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Representations submitted to:

- **Council of Europe Human Rights Commissioner and**
- **Department for the Execution of Judgments**

Public Sector Resources, the National Security excuse, the Legacy of the Conflict and the failure by the British Government to comply with ARTICLE 2.

The *McKerr* group of cases was adjudicated by the European Court of Human Rights between 2001 and 2003, with definitive findings of investigative failures by the United Kingdom, pursuant to Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), in relation to killings by security and police forces during the Conflict in the North of Ireland.

Since then, and under the continuous supervision of the Committee of Ministers of the Council of Europe, a number of ‘remedies’ have been proposed, created, and subsequently disbanded amid abject failure to execute the judgments of the European Court.

For background information purposes, a detailed analysis as to the state of affairs with regards to British Government’s compliance with those ECtHR rulings per the date of our last attendance on 11th March 2014, is appended hereto, with further periodic analyses appropriate to their time of presentation, also appended, per 24th November 2014 and 29th January 2016.

CONTENTS

Page 1 – 15 **12th April 2016** submission

Page 16 – 39 **11th March 2014** submission

Pages 40 – 58 **6th November 2014**

Transitional Justice in the Context of European Convention Obligations: Article 2 and the Package of Measures. Inquests as an Article 2 Mechanism.

Page 59 – 65 **29th January 2016**

The Human Rights Act and BREXIT: Challenges for State Compliance with ECHR standards for Inquests

Page 66 **14th October 2014** Police Ombudsman letter to next of kin re resources.

Pages 67 – 76 **19th January 2016** Sample Judicial Review pleadings re In Re Colum Benstead.

Pages 77 – 85 **9th March 2016**

Lord Chief Justice remarks to Commission for Victims and Survivors Conference.

INQUEST SYSTEM

Coronial Powers and Institutional Capacity.

Systemic delays on the part of State agencies such as the Police Service of Northern Ireland (PSNI) and the Northern Ireland Office (NIO), and a regime of opacity in relation to redacting documents combine to eviscerate the inquest system of the capability to effectively and thoroughly investigate deaths of individuals at the hands of security services.

Indeed, disclosure and coronial powers in relation to same have been a significant source of contention, with the inquest into the death of Pearse Jordan (examined by the European Court in *Jordan v United Kingdom*) yet to come to a definitive conclusion.

The Right Honourable The Lord Chief Justice of Northern Ireland Sir Declan Morgan QC, in a recent judicial review ruling concerning the Pearse Jordan inquest scathingly criticised the current state of coronial law and the utter lack of reform in this field:

*“The absence of adequate powers for Coroners and procedures suitable for investigation and hearings has resulted in the inquests becoming an adversarial battleground instead of a Coroner led inquiry. The adversarial nature of the proceedings is evidenced by the fact that in the case of the death of Pearse Jordan alone there have been 24 judicial reviews, 14 appeals to the Court of Appeal, 2 hearings in the House of Lords and one hearing before the European Court of Human Rights. The issues in dispute have included questions of scope, relevance and disclosure of materials. **If the existing legacy inquests are to be brought to a conclusion under the present system someone could easily be hearing some of these cases in 2040.**”*

(Re Jordan’s applications for judicial review [2014] NICA 76)

The Lord Chief Justice was not alone in his criticism of the inquest system or the cooperation of the State in respect of same. On assumption of the Presidency of the Coroners Court in November 2015, the Lord Chief Justice immediately appointed Lord Justice of Appeal Sir Reg Weir QC, to conduct an in depth review of all 55 pending Legacy inquests. This series of publicly heard Case Management reviews was conducted in back to back daily sessions, from Monday 18th January until Friday 29th January, during which the presiding Judge was

unambiguous in where he considered the responsibility for the delays and failures to comply with disclosure requests lay¹.

In an unprecedented and much welcomed and appreciated move, the Lord Chief Justice, along with Weir LJ, personally met with the families of those affected by the delays in the Inquest system, on Friday 12th February 2016, to present the conclusions of a report prepared by Lord Justice Weir, and the way forward to be proposed to Department of Justice.

He said that the failure to deal with legacy inquests has "*cast a long shadow over the entire justice system*" but that all inquests into controversial killings could be completed within five years if the Government provides enough resources².

