Government then said 'It will be possible to ratify Protocol 4 only if the potential conflicts with our domestic laws can be resolved. This remains under consideration but we do not propose to ratify Protocol 4 at present.'[3] The then government had concerns that Articles 2 and 3 of Protocol 4 may confer rights in relation to passports and a right of abode on categories of British nationals who do not currently have a right to reside in the UK.[4] In a subsequent Joint Committee on Human Rights report, the Committee noted that the terms of Article 2 of Protocol 4 are 'substantially similar to those of Article 12 ICCPR, which the UK has ratified subject to reservations regarding disciplinary procedures for members of the armed forces, and regarding nationals of dependent territories and the right to enter and remain in the UK and each of the dependent territories.'[5]

In contrast, it was eventually agreed by the Labour Government that Protocol 7 should be ratified and added to Schedule 1 of the Human Rights Act:

"4.15 In general, the provisions of Protocol 7 reflect principles already inherent in our law. In view of concerns in some of these areas in recent years, the Government believes that it would be particularly helpful to give these important principles the same legal status as other rights in the Convention by ratifying and incorporating Protocol 7. There is, however, a difficulty with this because a few provisions of our domestic law, for example in relation to the property rights of spouses, could not be interpreted in a way which is compatible with Protocol 7. The Government intends to legislate to remove these inconsistencies, when a suitable opportunity occurs, and then to sign and ratify the Protocol.

4.16 The Secretary of State will be able to amend the Human Rights Act by Order so as to insert into it the rights contained in any Protocols to the Convention which the United Kingdom ratifies in future. The Order will be subject to approval by both Houses of Parliament. The Bill also enables any reservation to a Protocol to be added, but as with the existing reservation it will have to be reviewed every five years if not withdrawn earlier" [6]

Changes which resulted in the ability to comply with the provision of equality between spouses in Article 5 of Protocol 7, were only made in 2010.[7]

The Additional Rights in these Protocols

The rights in Protocol 4:

- Prohibition of imprisonment for debt
- Freedom of movement within a territory
- Freedom to leave the territory
- Prohibition of expulsion of nationals
- Prohibition of collective expulsion of aliens[8]

The rights in Protocol 7:

- Procedural safeguards relating to the expulsion of aliens
- Right of appeal in criminal matters
- Compensation for wrongful conviction
- Right not to be tried or punished twice
- Equality between spouses

The right in Protocol 12

- Any right set out in law shall be secured without discrimination

Protocol 4 and 7 add rights to the ECHR, at least in part, to make up for deficiencies in the ECHR itself when compared to the United Nations International Covenant on Civil and Political Rights (ICCPR)- the UN's equivalent of the ECHR. The UK ratified the ICCPR in 1976 (and now 172 countries across the World have ratified it).

The right to free movement and the prohibition on the collective expulsion of aliens contained in Protocol 4 are also set out in Articles 19 and 45 of the EU's Charter of Fundamental Rights. The prohibition against double jeopardy and the equivalence between men and women contained in Protocol 7 are set out in Articles 23 and 50 of the Charter and the general prohibition against discrimination in Protocol 12 is contained in Articles 20 and 21.

Currently, Protocol 4 of the ECHR has been signed and ratified by all bar four of the 46 Member States of the Council of Europe (Greece, Switzerland, Turkey and the UK have not ratified the Protocol). Protocol 7 has been signed and ratified by every one of the 46 Member States except for Germany, Netherlands and UK. If ratified, article 4 of Protocol 4 could be an important tool in challenging the effects of the Nationality and Borders Act

2022 and Illegal Migration Act 2023 domestically and in Strasbourg. Despite inconsistent applications of article 4 of Protocol 4, the Court's jurisprudence is one of the few legal protections against European externalisation policies and a way for those affected to challenge domestic decisions.

Protocol 12, the general anti-discrimination provision, is also a right already contained in the ICCPR[9] but is missing from the main body of the ECHR itself. Article 14, in the main Convention, only prohibits discrimination where this relates directly to the other rights in the Convention. Protocol 12 is, however, a 'stand-alone' provision and has a much wider remit. Protocol 12 has been ratified by twenty Member States although it only came into force in 2005. It is accepted that it would have been more difficult for the UK to ratify in 2005. Concerns were raised regarding its potential breadth, though the Joint Committee on Human Rights considered that these concerns were unwarranted.[10] In addition, the Labour Government's Equality Act of 2010 has now resolved many of any remaining difficulties with compliance, at least in England, Scotland and Wales. As a signatory to a wide variety of international human rights instruments concerning equality and non-discrimination, the United Kingdom has already accepted the main principles enshrined in Protocol 12.

As with all the Convention Rights, these rights come with protections and caveats to protect the wider public interest and the interests of society more generally and to assuage concerns regarding overreach, many of the rights in these Protocols are subject to limitations or restriction. For example, restrictions which:

"are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

"may … be … imposed in accordance with law and justified by the public interest in a democratic society."
"[are] necessary in the interests of public order or is grounded on reasons of national security."

"shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case."

Many of the provisions impose important but relatively restricted 'due process' rights – rights to a fair procedure which is already largely set out in UK law or provided by the common law created, in large measure, by judicial review.

In relation to Protocol 12, the prohibition of discrimination, is consistent with the Equality Act 2010, "distinctions for which an objective and reasonable justification exist do not constitute discrimination." Obviously, although the ratification of this protocol would be very helpful in Northern Ireland, comprehensive domestic legislation to protect people from discrimination is also necessary.

Now that the threat to the Human Rights Act has disappeared for now it is important step to consider adding the further protections that are set out in Protocols 4, 7 and 12 and to bring the UK in line with most of the rest of 46 countries of the Council of Europe and the 172 countries that have ratified the ICCPR.

Event Notice: Mansoor Adayfi on Restoring Justice and Demanding Accountability, Reflections from Guantanamo and Beyond

Thursday, December 12 from 5-6:30 pm, Queen's University Belfast School of Law, Moot Court (MST.02.006) – RSVP Here

Mansoor Adayfi is a writer, human rights advocate, and former prisoner who spent around 15 years at the US military camp in Guantánamo without charges or trial. He was resettled to Serbia in 2016 as part of an agreement between the US government and Serbia. Since his release, he has taken a few steps toward his goals. In 2021, he completed his bachelor's degree in management, and he is currently working towards a master's in Project Management. Based on his graduation thesis, "Rehabilitation and Integration of Former Guantanamo Prisoners into Social Life and the Labor Market," along with American lawyers and US-based NGOs, he founded GSF (Guantanamo Survivors Fund).

Among Mansoor's works are the New York Times Modern Love column titled "Taking Marriage Class at Guantánamo" and the op-ed "In Our Prison by the Sea." He wrote the introduction, "Ode to the Sea: Art from Guantánamo Bay," for the 2017-2018 exhibition of prisoners' artwork at the John Jay College of Justice in New York City and contributed to the scholarly volume, "Witnessing Torture," published by Palgrave, and to the ECCHR Special publication 2022, "Rupture and Reckoning - Guantanamo turns 20," and others.

In 2018, he participated in the creation of the Whicker Prize-winning radio documentary, "The Art of Now" for BBC radio about art from Guantánamo and the CBC podcast, "Love Me," which aired on NPR's Snap Judgment. Regularly interviewed by international news media about his experiences at Guantánamo and life after, he was also featured in "Out of Gitmo," a documentary in PBS's Frontline series. In 2019, he won the Richard J. Margolis Award for nonfiction writers of social justice journalism. His first book, "DON'T FORGET US HERE, LOST AND FOUND AT GUANTÁNAMO," was published by Hachette to critical acclaim with reviews in The New York Times, The Guardian, The Washington Post, and the Los Angeles Times, among numerous others. It won the 2022 Evelyn Shakir Non-Fiction Award. Together with his friend and editor, Antonio Aiello, he was a Sundance Institute Fellow in Episodic TV to adapt his book into the television show, "From Guantánamo, With Love," now in

development with Diversity Hire, Inc. Mansoor and Aiello also adapted "Life After" into a feature film by the same name, currently a finalist in the Sundance Feature Film Development category and in development with Process-Media and Diversity Hire, Inc. His new audiobook, "Letters from Guantanamo," was recently published by Audible on the 9th of May, 2024.

Mansoor is a prominent advocate for the closure of Guantanamo, dedicated to seeking justice and accountability. He remains actively involved in efforts to address the ongoing issues surrounding Guantanamo and currently serves as the Guantanamo Project Coordinator CAGE International
Website:https://www.mansooradayfi.com/

Footnotes

[1]*See e.g. Libya, FFM; Venezuela, FFM; Myanmar, IIMM; Yemen, GEE; Burundi, COI; Syria, COI, South Sudan, CoHR;*
[2] *https://www.ohchr.org/sites/default/files/Documents/Publications/MinnesotaProtocol.pdf*
[3] *Rights Brought Home, October 1997, CM 3782, para 4.11*
[4] *Department of Constitutional Affairs, Report of the Outcome of an Interdepartmental Review Conducted by the Department of Constitutional Affairs, July 2004, p. 40*
[5]*Joint Committee on Human Rights, Review of International Human Rights Instruments, Seventeenth Report of Session 2004-05, para 38*
[6] *Rights Brought Home, October 1997, CM 3782, paras 4.15 and 4.16*
[7] *By sections 198 to 201 of the Equality Act 2010 which does not apply in Northern Ireland.*
[8]*For more detailed analysis of this provision and the applicability on legislation such as the Nationality and Borders Act 2022 and the Illegal Migration Act 2023, see the authors 'More Human Rights: Protocols 4, 7 and 12 of the European Convention on Human Rights and the Human Rights Act 1998', European Human Rights Law Review 2023, Issue 6.*
[9]*Article 26.*
[10]*Joint Committee on Human Rights, 17th Report (2005–2006), HL 99, para 33*

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