

Text of opening statement/remarks by Relatives for Justice to the Joint Oireachtas Committee on the Implementation of the Good Friday Agreement

Firstly, we want to thank the Committee for today's invitation and for your steadfast work in promoting and protecting the Good Friday Agreement (GFA), including your work towards realising the full potential of the Agreement by seeking its full implementation.

Against the backdrop of almost four decades of violence in which over 3,600 people lost their lives and tens of thousands were physically and psychologically injured, the GFA was finally signed.

This was welcome by the majority of those who bore the brunt of the violence: those bereaved and injured.

The GFA heralded a new era and not least one of hope.

The Agreement made provisions for rights, equality, justice and much more.

The signing of the Human Rights Act (HRA) 1998, as an integral part of the Agreement, incorporated into domestic law the European Convention on Human Rights (ECHR).

This, largely along with the ending of violence, provided bereaved relatives a space to reflect and an agency to seek redress. It provide a human rights-based framework hitherto denied.

Such agency enabled families to use the law, assert their rights, and seek justice. It signalled a potential end to impunity. And in 2010 the appointment of an Attorney General further added to that rights framework.

In the two and half decades since the signing of the GFA the UK response to legacy issues – outstanding issues of truth and justice arising from the conflict - has been shameful and at best deliberately piecemeal. Overall, its approach is self-serving. They have deliberately frustrated due process, rights and flouted law.

In respect to its own role in the conflict the UK has determined a policy of denial, delay, and obfuscation. Paralleling this has been the systemic destruction of evidence by state authorities and the deliberate withholding of resources in order to thwart justice.¹ The use – or rather misuse – of the term 'national security', public interest immunity certificates (gagging orders), and even secret courts (Closed Material Procedures), that lock out families and their legal representatives in civil cases, are all a regular occurrence that drag on for decades whilst relatives die waiting on justice.

The arbitrary insertion of a 'national security' veto by the UK after the signing of the Stormont House Agreement (SHA) on legacy was typically in keeping with that approach. Described by then Irish government minister Charlie Flanagan as a 'smothering blanket of national security' it was to conceal evidence.²

¹ Destruction of the guns used on Bloody Sunday by the MoD three days before Tony Blair announced the inquiry – ***Rifles destroyed 'to foil Bloody Sunday inquiry'*** – Guardian Newspaper, March 14, 2000
Systemic destruction of evidence – <http://www.relativesforjustice.com/ruc-pathetic-excuses-facilitate-continuing-impunity-pps-must-act/>

² Interview with J Manley Irish News November 27, 2015

We now know that as the SHA was being negotiated the NIO was secretly depositing in archives at Kew Gardens files relating to controversial killings by the British army with orders prohibiting their release for decades. Some related to the killings of children by plastic bullets.

Such sleight of hand is commonplace and was evident in the passage of the NI Troubles (Legacy & Reconciliation) Bill when Lord Caine made amendments on inquests once he realised coroners had made efforts to expedite hearings to ensure completion before the law became fully operational. His amendment ensured the majority of inquests will never be completed.

Claiming, as the UK government does, that this new legacy law was designed in the best interests of victims and that the current system doesn't work, takes far too long, and doesn't deliver the right outcomes, including there was no agreed way forward on legacy, was an exercise of breath-taking hypocrisy.

Of course, such pretence contradict the facts that there was agreement on Stormont House, that the current system can deliver if left unhindered and properly resourced, and that the UK don't like the outcomes of transparent independent examination and investigation. Further, to then try and camouflage the Act in the context of reconciliation is disingenuous.

The facts demonstrate the UK are bad faith actors with vested interest.

From its Command Paper, the NI Troubles (Legacy & Reconciliation) Bill, now enacted into law, the UK has simply amalgamated all of the underhanded tactics used against families seeking accountable justice into one Act; one body, the Independent Commission for Reconciliation & Information Recovery (ICRIR); which is anything but independently.

It is our view the Act breaches Articles 2 & 3 of the ECHR and hollows out key provisions within and directly related to the GFA.

- The ICRIR will not conduct Article 2 compliant investigations but rather will perform desktop reviews;
- Families will have no input save for victim impact statements, which in truth have no standing;
- Families will not be afforded rights of representation;
- There will be no openness or transparency;
- All matters of review will be conducted in secret;
- Families may not even be told if an individual responsible for and/or involved in the killing of their loved one has applied for and been granted immunity/amnesty;
- Once amnesty is granted there can be no investigation even should this Act be repealed at a later stage;
- A British secretary of state will have ultimate control as the Act confers all key powers to his/her office;
- This includes determining who is granted amnesty/immunity – and who is not;
- Determining which cases are to be prioritised and reviewed;
- Reviews will not examine thematic patterns and linked cases;
- The Act imposes a legal obligation on the ICRIR that they **must** grant immunity from prosecution when '(A) a person has requested such immunity, (B) where the person has **“provided an account which is true to the best of their knowledge and belief”** and (C) where the panel is satisfied the conduct described would appear to expose the person to prosecution for one or more serious troubles-related offences.'

- The threshold for obtaining immunity therefore is quite clear and arguably constitutes an amnesty;
- In this regard the Act disapplies the terms of the GFA in respect of sentencing within a court of law of a person found to have been convicted for a conflict related offense;
- One of the main stated objectives of this Act is to protect British soldiers from investigation.

Last week the challenge by families against this Act concluded in the Belfast high court. Arguably, this is the single most important legal challenge in decades.

Once judgment is delivered, whichever side loses, will inevitably appeal and thereafter it will again be appealed to the UK Supreme Court. This will take considerable time over years. Only then can this matter go to the European Court of Human Rights (ECtHR).

This is time families cannot afford. The age profile of relatives means that many will die waiting. The heartache and additional harms continue causing intergenerational trauma, torturing families whose lives have been turned upside down and who have been failed time after time.

The sweeping and systemic breaches within this Act with respect to the ECHR, GFA & HRA, that impact all victims, place a responsibility on the Irish government to act.

Having patiently and in good faith tried every conceivable diplomatic effort to avoid the passing of this Act by the British government there is only one option left and that is for the Irish government to initiate an inter-state case challenging the Act.

This too would be a humanitarian issue in terms of expediting the case to Strasbourg.

Many leading legal experts believe such a challenge would be successful.

Ultimately, this is a political decision. A decision that would have widespread support here and internationally.

The British Labour Party has committed to repealing the Act if it is to come to power in the next British general election.

Taking an inter-state case would certainly add to ensuring that this commitment would be honoured.

There is an attempt through this Act to extinguish the rights that flow from and hopes envisaged in the GFA.

Collectively, we should all play a role in ensuring those rights are assured and hope remains. Families, NGO's, lawyers, academics, civil society and countless others, including this distinguished committee, are all playing their part. Families are never giving up.

As a signatory and guarantor of the GFA, and SHA, it's time for the Irish government to play its part.