

Comments to the Tom Lantos Commission
on Human Rights at the United States
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From Failure to Hope - Dealing with the Past for women in the North of Ireland

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I want to begin these remarks by thanking Congressman McGovern and his team for the opportunity to speak with you today. I also want to thank the Irish Dept of Foreign Affairs Conflict Resolution Division for their support of this visit and acknowledge the presence of Brian Cahalane from the Irish Embassy in attendance today.

I have been asked to give you a context piece. To tell you what has happened to date on dealing with the past in Ireland and to explain that while the work on the Irish peace process, which has been supported so well by Irish America and consecutive administrations, has had many successes of which we can be collectively justifiably proud, on dealing with the past we have failed.

Context

While most post conflict societies across the globe have had processes which have supported truth telling, transitional justice and reparations to victims and survivors of those conflicts, in Ireland we have not.

In 1998 we signed the peace agreement – the Good Friday Agreement¹ – with huge investment and support from the US and in particular Senator George Mitchell – we succeeded to agree when many thought it was impossible. We had a peace agreement founded in human rights and which looked to long term stability. It has been hailed as an example for the rest of the world.

For victims and survivors however their experience has been one of denial of experience and being sidelined in favour of the big peace process picture. That picture should of course have included them – they the people worst affected by our conflict. But instead they have found their interests being treated as confidence building measures at best for a tiny number of victims – or being silenced as they endure systemic impunity at worst.

We have been on a journey since 1998 where first there was no measure at all for anyone.² Then there was a small number of public inquiries – the most well known being the Saville inquiry into the 14 killings by British soldiers in Derry on Bloody Sunday.³ Other measures included the paper review into British state involvement in the killing of human rights solicitor Pat Finucane, carried out despite inter governmental commitment to a full public inquiry.⁴ Something this congress has focussed attention to in the past with the Helsinki Commission and the incredible work of Congressman Chris Smith and which remains a burning outrage.

¹ The Belfast Agreement April 1994 < <https://www.gov.uk/government/publications/the-belfast-agreement>>

² Christine Bell. Dealing with the Past in Northern Ireland Fordham International Law Journal (2002) 26, 4 Article 9

³ Report of the Bloody Sunday Inquiry June 2010 < <https://www.gov.uk/government/publications/report-of-the-bloody-sunday-inquiry>>

⁴ Sir Desmond De Silva. “The Report of the Patrick Finucane Review” December 2012 < https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/246867/0802.pdf>

See also statement of Finucane Family in response < <http://madden-finucane.com/2012/12/12/de-silva-review>>

In 1998 when the Peace Agreement was signed the word collusion explaining the role of British state forces acting in direction, arming and cover up of non-state actors' actions was considered republican propaganda. Numerous state investigations have proven that far from propaganda, collusion was a systemic state practice and policy throughout the conflict.⁵

For families this has been a drip drip of information which compounds trauma.

In 2005 facing calls from across the community for investigations of conflict killings the then Chief Constable Hugh Orde established a separate police unit – the Historical Enquiries Team. Initially this was established and would not examine killings by the state. This then changed after public pressure from families. What followed was every family who lost a loved one to the conflict were told that they would be reinvestigated by this “independent team”.

What actually happened was that the investigations were flawed, inadequate and in cases where the state was implicated – operated illegally. The unit was shut down in disgrace following a damning report by Her Majesty's Inspectorate of Policing in 2013.⁶ Leaving families with completed investigations knowing it was an illegal or flawed process that they had engaged in and for families who had not had completed investigations or indeed any investigation at all left feeling abandoned again.

The Police Ombudsman's Office, was established as a result of the Good Friday Agreement to ensure accountability and good policing following the disbandment of the Royal Ulster Constabulary and the founding of a new Police Service for Northern Ireland. From 2001 it was investigating historic cases of police wrong doing. This included investigating allegations of policies of shoot to kill by the RUC and of systemic collusion with non-state actors. That office suffered a significant compromise to its independence while operating. So much so that all historic investigations were suspended following a special investigation by the criminal justice inspectorate. This led to the early resignation of then Police Ombudsman Al Hutchinson. While there is now a new Ombudsman and historic investigations have resumed there is significant systematic under investment into the Historic unit in the Ombudsman's office, so much so that it has said it will take longer for them to carry out investigations than the conflict actually took.⁷ Additionally the matter of disclosure from the Police Service to the Ombudsman has been so contentious that we have seen the unhappy development of the Ombudsman being forced to take the Chief Constable to court in order to secure disclosure.

