RELATIVES FOR JUSTICE
The untold stories of Relatives, Victims, and Survivors

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Relatives for Justice (RFJ) submission for consideration of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, regarding documentation of gross violations of human rights in the context of transitional justice processes ahead of the 60th session of the Human Rights Council

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Relatives For Justice (RFJ) is a human rights-based NGO that provides holistic support services to those bereaved or injured by all parties involved in the conflict in a inclusive and non-judgmental manner in Britain and Ireland. We aim to explore and develop mechanisms for transitional justice and truth recovery that assist individuals in their healing process. We aim to contribute to positive societal change while effectively promoting and protecting human rights, social justice, and reconciliation in a participatory, post-conflict democracy.

Relatives for Justice is recognised by the Inland Revenue as a Registered Charity NIC101311; And a Company Limited by Guarantee NI44611

1. Please indicate any relevant norms, state practice and/or jurisprudence at the national and regional level regarding the obligation to document gross violations of human rights and serious violations of international humanitarian law in transitional justice contexts?

There are currently none in our jurisdiction. In 2014, the British and Irish governments and political parties in the North of Ireland reached an agreement known as the Stormont House Agreement (SHA). This accord included provisions for human rights-compliant mechanisms to address past violations, as well as an Oral History Archive (OHA) to collect, archive and preserve documentation of gross human rights abuses in our context of transitional justice. However, the UK Government, which was responsible for its implementation, made the unilateral decision to ditch the SHA and replace it with legislation recently found to breach human rights.[1]

When explaining the rationale for the move, the then Secretary of State Brandon Lewis raised concerns that the existing legal proceedings in legacy cases were effectively 're-writing history.' He argued they were feeding 'a pernicious and distorted view of the past, promoted and peddled by those with a vested interest in presenting the British state as the aggressor.'[2] In the same article, Lewis explained, 'That is why the [Legacy] Bill will also set up a major new oral history initiative' and 'I will also be commissioning an official history of the UK Government's policy in Northern Ireland.'[3] It is evident that the desire to assert a specific 'official truth' significantly motivated the Legacy Act and the subsequent replacement of the then-existing system.

The "major new oral history initiative" has not progressed, and the Court of Appeal recently ruled that certain aspects of the Legacy Act are unlawful and violate the European Convention on Human Rights (ECHR). This includes the veto powers granted to the Secretary of State over the disclosure of any reports compiled or information found by the so-called Independent Commission for Reconciliation and Information Recovery (ICRIR), a new body which has been imposed as the

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[1] Northern Ireland Troubles (Legacy and Reconciliation) Act 2023, found in breach of human rights by the Court of Appeal in September 2024. See Summary of judgment – In re Dillon and others – NI Troubles (Legacy and Reconciliation) Act 2023 – CA, delivered on 20 September 2024, available at https://www.judiciaryni.uk/files/judiciaryni/2024-09/Summary%20of%20judgment%20-%20In%20re%20Dillon%20and%20others%20-%20NI%20Troubles%20%28Legacy%20and%20Reconciliation%29%20Act%202023%20CA.pdf

[2] Brandon Lewis, *'My Northern Ireland legacy plan. No longer will our veterans be hounded about events that happened decades ago'* published on 09/06/2022 available at https://conservativehome.com/2022/06/09/brandon-lewis-my-northern-ireland-legacy-plan-no-longer-will-our-veterans-be-hounded-for-about-events-that-happened-decades-ago/

[3] *Ibid.*

only option for legacy cases despite fierce criticism from victims and survivors, political parties, the Irish Government and human rights experts.

2. Please inform about State initiatives to register, map, collect and preserve (archive) evidence, data and testimonies (including victim's testimonies) of serious violations of human rights and humanitarian law in transitional contexts for truth-seeking, accountability and memorialization purposes, among others. How have States to date documented such violations? Which good practices, obstacles, challenges and gaps are found in State practice? Are documentary archives accessible to plaintiffs, victims and their legal representatives and what regulations govern such access?