He went on to say³

"It is clear that the existing Coroners Service is not adequately resourced to carry the weight of these cases and so we will need to establish a new, dedicated Legacy Inquest Unit as a matter of urgency. My ambition is to start listing cases from September onwards but this will be predicated on the availability of resource."

Sir Declan added:

"I sincerely believe that if we are now in a position to make meaningful progress on this long-standing issue, and that if we do, it will provide a signal of hope to all victims and survivors that the remaining issues involved in dealing with the past can finally be resolved."

On 9th March 2016, the Lord Chief Justice outlined his specific plans at a Conference convened by the Commission for Victims and Survivors at the Titanic Centre, in Belfast, wherein he stated:

"I am satisfied that the plan I have developed represents the best way forward for these cases and satisfies the criteria that need to be met in order to discharge the UK Government's Article 2 obligations."

¹ Please see attached hereto, a detailed analysis of that commentary with regards to the 3 week series of case reviews conducted by Weir LJ, as delineated at the launch of a legal opinion commissioned by GUE/NGL on the effect of the proposed repeal of the Human Rights Act by the British Government which was presented during a conference organised by Martina Anderson on the proposed effect of 'BREXIT' on human rights, economic and social rights in the Irish context. 'BREXIT – Rights and Wrongs. Conference at Balmoral Hotel, Belfast Friday 29th January 2016.

² <http://www.irishnews.com/news/northernirelandnews/2016/02/12/news/legacy-inquests-could-be-completed-in-five-years-says-lord-chief-justice-416917/>

³ <http://www.u.tv/News/2016/02/12/Lord-Chief-Justice-calls-for-legacy-inquest-unit-53977>

In order to implement that plan, however, I will of course need to be provided with the necessary resources, and there will be cost implications for a number of other organisations which are required to support the work of the Coroner.

I have set a timescale of five years for completion of the existing legacy cases which are before the coroner, from the point at which resources are provided.”

He concluded his remarks by setting a very specific time scale for a decision to be made with regards to his receipt of resources for the detailed business plan for a dedicated Legacy Inquest Unit which accounts for the required extra investigators, lawyers and administrators as well as the creation of an electronic system to manage the vast amounts of documents.

“There remains time before the Assembly elections for the Executive to take a decision to put forward a bid to the Secretary of State for the draw-down of funding to allow legacy inquests to proceed. If this request elicited a positive response, we would aim to have a Legacy Inquest Unit established within a matter of months and for some legacy hearings to begin in September.

If there is no response before the election, we will almost certainly not be able to achieve a September start date, which would be extremely disappointing. We might at best be able to get one or two cases on before Christmas, but we would be unable to achieve the step change that is required to deal with all of these cases in an Article 2 compliant way.

The rate of progress before I became President is evidence that the status quo is not an option.”

It is a matter of great regret that with the election less than three weeks away, no decision on the requisite funding has been made and as such, the unacceptable status quo does persist. The intended timescale, proposed to families in January cannot now materialise, which will cause further anguish and distress, but also compounds and aggravates the State’s insouciant and consistent failure to satisfy its obligations under the Convention and the series of ECtHR judgments which it is in persistent breach of.

"We have people today who are suffering a great deal, we need resources and we need progress on the past in order to enable the present"

Baroness Nuala O’Loan⁴

⁴Baroness O’Loan: ‘Immoral’ to link Troubles legacy to welfare reform <http://www.bbc.co.uk/news/uk-northern-ireland-33858683> 11th August 2015

POLICE OMBUDSMAN

The **Police Ombudsman** is a crucial office in the context of the Peace Process. It was required by nationalists to have confidence in a new policing dispensation following the disbandment of the RUC in 2001. Very quickly it was thrust by the State into the investigation of the past when the British Government held the office up to Strasbourg as part of its package of measures to discharge the obligations of article 2. This was not a function within the original envision of the office. Under the confident and independent stewardship of the first Ombudsman, Nuala O'Loan, the office then suffered a crisis of confidence in its independence under Al Hutchison. Three damning reports by the DoJ, the Criminal Justice Inspectorate, and the CAJ, led to the suspension of the Ombudsman's Historic Directorate. The official concern was that the Office had '*suffered from a lowering of operational independence*'⁵, however the de facto position was that there was fears that PSNI had an editorial control on what complaints would be confirmed to the public, most specifically experienced by the Loughinisland families who would be the first and only families to successfully challenge a s62 PONI report, in the High Court in Belfast in December 2012⁶.

