

***REPORT OF THE INDEPENDENT INTERNATIONAL PANEL
ON ALLEGED COLLUSION IN SECTARIAN KILLINGS
IN NORTHERN IRELAND***

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October 2006

Embargoed until Monday November 6 at 11am

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KEY FINDINGS AND RECOMMENDATIONS

KEY FINDINGS:

Collusion:

The Panel examined 25 cases of suspected loyalist paramilitary violence in Northern Ireland during 1972-77. The 25 cases involve a total of 76 murders as well as attempted murders. In 24 of the 25 cases, involving 74 of the 76 murders, evidence suggests collusion by members of the Royal Ulster Constabulary (RUC) or the Ulster Defense Regiment (UDR):

- In 12 cases – 11 murders and one attempted murder -- former RUC officer John Weir accuses RUC officers and agents or UDR soldiers of participation. The panel finds Weir's allegations, in general, to be credible.
- Firearms were used in eight of the 12 cases alleged by Weir. In seven of those eight cases, RUC ballistics tests corroborate his allegations. In none do they contradict him.
- RUC ballistics tests show that one or more of these firearms were also the murder weapons in five more of the 25 cases.
- Criminal convictions link two more of the 25 cases to involvement by State security forces.
- Of the six remaining cases, there is evidence, in some cases strong, of State security force involvement in five. Only one case – a 1975 attack on a minibus near Gilford – appears to lack evidence of collusion. But given inadequate police investigations, no conclusion can be drawn.
- Documentary, testimonial and ballistics evidence suggests that the violent extremists with whom RUC officers and agents and UDR soldiers colluded – and even overlapped -- gained much of their arms and ammunition, as well as training, information and personnel, from the RUC and UDR.

Knowledge by Superiors:

- Credible evidence indicates that superiors of violent extremist officers and agents, at least within the RUC, were aware of their sectarian crimes, yet failed to act to prevent, investigate or punish them. On the contrary, they allegedly made statements that appeared to condone participation in these crimes.

- Even after Weir and another officer confessed in 1978 – information that should have blown the lid off RUC and UDR involvement in murdering Catholics – police investigations and ensuing prosecutions were inadequate by any reasonable standard.
- As early as 1973, senior officials of the United Kingdom were put on notice of the danger – and indeed of some of the facts – of sectarian violence by UDR soldiers using stolen UDR weapons and ammunition, and supported by UDR training and information. At least by 1975 senior officials were also informed that some RUC police officers were “very close” to extremist paramilitaries.

Earlier Police Investigations:

- Both the original police investigations of the 25 cases in the 1970s, and the later police investigations following the allegations made public by Weir in 1999, were deficient by any reasonable standard.

Current investigations and reforms are inadequate:

- The British government deserves credit for introducing reforms that will make future investigations more likely to meet international standards.
- However, these reforms will not help the victims in the 25 cases examined by the Panel, or many other victims of past collusion in sectarian murders.
- To date very few cases have been referred to the Police Ombudsman, who in any event lacks jurisdiction to investigate UDR soldiers.
- The Historical Enquiries Team, established by the Police Service of Northern Ireland, does not meet international standards for investigations. Moreover, except where its enquiries lead to new prosecutions – unlikely in most cases from the 1970’s – it plans to share findings only with families of victims, and not with the public.
- The Committee of Ministers of the Council of Europe is meticulously supervising British compliance with six judgments of the European Court of Human Rights in cases from Northern Ireland. However, except in those six cases, the Committee focuses on reforms for the future. Its current supervisory effort does not assist other victims of past collusion – including the families in the 25 cases examined by the Panel.

MAIN RECOMMENDATIONS:

Consultation:

- The panel urges the government to conduct a thorough and inclusive consultation with all interested groups and individuals in relation to the choice and nature of measures adopted to fulfill the obligations referred to in this report.

Investigations:

- The British government should conduct investigations that meet international standards in the 25 cases examined by the Panel, and in all other past cases involving serious allegations of collusion.
- To meet international standards, such investigations must be undertaken on the initiative of the State, by independent investigators, capable of assessing whether murder or attempted murder was committed and of identifying perpetrators, subject to public scrutiny, and carried out without further delay.
- Investigations should examine and report on patterns of collusion, not merely individual cases.
- Investigations should examine how high up the chain of command in Belfast and London there was knowledge, acquiescence or complicity in murder and attempted murder.
- Investigations should examine collusion in sectarian murders, not only by the RUC and UDR, but also by the British army and intelligence agencies.
- Investigations should also credibly examine murders committed by Republican groups.

