

The Good Friday Agreement (GFA) heralded a new beginning for the people of Ireland, and in the relationships between the islands of Ireland and Britain.¹

Ending decades of conflict in which so many families experienced the loss of loved ones and where we witnessed the most egregious of human rights violations, hope finally replaced despair.

This was especially so for those who bore the brunt of the violence - the bereaved and injured who still carry the trauma, psychological scars, and physical wounds; and who also burden an absence of truth, justice, and accountability.

The US

The Agreement, and hope that it holds, could not have been achieved without the intervention of the US Administration as an honest and independent broker.

Without doubt peace in Ireland has been one of the greatest successes in US foreign policy in our lifetime.

The diligence of US Administrations since 1998, an across the aisle bi-partisan approach, and interventions at critical times, have kept hope alive and ensured the core foundations and principles of the GFA remain the bedrock on going forward and building a better, just, and equal future for all our peoples.

In this regard, and on behalf of the thousands of bereaved and injured, from right across the religious and political spectrums, and those of none, whom we represent, I want to acknowledge and pay tribute to you and your work in ensuring that the core democratic principles of access to justice, the rule of law, due process, human rights, and equality are championed and seen as integral to the GFA.

Your words and actions have authority and resonance beyond your shores and are a reassurance to those of us in Ireland who continue to face persistent British government bad faith in respect to key pledges of the GFA and indeed subsequent agreements that flow directly from that agreement. I refer to the Stormont House (Legacy) Agreement (SHA).²

Rights

Hope in the GFA was also underpinned by human rights, most particularly the European Convention on Human Rights.³ The rights of those bereaved, injured and who suffered appalling injustices are now firmly based upon and subject to an adherence to international legal obligations and law, treaties and conventions, the UK had long subscribed to but had

¹ https://education.niassembly.gov.uk/post_16/snapshots_of_devolution/gfa

² <https://www.gov.uk/government/publications/the-stormont-house-agreement>

³ https://www.echr.coe.int/documents/convention_eng.pdf

NOT observed. And, by the gradual waning away from draconian powers, acts and provisions, that fuelled conflict and enabled many violations to be perpetrated and go unaccounted for during four decades of violence. Remedy for these violations was now possible for victims and survivors - **or so we thought.**

Access to justice

With the space provided by the ceasefires and the absence of violence, the bereaved and injured permitted themselves, many for the very first time, a chance to take stock of what they'd been through and to reflect, free from fear, intimidation, and recrimination.

The European Convention on Human Rights (ECHR) was incorporated into domestic legislation in the form of the Human Rights Act (HRA) (1998), as part of the GFA.⁴ Correspondingly, therefore, the GFA, with the HRA, provided many victims and survivors with agency and law to ask questions and seek answers for the first time about the circumstances of the murders of their loved ones. To challenge impunity.

They could now seek, for the first time, human rights compliant investigations and inquests into the murders of their children, parents, spouses/partners, and siblings; investigations that should be robustly independent, publicly transparent, completely thorough, and compliant with the law in accordance with Article 2 – The Right To Life – of the ECHR and HRA.⁵

In the twenty-four years that have followed the GFA, and with law on their side such agency has enabled families, supported by NGO's and lawyers, to make progress towards righting wrongs, correcting historical narratives, and obtaining accountable justice. But the journey has been painstakingly slow and for the most part uncompleted.

Alongside the devolution of policing and criminal justice in 2010, and the appointment of an attorney general, addressing the legacy of the past must be a prerequisite to our society being able to move progressively forward while embedding peace and confidence in our institutions of governance.⁶

Obfuscation, deny & delay as a tactic

However, and despite such progress, key and powerful forces that were instrumental within UK state agencies involved in the conflict and responsible for killings, directly and through collusion, continue to exert significant influence in thwarting progress and undermining the rule of law concerning legacy.

Allied with political forces within the UK government and intelligence services they have mounted a rear-guard action aimed at preventing scrutiny of their actions – using

⁴ <https://www.equalityhumanrights.com/en/human-rights/human-rights-act>

⁵ https://www.echr.coe.int/Documents/Guide_Art_2_ENG.pdf

⁶ <https://www.legislation.gov.uk/ukxi/2010/976/part/2/made>

sovereignty as a shield whilst deceitfully engaging in talks on finding resolution that upholds the rights of victims.