This led to the end of the tenure of Al Hutchison in January 2012 with the primary function of new Ombudsman, Dr Michael Maguire, appointed in June 2012, being to restore public confidence in the office, which he has. So much so, that the old guard of PSNI's C2 branch, refused to hand over intelligence to Dr Maguire's investigators in separate cases touching upon RUC and PSNI involvement in 60 murders.

Dr Maguire was obliged to take unprecedented legal proceedings to establish his authority and rights to view such information pursuant to the discharge of his statutory duties. He won the judicial review, but a revealing statistic came to light during the proceedings on 13th June 2014. Crown Counsel, appearing for the Chief Constable complained that there had been an:

⁵ <http://www.thedetail.tv/issues/22/cji-report-into-ombudsman/ombudsman-loses-staff-trust-over-withheld-intelligence>

a) Tony McCusker report into allegations regarding the role of the Department of Justice in respect of the Police Ombudsman's Office 16th June 2011,

b) Inspection into the Independence of the Office of the Police Ombudman by the Criminal Justice Inspectorate, Dr Michael Maguire, June 2011.

c) Human Rights and Dealing with Historic Cases - A Review of the Office of the Police Ombudsman for Northern Ireland, Committee on the Administration of Justice (CAJ) June 2011.

⁶ <http://www.belfasttelegraph.co.uk/news/local-national/northern-ireland/loughinisland-families-hail-scrapping-of-flawed-report-29007465.html>

“...exponential growth in requests for sensitive information, which was quite radical in the past two years (under Dr Maguire) When the volume was identified by police, they had concerns about the nature of it and how it is to be handled.”

It was later confirmed that the requests for sensitive information had increased as follows:

	2011	4 (Under Al Hutchison)
	2012	21 (Dr Maguire appointed in June 2012)
	2013	69
First Quarter of	2014	38

It appeared to many observers that the reasons for the refusal to engage with the new Ombudsman were quite obvious, in that Dr Maguire was discharging his statutory duty, robustly and independently without fear or favour, and was asking the difficult questions, seeking the sensitive information, which led to the doors closing, doors which had not been pushed by his previous incumbent. The case was settled on 5th September 2014⁷ with the newly appointed Chief Constable George Hamilton correctly conceding on all points.

Notwithstanding the cuts the British government is imposing on the local Executive the Office of the Police Ombudsman (OPONI) will constitute only a small fraction of the overall DoJ budget, and hence opportunities to cut monies.

The budget for OPONI historic cases is £2.23 million a year. In 2014 OPONI submitted a business case to DoJ outlining a requirement for £1.1 million to complete the work for its Historic Investigations Directorate, to increase its staffing complement from 44 to 55, to complete the 340 historic murder complaints involving the RUC, in a 6 year time frame. DoJ responded by making available £0.4million to OPONI for this purpose, however last week even this has now been withdrawn, and further cuts to the overall OPONI budget of £750k were imposed, resulting in Dr Maguire having to make 15 investigators redundant⁸. The stark

⁷ PSNI obstruction case settled – files to be released to Police Ombudsman – Irish News 6th September 2014

⁸ **Police Ombudsman: Budget cuts delay investigations into killings**
<http://m.bbc.co.uk/news/uk-northern-ireland-29431925>

statistic is that once he had legally exercised his authority to look in the dark corners, his ability to do so was economically restricted.