Moral Reparations:

- Results of investigations (including those of the Historical Enquiries Team) should be made public.
- Where adequate investigation indicates collusion by State security forces in sectarian murders, the State should publicly acknowledge its responsibility.
- In such cases senior officials should publicly apologize to families of victims.
- Paramilitary groups on both sides of the conflict should cooperate with credible official investigations.

I. EXECUTIVE SUMMARY

A. The Panel and its Mission (Chapter II of the Report)

In 2004 the Pat Finucane Centre of Derry asked Professor Douglass Cassel, then of Northwestern University School of Law, Chicago, Illinois, USA, to convene an independent international panel of inquiry into alleged collusion by members of United Kingdom security forces in sectarian murders and other serious crimes in Northern Ireland in the mid-1970's – and particularly the activities of the so-called “Glenanne group.”

The panel's central mission is to examine whether the British State has a case to answer with respect to allegations of collusion, in terms of both its substantive and procedural responsibilities under international law, such that further, official investigation is required by international human rights law.

The Independent International Panel consists of four members, all with extensive relevant experience, as follows:

- **Professor Douglass Cassel** teaches international human rights, international humanitarian and international criminal law, previously at Northwestern and now at Notre Dame Law School in the United States of America.
- **Susie Kemp** is an international lawyer based in The Hague who is Legal Adviser to Impunity Watch.
- **Piers Pigou** served as an investigator for the South African Truth and Reconciliation Commission, and as advisor to East Timor's Commission for Reception, Truth and Reconciliation.
- **Stephen Sawyer** is Senior Counsel and Clinical Assistant Professor of Law at the Center for International Human Rights of Northwestern University School of Law in the United States of America.
- **Thomas Vega-Byrnes**, a Chicago-based attorney with extensive international experience, was the panel's counsel.

The panel is professionally independent of the Finucane Centre. Its terms of engagement (Appendix A to its Report) are to investigate and report in an “independent and impartial manner according to its professional judgment.” Its final report is to be published “independently of whether the [Finucane Centre] agrees with its conclusions.”

The panel provided draft copies of its report to the Finucane Centre, the British government and the Police Ombudsman for Northern Ireland. Helpful comments were received, which the panel has taken into account in this final version.

The panel understands that in the polarized atmosphere of Northern Ireland, it is difficult for any assessment of human rights violations to be accepted as objective by all sectors. Nonetheless the panel hopes that its effort to examine the evidence in an impartial, professional manner will suggest the importance of a more thorough, official inquiry, with full access to State files, and independent of the police and army and other agencies allegedly involved in collusion. Only so can the British government make clear to victims, to history – and to itself – the extent to which its agents participated or colluded in or tolerated gross violations of human rights, for which its offices have, to date, failed to conduct due investigations and prosecutions or to make due disclosure and reparation.

B. The Panel’s Inquiry (Chapter III of the Report)

The panel interviewed victims and family members in the following 25 cases of alleged sectarian violence against members of the Catholic community in the 1970s. The 25 cases included a total of 76 murders as well as attempted murders. Most of the cases were believed by the Finucane Centre to be connected to the “Glenanne group,” an alleged band of violent Protestant extremists, said to include members of the Royal Ulster Constabulary (“RUC”) and the Ulster Defense Regiment (“UDR”). Dates shown are those of the crimes; where death was not immediate, the date of death is also given:

Patrick Connolly	Oct. 4, 1972
Francis McCaughey	Oct. 28, 1973 (died Nov. 8, 1973)
Patrick Campbell	Oct. 28, 1973
Boyle’s Bar	Jan. 17, 1974
Traynor’s Bar	Feb. 19, 1974
Dublin Monaghan Bombings	May 17, 1974
Falls Bar (Falls)	Nov. 20, 1974
John Francis Green	Jan. 10, 1975
Owen Boyle	April 11, 1975 (died April 22, 1975)
Bowen home, Killyliss	April 21, 1975
Bleary Dart’s Club	April 27, 1975
Grew family	May 24, 1975
Miami Showband	July 31, 1975
Gilford Minibus	August 1, 1975
McCartney and Farmer	August 24, 1975
Peter and Jennie McKearney	Oct. 23, 1975
Donnelly’s Bar, Silverbridge	Dec. 19, 1975
Kay’s Tavern, Dundalk	Dec. 19, 1975
Reavey Family	Jan. 4, 1976
O’Dowd Family	Jan. 4, 1976
Castleblayney Bomb	March 7, 1976
Hillcrest Bar, Dungannon	March 17, 1976
Eagle Bar, Charlemont	May 15, 1976
Rock Bar, Keady	June 5, 1976
Sgt. Joe Campbell	Feb. 25, 1977

The panel also interviewed four former members of government security forces in Northern Ireland during the 1970's:

- Fred Holroyd, former British Army Intelligence Officer
- Billy McCaughey, former RUC officer and alleged member of the Glenanne group
- Colin Wallace, former British civil servant who worked for Army Intelligence
- John Weir, former RUC officer and confessed member of the Glenanne group

In addition, the panel met with two senior government officials: Chief Constable Sir Hugh Orde, the highest ranking officer of the Police Service of Northern Ireland, and members of his staff; and the Chief Commissioner of the Human Rights Commission for Northern Ireland. Requests to meet with other British government officials either were not granted or were granted only subject to limiting conditions.