Families who never had inquests along with a small number of families who have had inquests reopened have had the ignominy of securing the framework for a compliant process only after hundreds of judicial reviews and recourse to the European Court of

⁵ See Relatives for Justice Submission to UN Special Rapporteur on Truth, Justice and Reparations November 2015 < <http://relativesforjustice.com/wp-content/uploads/2015/11/Submission-to-UN-Special-Rapporteur-Pablo-De-Greiff-2015.pdf>>

⁶ Her Majesty's Inspectorate of Policing June 2015 < <https://www.justiceinspectorates.gov.uk/hmic/publications/hmic-inspection-of-the-historical-enquiries-team>>

⁷ Supra 5

Human Rights – to now be sitting with the British Government refusing to release funding to allow these inquests to proceed.⁸

What would cost the money? Securing disclosure from state agencies regarding these deaths. 97 deaths. Out of the 3.5 thousand deaths of our conflict.

It is important to remember that the PSNI and the Policing Board and the Police Ombudsman were designed as new institutions – human rights compliant bodies for present policing purposes. They were never designed to perform retrospective functions. But here they have been compromised and infected by the past – and confidence of the public in them as functioning bodies has been affected. That has implications for our peace process and its long term success.

Revelations on the extent of state collusion have been a feature of the discourse on dealing with the past. Some of these revelations have emerged through state appointed extra investigations such as those by Canadian Judge Cory⁹, John Stevens¹⁰ and Sir Desmond De Silva, mentioned earlier¹¹. These have given us a picture of systemic policies and practices of collusion between state agencies and non-state actors that have associated death tolls that run into many hundreds.

We have also seen during the time period a process of information recovery leading to the recovery of remains of the Disappeared. People abducted and killed by the IRA and the INLA during our conflict without acknowledgement and buried in undisclosed locations. A system for limited immunity pertaining to information regarding these egregious violations was put in place to allow for families to have the dignity to bury their husbands and children and siblings many many years after their deaths.¹²

Hope

So we have had processes – but they have not connected up and some of them have been highly inappropriate, definitely contentious and overall a feeling a failure to meet victims needs in a human rights compliant fashion.

⁸ See Irish News 10 March 2016 <

<http://www.irishnews.com/news/northernirelandnews/2016/03/10/news/lord-chief-justice-legacy-inquest-funding-should-be-requested-before-elections--445528/?param=ds441rif44>>

Also

Mark Thompson Relatives for Justice on Monies to Inquests < <http://relativesforjustice.com/stormont-house-agreement-monies-must-be-protected-if-hiu-has-any-hope-of-success-in-delivering-to-families/>> February 2016

⁹ Cory Collusion Inquiry reports into the deaths of Patrick Finucane, Rosemary Nelson, Robert Hamill, Billy Wright, Superintendents Breen and Buchanon. December 2003

Also

Relatives for Justice “Collusion 1987-1994” 1994

¹⁰ John Stevens. Stevens 3 Report on Collusion Review and Recommendations April 2003

¹¹ Supra 4

¹² See ICLVR Website < <http://www.iclvr.ie/>>

Recognition of that failure has seen three separate initiatives on dealing with the past. The first was the Consultative Group on the Past in 2009.¹³ A truly inclusive consultation regarding how to meet victims' needs. It released a major report containing over 50 recommendations. This met with some controversy over a payment to every family bereaved – some feeling that there should not be equality in death or trauma and that some families whose loved ones were engaged in non-state paramilitary activity should not be entitled to the payments. Whatever the legitimacy of that argument within days the British Government said it would not implement its proposals.

But the issues did not go away. Demands to deliver truth and justice continued and all of the problems with the Historical Enquiries Team and the Police Ombudsman inevitably created a crisis. So in 2013 there were talks between the local political parties facilitated by Dr Richard Haas and Professor Meghan O'Sullivan. They did not reach agreement. However Dr Haas and Professor O'Sullivan published the proposals the parties identified in the months of intense negotiation.¹⁴

Following the failure of those talks and a crisis in the devolved administration another set of negotiations were held in 2014. This time the British and Irish Governments were involved with all of the political parties. And a set of proposals to deal with the past were agreed – called the Stormont House Agreement, agreed Christmas 2014.¹⁵ This appeared to be the moment that things might change. Mechanisms were agreed by everyone and implementation strategies began.

And somehow over the course of the next few months we got stuck again.

What information a family received and how they received it became contentious as the Right to Truth came into conflict with Britain's assertion that they had national security fears. Just as in the inquest courts it became clear that the British Government interest was not delivery on its human rights obligations to victims of violations, but rather the continued maintenance of their narrative of our conflict. Their fear that the actual facts of how our conflict was pursued meant that they introduced, in the words of Irish Foreign Minister Charlie Flannigan, a smothering blanket of national disclosure. It meant that last November we yet again could not get a mechanism to deliver truth and information to families agreed. Mary will speak more to the possibility that this logjam potentially breaking in May. But it may not – that is a real possibility. Families who have suffered so much to date need support on this.