The concerning fact with regards to human rights implications, is that the British Govt had submitted⁹ in February 2014 to the Department for the Execution of Judgements of the ECtHR, which has responsibility for the supervision of the execution of the McKerr group of cases that: *“As OPONI is now functioning effectively, .. the United Kingdom considers that this general measure has been implemented in full and should be closed.”*

The fact of the matter is that Dr Michael Maguire has regretfully had to write to the same office in October 2014 advising that his office;

*“will not always be able to meet the commitments given by the UK government that PONI will conduct investigations into ‘historical’ matters in a timely manner as and when required under the convention ”*¹⁰

Indeed that same week, Paul Holmes, the Director of Historic Investigations at the Police Ombudsman’s office, sent a letter to over 300 families who have complaints pending for investigation advising that the office had *‘suffered a significant reduction in its operating budget’*.

The letter¹¹, which offered heartfelt apologies for the distressing news, went on to advise;

“These cuts in our funding have had a particularly adverse impact on the Police Ombudsman’s historic investigations due to the loss of 25% of staff involved in this work. Together with the unavailability of additional funding previously requested from the Department of Justice to enable completion of these inquiries by 31st March 2019, it is now clear that our historic investigations cannot be completed before 2025.”

⁹<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2449927&SecMode=1&DocId=2107760&Usage=2>

¹⁰ http://www.theguardian.com/uk-news/2014/sep/30/ulster-police-watchdog-cuts-delaying-inquiries-troubles-killings?CMP=twl_gu

¹¹ Sample letter to KRW Law 14th October 2014

These funding excuses however occur in the context of the massive public funds spent placating the security constituency, which has a massive strangle hold on unionist politics:

- **£500 million**¹² Patten redundancy scheme to ‘depoliticise’ policing
- **£135 million**¹³ of public funds has been spent on hearing loss claims for 10,807 retired police officers. The scheme was described by an independent government appointment review, to be ‘buckling’ in May 2015¹⁴.
- **£250 million**¹⁵ on payments to the UDR/RIR;
- **£20 million**¹⁶ ‘Gratuity payment’ to the RUC reserve;
- **£106 million**¹⁷ on retiring rehiring, to bring in Patten retired RUC into the PSNI without Ombudsman involvement;
- **£70 million**¹⁸ to prison officers in a Patten-style pay out.

¹² **Patten police redundancy bill hits £500m 12th January 2011**

<http://www.bbc.co.uk/news/uk-northern-ireland-12171098>

A package described by then Secretary of State Peter Mandelson, as the most generous scheme ever available to public sector workers in the jurisdiction

¹³ **Police hearing loss: £135m paid in compensation 23rd January 2014**

<http://www.bbc.co.uk/news/uk-northern-ireland-25860820>

¹⁴ <http://www.belfasttelegraph.co.uk/news/northern-ireland/psni-injuries-pay-scheme-buckling-31222098.html>

¹⁵ **NI soldiers getting £250m pay-off 9th March 2006**

http://news.bbc.co.uk/1/hi/northern_ireland/4789624.stm

Redundancy packages costing up to £250m for 3,000 Northern Ireland Royal Irish Regiment soldiers have been announced in the House of Commons. Armed Forces Minister Adam Ingram said "The unique and exceptional payment of the tax-free ex-gratia award is specifically designed to acknowledge the impact that disbandment will have on soldiers currently serving with the Royal Irish Regiment (home service) battalions. This is a very generous package and reflects the regard in which the home service is held."

¹⁶ **£20m gratuity scheme for police part-time reserve announced**

<http://www.bbc.co.uk/news/uk-northern-ireland-11710888>

Justice Minister David Ford has published the details of a £20m gratuity scheme for members of the Police Part-Time Reserve. The money is being provided by the Treasury. Mr Ford said that the "payments are to be made in recognition of the particular circumstances of those who volunteered to serve" in the reserve.

¹⁷ **Audit Office RUC rehiring report stark reading for PSNI**

<http://www.bbc.co.uk/news/uk-northern-ireland-19809450>

"Out of control". That is how the government's spending watchdog describes the recruitment of temporary agency staff by the PSNI in 2007. The report reveals that:

1. 256 retired officers were rehired with three months of leaving
2. Of those, 127 were rehired within a month, 54 within a week, and 21 were back within a day
3. Two were even employed as agency staff before they had officially left the PSNI

¹⁸ **Huge response to prison officers redundancy plan 9th December 2011**

<http://www.bbc.co.uk/news/uk-northern-ireland-16113994>

"Nearly every one of the 650 Northern Ireland prison officers aged over 50 have expressed an interest in taking voluntary redundancy. The sums on offer are much lower than the packages for police officers under the Patten redundancy scheme, but they are much more generous than standard public sector pension schemes. Payments will depend on length of service and salary. The most experienced officers will receive a lump sum of more than £55,000, which they would have received anyway as part of the civil service early retirement scheme. They will also receive a number of enhanced payments, equivalent to 21 months salary, bringing the total to just over £120,000, plus an annual pension of £18,500."