The panel's counsel, Thomas Vega-Byrnes, met with victims and survivors of alleged sectarian violence against the Protestant community.

The panel also reviewed voluminous documents, including two reports by the Hon. Henry Barron, former Justice of the Supreme Court of the Republic of Ireland, on sectarian bombings in Dublin and Monaghan, Ireland in 1974, and in Dundalk in 1976. Justice Barron's reports were especially important in view of the panel's difficulty in securing access to British police documents. At a meeting with Chief Constable Orde, the panel was given to expect substantial cooperation. However, none of the documents subsequently requested by the panel was made available.

Justice Barron, too, encountered difficulties in gaining access to British police, army and government files. A committee of the Irish Parliament has denounced the lack of cooperation by the British government with the Barron inquiry. A further inquiry report by Irish senior barrister Patrick MacEntee is currently due by October 2006.

Nonetheless Justice Barron's reports benefited from, and took into account, a wealth of information, including ballistics tests and notes of Northern Ireland police interviews, not otherwise available to the panel.

The panel has studied Justice Barron's lengthy reports with care. Although constrained by the limited information, his reports are meticulous, judicious and fair-minded. The panel places great weight on the conclusions reported by Justice Barron, insofar as they are relevant to the role of British security forces in sectarian violence against the Catholic community in the 1970's, and subject to the need for further information.

The information now publicly available about the murders examined by the panel is far too limited for the British government to meet its obligations under the European Convention on Human Rights of investigation and disclosure to victims and survivors

and to the public. Much more is needed. The Historical Enquiries Team, initiated by the police in January 2006, will not by itself meet that need to the standards of the European Convention.

C. Legal Standards (Chapter IV of the Report)

The panel's mandate is to "evaluate whether the central allegations related to the activities of the Glenanne group warrant further official investigative or other measures," to do so "within the context of international human rights law and humanitarian law," and to "make recommendations on whether the UK has a case to answer."

The panel adopted the following parameters:

- To use the legal standards of the European Convention on Human Rights, in force and binding as a matter of international law in the United Kingdom since 1953.
- To consider individual responsibility only insofar as relevant to State responsibility.
- To apply only legal standards binding on the UK at the relevant time.
- To follow the practice of international courts, taking into account any relevant information without being bound by formal rules on admissibility of evidence.
- To refer to international instruments and principles additional to the European Convention on Human Rights only as tools for interpreting the Convention.
- Not to purport to pre-empt any future decisions of courts in relation to these events, but simply to apply international human rights legal standards relevant to State responsibilities to take further actions.

Under the European Convention the following are the principal obligations of the UK related to the incidents examined by the panel:

1. To protect the right to life.
2. To refrain from torture, or cruel, inhuman or degrading treatment.
3. To provide an effective remedy to anyone whose rights or freedoms under the Convention have arguably been violated.
4. Generally to secure the human rights set out in the Convention to all persons within its jurisdiction and to do this without discrimination.

Each of these State obligations also gives rise to corresponding rights of victims and family members.

The State's obligations are both substantive and procedural. A *substantive* violation of a human right occurs when actions or omissions attributable to the State directly prevented the enjoyment of the right or directly caused the prohibited conduct.

A *procedural* violation relates not to the State's responsibility for causing death or injury itself, but for failing to prevent it or to respond adequately afterwards.

1. *Substantive Responsibility for the Attacks*

Human rights law generally attributes actions or omissions to the State when they are those of an agent of the State, or of a person acting with the consent or acquiescence of a public official.

Under the European Convention, and for purposes of State responsibility, the higher authorities of the State “are strictly liable for the conduct of their subordinates; they are under a duty to impose their will on subordinates and cannot shelter behind their inability to ensure that it is respected.”

In adjudicating State responsibility, the European Court of Human Rights applies a very high standard of ‘beyond reasonable doubt.’ The panel does not apply this standard of proof, however, since its task is not to adjudicate, but merely to determine whether the UK has a case to answer and whether further official investigation is warranted. The panel interprets a “case to answer,” in light of international law, to mean that the information relating to allegations of State responsibility is sufficient to require further official investigation.