Comments from previous British Secretaries of State for the North reveal such duplicity. In 2016 on the eve of the anniversary of the murder of Pat Finucane, and just prior to the publication of the Police Ombudsman's report into collusion in the massacre of six Catholic men in Loughinisland, County Down, in June 1994, Theresa Villiers stated that families using law to seek justice were engaged in 'pernicious counter-narratives.'⁷ In March 2019 Villiers successor, Karen Bradley, sought to justify all killings by the British army and RUC stating they were not 'crimes' and that soldiers and police officers had been 'acting in a dignified and appropriate way', when they killed almost 400 people. She later withdrew her remarks after public and international outrage. But they showed intent.⁸

Describing human rights and justice as being toxic, the vilification of victims, NGO's and lawyers engaged in advocating rights, has also been deployed as part of the above discourse. This seeks to deflect and displace rights and accountability under the GFA.

Hiding behind the use – or rather misuse – of public interest immunity gagging orders, national security claims and closed material procedures – otherwise known as secret courts – the UK government and its agencies have managed to prevaricate and delay investigations, inquests, civil actions and deny justice.

Coupled with the deliberate withholding of resources, effectively starving coroners' courts, civil courts, and the Police Ombudsman, this twin-track strategy has resulted in a logjam in the justice system.

Thousands of victims coming forward

With over 1,100 civil cases lodged in Belfast high court against the UK government for its role in the conflict; over 450 cases with the Police Ombudsman's Historic Directorate, having met the 'grave & exceptional' threshold of warranting investigation; approximately 80 killings across almost 50 inquests waiting to be heard and/or completed; and even more inquest applications on the desk of the attorney general for consideration of reopening, legacy is the defining issue of our time and requires resolution through law. Not amnesty.

It will not simply go away and nor should it. Peace demands justice.

A further 1,200 conflict killings sit in cold storage within the PSNI's Legacy Investigation Branch (LIB) – even though the PSNI does not meet the requisite legal standards of independence under law to investigate these matters. And meddling is rife where old

⁷ <https://www.irishcentral.com/roots/history/ni-police-colluded-with-loyalist-killers-of-six-catholics-watching-world-cup> - <https://www.irishnews.com/news/2016/02/22/news/villiers-accused-of-trying-to-stymie-the-work-of-solicitors-on-troubles-cases-425094/>

⁸ <https://www.thejournal.ie/karen-bradley-factcheck-4528101-Mar2019/> & <https://www.irishnews.com/news/northernirelandnews/2019/03/06/news/karen-bradley-british-soldiers-responsible-for-troubles-killings-acted-in-dignified-and-appropriate-way--1566670/>

loyalties and the protection of RUC handlers and agents involved in murders dominate and overshadow the supposedly new beginning to policing.

Vested interest prioritised over delivering justice

It's important to also note that many former intelligence operatives who served in the RUC's special branch, itself the subject of much of the logjam, have returned to the PSNI as 'civilian workers' taking up key positions within the PSNI's Legacy Support Unit (LSU), which has control over historic intelligence and responsibility for disclosures to the courts, inquests, and Police Ombudsman.

This led directly to the previous Ombudsman, Dr Maguire, issuing unprecedented judicial action against the PSNI in respect to major investigations he was conducting into collusion between special branch and illegal paramilitaries.⁹

He said at the time he wasn't prepared to permit a situation in which the very people who were the subject of his investigations would be able to determine what documentation and intelligence he could and could not have access to.

Three of the reports that formed his very public stance were recently published by the current Ombudsman having been subjected to years of deliberate delay. All these reports found extensive evidence of state collusion in over 50 murders and attempted murders. The current Ombudsman has described the 'patterns emerging' as 'significant, widespread, and serious.'¹⁰

Agreement reached

In December 2014 agreement was finally reached between the Irish and UK governments, and the five main executive parties, to unlock this logjam. Under the SHA details were published on four key mechanisms to address the past; a fully independent Historic Investigations Unit (HIU), with full police powers; an Independent Commission for Information Retrieval (ICIR), and Oral History Archive (OHA), and an overarching Implementation & Reconciliation Group (IRG) examining themes and patterns arising from the conflict.