These payments to the Security Constituency have contributed to a grave sense of frustration, with a total estimate of public funds paid out reaching almost **£1.2 billion**.

Indeed, in his case management reviews of the pending legacy inquests, Lord Justice Weir observed¹⁹ that:

“The matter of resources, is a matter for the Government as it is their article 2 duty to discharge. The MoD is not short of money, It's busy all over the world fighting wars and it's about to buy some new submarines with nuclear warheads - so it's not short of money. This is obviously very low on their list of priorities.”

In late 2015, the Director of Public Prosecutions for Northern Ireland Barra McGrory QC referred a group of historical deaths to the PSNI to investigate the involvement of the military intelligence Agent known as “Stakeknife” in these deaths. The PSNI publicly admitted lack of resources as a bar on the timeous investigation of such matters, stating that the police required £35 million to conduct such an inquiry.

An interesting constitutional hiatus ensued in February 2016, with the First Minister Arlene Foster, the PSNI Chief Constable George Hamilton²⁰ and the locally devolved Minister for Justice David Ford all calling for additional funds from the British Treasury to resource such an investigation²¹. This call was met with a swift and flat refusal from the Northern Ireland Office²² stating that

“any such investigation is a matter for the PSNI. It is the Department of Justice and the wider Northern Ireland Executive who have the responsibility for funding the PSNI.”

This response could be considered a thematic reflex by the State, as it echoes the response to pre action protocol correspondence sent by our office on behalf of Colm Benstead, who has an application for Judicial Review pending before the High Court in Belfast, against the Secretary of State, in respect of her failure to adequately resource the Police Ombudsman’s office.

¹⁹ Kevin Barry O'Donnell, Sean O'Farrell, Patrick Vincent and Peter Clancy, Preliminary Hearing 28th Jan 2016 <http://m.belfasttelegraph.co.uk/news/northern-ireland/mod-is-not-short-of-money-for-work-on-inquests-into-historic-killings-in-northern-ireland-judge-34404763.html>

²⁰ Chief Constable George Hamilton told the BBC's The View that it is likely to cost in the region of £7m per annum "when it gets up and running at full tilt." He said it will take time to "put some infrastructure in place" and to "populate the investigative teams so that they can be deployed".

²¹ Stakeknife: David Ford says UK government should pay for investigation - BBC News 1st February 2016 <http://www.bbc.co.uk/news/uk-northern-ireland-35458359>

²² NIO: no more police funding for legacy investigations - BBC News 5th February 2016 <http://www.bbc.co.uk/news/uk-northern-ireland-35496645>

In the reply received from the Crown Solicitor's Office²³, they assert;

“Matters relating to policing and justice were devolved to the Northern Ireland Executive in 2010 by the Northern Ireland (Devolution of Policing and Justice Functions) Order 2010. As a consequence responsibility for the funding of devolved policing and justice bodies responsible for investigating deaths (including Troubles related deaths) now rests not with the proposed respondent but with the Northern Ireland Executive.”

British Government Obligations – legal, moral, political

The British government has been careful in choreographing its response to the issue of resources and the Legacy of the Conflict mindful of its mandate in relation to the economy, its uneasy relations with the EU, its awareness of the US Irish lobby and its strained relations with the Irish government.

The British government has a continuing responsibility to resource core aspects of the Legacy of the Conflict in the North of Ireland. This is a responsibility arising from both the political expectations and obligations arising under the Good Friday Agreement 1998 and under the legal procedural investigations obligations arising when there has been a breach/violation of Article 2 of the ECHR (and also Article 3 attaching to survivors).