The British State's approach to this issue, particularly regarding its role during the conflict, is obstructive and combative against bereaved families and civil society seeking truth and accountability. Since signing the peace agreement in 1998, we have observed that the UK Government has attempted to conceal any information related to human rights violations committed by state actors, either directly or through collusion with illegal paramilitaries. Examples of this include the sabotage and destruction of evidence, vexatious counter-challenges against families seeking truth and accountability, the misuse of 'national security,' and the application of the policy of 'Neither Confirm Nor Deny' (NCND) regarding state agents involved in illegal paramilitary organizations. Families have also faced active resistance to disclosure, which includes seemingly deliberate failures to meet court deadlines within the justice system, inappropriate and excessive redactions, and a heavy reliance on secret courts known as Closed Material Procedures (CMPs) and closed hearings referred to as Public Interest Immunity (PII).

An illustrative example of the approach of State agencies to this matter is the case of two journalists, Trevor Birney and Barry McCaffrey, who created an award-winning documentary revealing State collusion named *'No Stone Unturned'*. The film uncovered the failure of the police to investigate the killings of six individuals in 1994 and to hold the suspected perpetrators accountable, including new evidence on the case. Instead of addressing the findings, the police responded by arresting the journalists and seizing their documents and computer equipment under allegations of theft related to material used in the documentary. However, the police investigation was unsuccessful, and a court later ruled that the warrants used to search the journalists' homes and offices were inappropriate. As a result, the police were compelled to issue

a public apology for their treatment of the journalists and agreed to pay substantial damages to both the journalists and the film company that produced the documentary. More recently, the Investigatory Powers Tribunal (IPT) in London determined that the police surveillance operation conducted against the journalists was unlawful.[4] Furthermore, the PSNI has already been forced to admit that they spied on 300 journalists and 500 lawyers and human rights NGOs such as RFJ in the North of Ireland.[5]

In court proceedings, the following two cases exemplify the issue:

- Liam Paul 'Topper' Thompson, a 24-year-old taxi driver from Belfast, was murdered in a sectarian attack by loyalist paramilitaries in 1994, with strong suspicions of collusion. An investigation compliant with Article 2 of the ECHR has never been completed. In 2023, an inquest into Thompson's death began, but State parties delayed disclosing relevant documents. In 2024, the coroner reviewed sensitive materials in a closed hearing and planned to release a summary while considering family involvement, open justice and transparency. The UK Government and the Police Service of Northern Ireland (PSNI) challenged the coroner's decision, but the High Court upheld it. The PSNI agreed to release some information, while the Government appealed the ruling, dismissed by the Court of Appeal on April 30, just before a legislative deadline that limited the inquest. Under these circumstances, the coroner called for a public inquiry. Still, the Government has rejected this call and continues to contest the Court of Appeal's decision, leaving Topper Thompson's family without truth and justice after two decades since the murder.

- Sean Brown, a 61-year-old father of six from County Derry, was abducted and murdered in 1997 by loyalist paramilitaries. During a fresh inquest in 2024, just a few months before the cutoff date of the Legacy Act, the coroner was shown evidence that of the 25 people linked to the murder, several were state agents. As recently described by a High Court judge, "The inquest process was frustrated at every turn by the failure of the State to

[4] The Guardian, *'PSNI and Met police unlawfully spied on two journalists, tribunal finds'* published on 17/12/2024 available at https://www.theguardian.com/uk-news/2024/dec/17/psni-met-police-unlawfully-spied-on-two-journalists-tribunal-finds

[5] Birney, Trevor and McCaffrey, Barry, *'Only a public inquiry can properly investigate the full extent of police spying operations targeting journalists, lawyers and human rights defenders in the north'* published in the Irish News on 18/12/2024 available at https://www.irishnews.com/news/northern-ireland/only-a-public-inquiry-can-properly-investigate-the-full-extent-of-police-spying-operations-targeting-journalists-lawyers-and-human-rights-defenders-in-the-north-GZKLTRIYBVEF3M73RXCHXWH5AE/

comply with statutory disclosure obligations. These failings were so egregious that it led the coroner to question whether the non-compliance was part of a deliberate effort to prevent the inquest from discovering the truth."[6] The coroner had called on the Government to open a public inquiry into the case, which the Secretary of State rejected recently. This decision was challenged by Sean's 87-year-old widow Bridie, who argued the decision breached Article 2 of the ECHR. At the time of writing this submission, the High Court has ruled in her favour, ordering a public inquiry into the murder case to satisfy the State's Article 2 obligation.[7]

Unfortunately, these cases are just two examples among many hundreds.