British bad faith

However, like most agreements involving the UK government they began to unpick it before the ink was even dry.

The British government arbitrarily inserted several clauses on national security that would prevent families from accessing information about the circumstances of the murders of their loved ones should that information threaten UK national security.

⁹ <https://www.bbc.co.uk/news/uk-northern-ireland-27834041>

¹⁰ <https://www.bbc.co.uk/news/uk-northern-ireland-60361381>

This was described by the then Irish government minister Charlie Flanagan as unacceptable and a 'smothering blanket' to hide their sins.¹¹

It then took until May 2018 for the UK to finally put out to public consultation the agreement reached at Stormont House. In an unprecedented public response, and despite concerns of the real intentions of the UK, that had by this stage floated the notion of an amnesty, there was overwhelming endorsement of the original 2014 proposals. And absolute opposition from all quarters to any form of amnesty.¹²

In January 2020 further negotiations led to the UK and Irish governments publishing the New Decade New Approach (NDNA) agreement.¹³ This included a commitment by the UK to finally bring forward, within 100 days, legislation to give effect to the SHA legacy architecture; a full six years and one month later. Yet again, this commitment was broken.

On July 14, 2021, the UK published a Command Paper setting out its new way forward.¹⁴

Abandoning all previous pretence, and in a unilateral move, the UK binned the SHA and unashamedly set out their true intentions – which are to bring an end to all murder investigations, including by the Police Ombudsman, all inquests, all civil cases, disclosure of all files, including extending the powers of the Official Secrets Act (OFA) to journalists prohibiting investigative reporting and filmmaking on certain cases, that would in effect, constitute a breach of the Act. The latter a direct result of the 2017 film *No Stone Unturned*, which revealed RUC collusion in the murders of six men in Loughinisland and exposed one of the killers as an agent of the State. Even though the agent was exposed and identified the PSNI instead arrested and charged the filmmakers - not the killers.¹⁵

Newer generations

The failure to implement agreed mechanisms on the past and secure truth and justice have far reaching consequences. Consequences for confidence in the rule of law and the criminal justice system, and consequences for the so-called peace generation.

Grandchildren and great grandchildren, nieces & nephews, who weren't even born when their kin were killed are fully engaged in their families' struggles to obtain truth and justice.

¹¹ <https://www.irishnews.com/news/2015/11/27/news/flanagan-critical-of-national-security-smothering-blanket--334991/>

¹² <https://www.bbc.co.uk/news/uk-northern-ireland-48882548>

¹³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade_a_new_approach.pdf

¹⁴ <https://www.gov.uk/government/news/secretary-of-state-for-northern-ireland-brandon-lewis-mp-oral-statement-wednesday-21st-july-2021>

¹⁵ <https://www.newyorker.com/news/daily-comment/why-were-a-filmmaker-and-a-journalist-arrested-in-northern-ireland>

These generations have lived their entire lives framed by events and historical memory of gross violations and injustices that require resolution. They hold an unquenchable desire for justice and every attempt to extinguish justice steels more their determination.

The peace dividend has by-passed their families. The peace agreement has not delivered to their families. Trauma has been compounded by denial of truth and cover-up, and hope has been replaced with the cynicism of the absence of justice.

Peace cannot be built upon a foundation of lies and deceit. The GFA must deliver justice for this generation and have a meaning based upon the primacy of the rule of law.

The UK Command Paper and proposed bill to abolish rule of law norms and standards, due process, the rights of victims who bore the brunt of conflict and sacrificed so much for peace, poses one of, if not the single, greatest threats encountered by the GFA.

It is a deliberate act of political vandalism on the GFA and an action akin to that of a rouge state.

It is the very antithesis of everything the GFA represented.

This now requires vigilance and diplomatic intervention. Thankfully the US remains engaged and is a guarantor of the GFA.

We respectfully ask this Commission to work to encourage the US Administration, supported by Congress and the Senate, to convene a summit with the Irish and UK governments, all political parties, and victims' representatives, to ensure the UK honours its commitments and agreements pledged in respect to GFA and SHA on legacy.

There is absolutely no place whatsoever in our post-conflict society for any form of statute that provides amnesty for gross human rights violations.

Accountability is most certainly at risk.

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