We therefore submit that the DOJ should continue to advocate for resources for Policing the Past from Westminster and that the devolved policing and criminal justice powers granted to the jurisdiction under the Hillsborough Agreement 2010 exempt the Legacy from the block grant to Stormont (similarly to the retention of power regarding security matters and aspects of that element of the PSNI budget).

The compelling logic underlying this proposal is that it is the British government who is the signatory to the ECHR as the High Contracting Party and that it is the British government who had both *de facto* and *de jure* control of the jurisdiction following the suspension of Stormont through the period of the Conflict and that it was the British government as the key state actor through the police, the security services and its army that was responsible either directly or indirectly for multiple human rights breaches/violations during the Conflict.

²³ Crown Solicitors Office – reply to Pre Action Protocol Correspondence, in the Matter of an Application for Judicial Review by Colum Benstead, 19th January 2016

The failure of the British government to address its obligations – legal, moral, political – means there is an on-going breach which must be addressed through human rights compliant investigations which are adequately resourced.

- The British government cannot derogate from its legal responsibilities when a breach of Article 2 of the ECHR during the Conflict could have been prevented or was caused by the Security Forces
- The British government cannot use resources as a motive to deny access to truth, justice and accountability for victims of the Conflict in through a human rights compliant mechanism
- The British government cannot dictate a particular narrative interpretation of the Conflict or to rely upon broad brush ideas of collusion and developmental security policy
- The British government cannot rely upon public apologies to discharge its responsibilities for human rights violations occurring during the Conflict.
- The British government cannot rely upon anachronistic ideas of national security or rhetorical national security arguments framing current policy
- The British government cannot continue to provoke a desired political resolution through empty promise of a financial package to restore political stability to the jurisdiction
- The British government cannot threaten repeal of the Human Rights Act 1998 and the restoration of combat immunity in relation to the Legacy of the Conflict.

The Smothering Blanket of National Security.

With the devolution of policing and justice powers in respect of this jurisdiction to a local assembly in Belfast, in 2010, the framework of the pre-eminence of national security was enshrined and protected through a series of Memoranda of Understanding and written protocols, not legislation. Most notably, however, there is no statutory definition of national security.

“The term ‘national security’ is not specifically defined by UK or European law. It has been the policy of successive governments and the practice of Parliament not to define the term, in order to retain the flexibility necessary to ensure that the use of the term can adapt to changing circumstances”²⁴

At the time of the devolution of policing and justice in April 2010, the British Government produced a protocol setting out ‘Handling Arrangements for National Security Related Matters’, and remarkably therein, sought to re-designate the entirety of the history of the previous 40 years of conflict as a national security matter.

“The NIO will retain ownership and control of access to all pre-devolution records ... DOJ officials will have no access to pre-devolution NIO records that relate to matters that remain the responsibility of the UK government, including records that relate to matters of national security”²⁵

The Protocol further set out that the UK Government will ‘determine what information pertaining to national security can be shared and on what terms’ with the devolved Minister of Justice²⁶ The Protocol is clear that it ‘*is not legally binding and does not give rise to legal obligations*’, yet it is a statement of policy intent to restrict the disclosure of information.

Similarly an NIO Memorandum of Understanding with the Policing Board on National Security Matters, made it clear that the Chief Constable would not answer Policing Board questions which ‘indirectly touch upon’ National Security matters if there is a risk of damage to the interests of this undefined concept.²⁷

²⁴ www.mi5.gov.uk/about-us/what-we-do/protecting-national-security.htm

²⁵ Para 10 and 11 of NIO Protocol – see at Hansard WPQ 15th March 2010 : Column 254W

²⁶ NIO Protocol ‘Handling Arrangements for National Security Related Matters’ Annex A paragraphs 10-11

²⁷ The Policing You Don’t See : Covert Policing and the Accountability Gap – CAJ 2012.

In December 2014 agreement was finally reached on legacy mechanisms; after previous attempts²⁸ to agree on how the past would be addressed had become log-jammed.

Significantly the Stormont House Agreement (SHA), a political agreement, included for the first time both governments as well as the parties to the devolved power sharing Executive.