3. Please inform about civil society initiatives to register, map, collect and preserve evidence, data and testimonies (including victim's testimonies) of serious violations of human rights and humanitarian law in transitional contexts for truth-seeking, accountability and memorialization purposes, among others. How has civil society supported documentation efforts in transitional contexts? What lessons can be learnt from these experiences? What support has civil society received from concerned States and/or donor states and institutions to carry out initiatives in this field? What obstacles has civil society faced in implementing initiatives to document human rights violations (state blockages, lack of resources, insecurity for staff conducting documentation or archiving efforts, challenges to the preservation of documentation/evidence/archives, impeded access to archives or victims, etc.)?

Due to State inaction and obstruction regarding the documentation of human rights violations, civil society has taken on this task against all odds. This was at the origin of our organisation, too, and it was rooted in the work of the Association for Legal Justice (ALJ), whose mantra in response

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[6] BBC News, *'Judge rules government must set up Sean Brown inquiry'* published on 17/12/2024 (available at https://www.bbc.com/news/articles/ce8e32d3ndjo accessed in December 2024).

[7] Summary of Judgment - In re Bridie Brown, delivered 17 December 2024 by J Humphreys (available at Summary of judgment - In re Bridie Brown .pdf accessed in December 2024). See also Irish *News 'High Court rules British Government must set up public inquiry into murder of GAA official Sean Brown'* published on 17/12/2024, available at https://www.irishnews.com/news/northern-ireland/high-court-rules-british-goverment-must-set-up-public-inquiry-into-murder-of-gaa-official-sean-brown-X7CXL7JBA5C6RAC7N4KTEM77LM/; and Irish News, *'Nuala O'Loan: Sean Brown intelligence should have been shared'* published on 17/12/2024, available at https://www.irishnews.com/news/northern-ireland/nuala-oloan-sean-brown-intelligence-should-have-been-shared-U4SMRQ4EXZF5HBLOBUYPA77PYQ/

to human rights violations was to document, document and document.[8] The ALJ took over 4,000 statements from victims of abuse or witnesses during the conflict, many of which are now held in Monsignor Raymond Murray's Collection in the Tomas O'Fiaich Library at Saint Patrick's Cathedral, Armagh. RFJ also holds these statements.

A crucial aspect of RFJ's current work is compiling and publishing family reports that are collaboratively created with the families of the victims of the conflict. These reports detail the circumstances surrounding the killing, the subsequent investigative and legal processes, any failures within those processes, and the impact of the victim's death on their family and the wider community. Often, these reports are the first comprehensive and accurate account of the victim's death, and in some instances, they serve as the initial step in rectifying the historical record.

Due to the British government's refusal to engage in genuine truth recovery and memorialisation efforts, civil society has often assisted families in these endeavours and in examining patterns of abuse. RFJ is proud to support projects that document the various harms experienced by family members, including gender-based analyses. One such project is the photographic exhibit "It's Different for Mothers." Additionally, we have commemorative initiatives like our Remembering Quilt, which encourages families to create physical and artistic memorials for their lost loved ones. This fosters a community-focused approach to supporting bereaved families.

5. How can States better integrate documentation efforts that can promote, in a complementary manner, the five pillars of transitional justice (truth, justice, reparation, memorialization and guarantees of non-recurrence) while also avoiding revictimization?