Families live with the trauma of the initial incident. They lived with systemic failures by the RUC to investigate at the time. They live with the constant politicking of victims issues. And they live with the abject failure to deliver any consistent appropriate mechanism to meet

¹³ Report of the Consultative Group on the Past January 2009 < http://cain.ulst.ac.uk/victims/docs/consultative_group/cgp_230109_report.pdf>

¹⁴ Proposed Agreement December 2013 < <http://www.northernireland.gov.uk/haass.pdf>>

¹⁵ Stormont House Agreement December 2014 < https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/390672/Stormont_House_Agreement.pdf> p5

their needs. It is a shame and it is condemning these families to trauma heaped on trauma. Again and again it is called torture by those who experience it.

Absence of Gender Lens

Absent in every single one of the processes I just mentioned was any mention of the particular experiences of women.

A glaring gap.

What we need to remember is that 91% of the dead of our conflict were men. That has obvious implications. And for the families that lost women and girls there was a particular rare experience. Losing a wife and mother is different to losing a husband or father. Not greater – but definitely different. That difference of conflict experience is not appreciated let alone addressed.¹⁶

In all of this context setting on institutions and processes - We are talking about people's lives. These mechanisms are designed to address the absolute worst thing that has happened to families. Not one victim of the conflict separates the killing of their loved one from the aftermath and impact. Lives were irrevocably changed and understanding impact is critical to understanding the true nature of violation. If we only understand it as a forensic detail of how someone met their death and who was responsible then we miss the huge frame of experience. And so much of that relates to women's experience.

No one experiences dealing with the legal frameworks of remedy as separate from supporting the needs that emerge from impact. How could they?

We have international legal frameworks that say victims of conflict and in particular women affected by conflict should be equal participants in mechanisms designed to support them. These obligations ask those with responsibility to ensure that effective measures are taken that will demonstrably secure equal participation in conflict resolution processes – especially those designed to meet their needs if they have been harmed by conflict.

How can you be an equal participant if you cannot say the name of your father without crying your heart out? How can you be an equal participant if you have no living memory of what happened and no one told you because they were too upset to say anything and wanted to protect you and now they are all dead?

Process is a word we have associated with peace. We have accepted that a peace process can be challenging, have stops and starts, needs long term commitment and infinite resources. We have all – well most us – bought into the idea of Peace process.

Dealing with the past for victims and particularly women process is key. We use process to describe the way the connections of conflict related harm are identified, supported and remedied. It is long term, it changes and requires sustained attention and support. Most of all, just like the peace process, it requires momentum and structure to sustain it.

¹⁶ Relatives for Justice Dealing With the Past: Where Are the Women February 2015

No person who will be engaging the Stormont House Agreement will have been a single dimensional next of kin or closest relative of someone killed by conflict with no other factors affecting their ability to participate.

Listen closely when you hear the testimony of victims of the conflict.

“Our lives changed forever”; “nothing was the same again”

If that is true – and it is – then we need to understand what that means in real terms for that family to engage with mechanisms we establish.

If that change involved the long term devastation that accompanies the experience of acute trauma then participation will be linked to the development of long term support mechanisms to assist that family. That will be multi-layered and interlinked. And it will affect their ability to engage with the legal mechanisms which will be established.

If that change meant that education was discontinued or impossible to achieve then support will be needed on a variety of levels – how can a person engage on an equal basis if they feel their reading and writing is not great?

If that change meant hard grinding years of poverty then there are really practical issues about how to make meetings accessible and even the most practical issues like needing childcare costs, bus fares and money for lunches to have dignity when attending meetings are matters of consideration.

If that change meant that that woman and that family were more likely to experience other conflict related harms – which they overwhelmingly were – then that experience of multiple harm needs to be acknowledged and supported by the mechanisms. And that may well mean for that woman multiple processes of remedy will be engaged in.

Because women face multiple barriers to equal participation in any process, especially legal and political ones – there are real issues about how we support women to be equal participants.

Women affected by conflict related violation rarely have positions of power. We need to ensure we create structures that support the development of agency and empowerment. And that takes a little reimagining of what traditional processes look like.

Law and legal process are only important when they are relevant and that is especially the case when it is human rights law.

When we are talking about the remedy of gross human rights violations, there is no point in any of that being an academic exercise or something that is exercised among professionals with those harmed as mere interested parties. For it to have meaning and depth it needs to be connected to the lived experience and needs of those who suffered the violation.

And that means going back to the woman who cannot stop crying, and pausing with her, listening to her, and taking it at her pace. She is valuable enough for us to do that.

So the principles Catherine will speak to now use language that may be a little challenging to those who live and work in purely legal and political spheres. But given that we know that structures to date have worked to exclude women then a bit of challenge is a good thing.

American President Lincoln knew about these issues coming out of conflict. I stood at your monument on Wednesday and read his words carved in stone, words that sit in the offices of Relatives for Justice in Belfast

“With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in, to bind up the nation's wounds, to care for him who shall have borne the battle and for his widow and his orphan, to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations.”

Thank you