Fundamental to this was that the Historical Investigations Unit (HIU) element, which the majority of families bereaved from across the community seek most, would be fully Article 2 complaint. This too included a public commitment by the UK government that they would provide full disclosure to the HIU.

However, as progress was made through the Stormont House Implementation Group (SHIG), which included the party leaders meeting weekly and when appropriate relevant agencies such as DOJ and the PSNI CC, the commitment to full disclosure appeared not to materialize.

The deliberate leaking of draft legislation that would ultimately put the legacy mechanisms on a statutory footing confirmed that the UK government had inserted a ‘national security’ veto effectively torpedoing the entire legacy section of the agreement.

For their part the Irish government, through Minister Charlie Flanagan, described this as a ‘*smothering blanket*²⁹’ and that it was completely ‘*unacceptable*’.

In preliminary observations following a country visit to the jurisdiction the UN Special Rapporteur on Truth, Justice, Reparations & Non-Recurrence, Mr. Pablo de Greiff said³⁰,

'Although everyone must acknowledge the significance of national security concerns, it must also be acknowledged that particularly in the days we are living in, it is easy to use "national security" as a blanket term. This ends up obscuring practices which retrospectively, it is often recognized (unfortunately, mostly privately), were not especially efficient means of furthering

²⁸ Failed HET - Eames/Bradley - Haass/O’Sullivan

²⁹ Irish News 27th November 2015

³⁰ In a speech delivered on November 18th as talks concluded for implementation of the SHA Full statement of Preliminary Observations and Recommendations on the country visit to the UK: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16778&LangID=E>

security. In particular, national security, in accordance with both national and international obligations, can only be served within the limits of the law, and allowing for adequate means of comprehensive redress in cases of breaches of obligations.'

The Fresh Start Agreement³¹ of 20th November 2015 however abandoned the legacy mechanisms; the core crux of this being the UK government's insistence of a 'national security' veto seeking to trump victims' rights to know the truth concerning the killing of their loved ones.

Key questions arise

- why won't the British government provide full disclosure, in compliance with international obligations, having initially committed to doing so, and
- why would they have need to use a veto in killings carried out by non-state actors, as is the case currently concerning many of the 56 legacy inquests involving almost 100 deaths.

Indeed the European Commissioner for Human Rights, Nils Müznieks³² noted as recently as 22nd January 2016, the fact that the European Convention on Human Rights has a particular resonance here, stating specifically with regards to National Security:

*"I urge the UK government and other parties concerned to return to negotiations on mechanisms for dealing with the past in the Stormont House Agreement, including setting up the Historical Investigations Unit, as soon as possible. **Disagreements over the national security veto concerning disclosure of information need to be resolved.**"*

That this elusive and undefined concept was allowed to act as the catalyst to deny all victims of the conflict an article 2 compliant resolution to their cases, is a disgrace, but that the only legal concept, providing them with a modicum of hope, the Convention, is also under attack, is a Kafkaesque farce.

³¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/479116/A_Fresh_Start_-_The_Stormont_Agreement_and_Implementation_Plan_-_Final_Version_20_Nov_2015_for_PDF.pdf

³² "Forthcoming reforms on Human Rights law must not weaken protection" – Nils Müznieks 22nd January 2016 <http://www.coe.int/en/web/commissioner/-/uk-forthcoming-reforms-to-human-rights-law-must-not-weaken-protection>

CONCLUSIONS

Starved of resources, *bona fides* cooperation, openness, transparency and subject to repeated interference with independence, the Legacy infrastructure in the North of Ireland, such as it currently is, has consistently failed to execute the judgments of the European Court in spirit as well as letter.

Violations of treaty obligations at the international level cannot be remedied effectively unless they are effectively remedied at the domestic level. Victims and their families' demands for full truth and accountability cannot remain insulted *ad nauseam*. Such insults defeat the very purpose of the ECHR itself.

The Commission and the Agencies of the European parliamentary infrastructure are therefore called upon to raise awareness of the serious concerns amongst Member State's with the purpose of encouraging the UK to urgently discharge its obligations under Article 2 of the ECHR, to promote:

- a. Public confidence and trust in the Rule of Law,
- b. Integrity between Member States regarding the Council of Europe's standards requiring the prompt and effective execution of judgements.