For far too long, the families of those killed during the conflict — those who are most affected by our past — have had to battle for their rights to truth and justice. In the absence of effective transitional justice mechanisms, the package of measures comprised of civil proceedings, inquests, independent police and Police Ombudsman investigations have been the channel for those battles in recent years, bringing about some truth, which, for families, is paramount. Unfortunately, the UK government has shown little regard for the rights of families and its legal obligations,

[8] The Association of Legal Justice (ALJ) was a human rights organisation formed in 1970 to catalogue abuses inflicted on residents by British forces and RUC during the armed conflict.

particularly concerning any official documentation initiative. This deliberate neglect has resulted in further harm and re-traumatisation for the families involved.

The SHA signed in 2014 included provisions for human rights-compliant mechanisms to address past human rights violations and an oral history project that could contribute to integrating documentation efforts in the promotion of the five pillars of transitional justice. It received praise and support from various human rights monitoring bodies, such as those within the United Nations. However, the UK Government unilaterally departed from this framework and imposed a system that has been deemed unlawful and unethical, controlled entirely by them.

In light of everything mentioned above, we respectfully request that the Special Rapporteur urge the UK Government to repeal the Legacy Act and replace the ICRIR in its entirety with the Stormont House PLUS model.

Addendum

Some more articles relating to the arrest of and spying on journalists and human rights activists:

The Irish News editorial, 'Instead of unlawfully snooping on journalists, why wasn't the PSNI pursuing the Loughinisland killers?' (19/12/2024): https://www.irishnews.com/opinion/instead-of-unlawfully-snooping-on-journalists-why-wasnt-the-psni-pursuing-the-loughinisland-killers-the-irish-news-view-EIWVWBPGLJFYFG7YPGT7LOZQUQ/

The Irish News, 'Former Police Ombudsman says 'grave concern' that chief constable ordered spying on journalists and Ombudsman staff' (18/12/2024): https://www.irishnews.com/news/northern-ireland/former-police-ombudsman-says-grave-concern-that-chief-constable-ordered-spying-on-journalists-and-ombudsman-staff-JD4WTA6DBVCHDLKYAGKTBTAMAY/

Andersonstown News editorial, 'WE SAY: PSNI boss has a choice to make' (19/12/2024): https://belfastmedia.com/we-say-psni-boss-has-a-choice-to-make

An article written by our Deputy Director, Andrée Murphy, regarding legacy: https://belfastmedia.com/irish-government-need-to-remain-steadfast-on-legacy

Some of the reports compiled by RFJ:

Joe, Jeanette and Brigeen Dempsey family report: https://www.relativesforjustice.com/wp-content/uploads/2023/10/Dempsey-Rep-13-May-202036.pdf

Report on collusion between 1990-94, compiled in 1995: COLLUSION-REPORT-1990-1994.pdf

Gavin McShane family report: McShane-Blet-May-2019-LRes.pdf

Thomas Burns family report: https://relativesforjustice.com/wp-content/uploads/2019/12/Burns-Thomas-Rep-OCT-2019.pdf

RFJ report, *'Ambush, Assassination and Impunity: the Killings of Kevin Barry O'Donnell, Patrick Vincent, Peter Clancy and Sean O'Farrell'*: https://relativesforjustice.com/wp-content/uploads/2016/11/Clonoe-Report-LRes.pdf

Jim Doherty family report: https://relativesforjustice.com/wp-content/uploads/2019/11/Jim-Doherty-Rep-HRes-JULY-2019.pdf

RFJ report, *'Sean Graham Bookmakers Atrocity'*: https://relativesforjustice.com/wp-content/uploads/2016/11/S.Graham-Full-Report-Web.pdf

Joseph McCrystal family report: https://relativesforjustice.com/wp-content/uploads/2019/11/J.-McCrystal-Rep-OCT-2019.pdf

RFJ report, *'Collusion in Cappagh killings: State Sponsored murder at Boyle's Bar, Cappagh, Sunday 3rd March 1990'*: https://relativesforjustice.com/wp-content/uploads/2016/03/Cappagh-Report-and-Cover-FEB-2016-print-version.pdf

Facts about the ICRIR, published in June 2024 by RFJ: https://www.relativesforjustice.com/facts-about-the-icrir/