2. *Procedural Responsibility for Failing to Prevent or to Respond Adequately to the Attacks*

The procedural forms of State responsibility include failure to take reasonable steps to prevent gross violations of human rights, or afterward to investigate or provide suitable remedies.

The State has a duty under Article 2 of the Convention to conduct an effective, official investigation of suspected wrongful killings. This duty obtains, regardless of whether the suspected perpetrator was a State agent or a non-State actor.

For an investigation to be considered ‘effective,’ it must be undertaken by the State, and not left to depend on the initiative of victims or family members. The investigators must be independent from those implicated in the events. The investigation must be capable of ascertaining whether any official force used was justified, and, where feasible, of identifying and leading to prosecution of those responsible. The investigation should also seek to determine “any pattern or practice which may have brought about that death.” The investigation must be timely, and there must be a sufficient element of public scrutiny of the investigation or its results.

A prevailing security situation which includes violent armed clashes does not remove or modify the State’s obligations to ensure that an effective, independent investigation is conducted into deaths arising out of clashes involving the security forces.

D. The 25 Cases (Chapter V of the Report)

Of the 25 cases of violence against members of the Catholic community in the mid-1970s reviewed by the panel, 23 involved murders which took the lives of a total of 76 people, while two cases (the Grew family and Rock Bar) appear to be attempted murders. Twenty-one cases took place in Northern Ireland. Four cases (Dublin Monaghan, John Francis Green, Kay's Tavern Dundalk, and Castleblaney bomb) took place in the Republic of Ireland, but with strong evidence of involvement by loyalist forces from Northern Ireland. The earliest of these attacks was in October 1972 (Patrick Connolly) and the latest in February 1977 (Joe Campbell).

Their criminal means and targets were as follows:

- Ten cases involved attacks on homes, of which six were with guns, and four with bombs;
- Seven cases involved attacks on bars with guns or bombs – attacks which are inherently indiscriminate as to the individual victims, although targeted at bars owned or patronized by Catholics;
- Four cases involved even more indiscriminate car bombs, three placed outside Catholic bars, while in one case the targets – the most indiscriminate of all -- were public places in Irish cities;
- Two cases involved shootings or bombs at bogus checkpoints; and
- One case involved a shooting at a bus, and another the deliberate assassination of a targeted police officer outside his police station.

Firearms were used in 16 of the 25 cases. In 12 of those 16 cases, ballistics tests link eight weapons and through them the perpetrators, including members of the Northern Ireland security forces (RUC and UDR). In three of the 16 cases no information about the firearms used is available to the panel; while in one case the arms were of a kind normally used by Republican groups. In nine cases only explosives were used, not firearms.

Convictions were obtained in only nine of the 25 cases, and several of those convictions are suspect as erroneous and incomplete.

The evidence in at least 24 of the 25 cases, involving 74 of the 76 murders, suggests that the crimes were committed by loyalist extremists, including members or agents of the RUC and UDR. In most cases the evidence to this effect is strong. In the Gilford minibus case, there are conflicting claims about responsibility, as well as inconsistencies in the evidence.

In evaluating State responsibility for these crimes, the panel did not undertake to investigate whether the victims were in all cases innocent civilians, or instead might have been involved in illegal activities on the Republican side. As a matter of law any such affiliations are irrelevant to violations of the right to life. Except in one case, they were also not supported by publicly available evidence. And the panel did not wish to compound the grave injuries already suffered by the victims and families.

E. United Kingdom State Responsibility (Chapter VI of the Report)

There is substantial evidence of State responsibility of the United Kingdom. In some cases, if this evidence were presented in proper form before a court of law, it would arguably suffice to amount to a *prima facie* showing of State responsibility. In all cases, the evidence suffices to trigger the State's duty under the European Convention on Human Rights to conduct a full and transparent investigation.

The limited evidence available to the panel is not sufficient, without further inquiry, to justify a finding of complicity by senior officials of the British State or of an official State policy to support or condone the murders of members of the Catholic community in the 1970's.

However, there is compelling evidence that officers of the British State – in particular, RUC officers, UDR soldiers, and their agents -- were involved in sectarian murders of Catholics. There is credible evidence that their activities were known and supported, tacitly and in some cases explicitly, by some of their RUC and UDR superiors and, to some extent, by some British intelligence and army officers. Despite this knowledge, appropriate criminal investigations and prosecutions of these murders were not conducted, even in the face of evidence amounting to probable cause for arrest.

The panel has also seen documentary evidence that senior officials of the British government were informed of facts that put them on notice of the risk of collusion between State security forces and Loyalist paramilitaries in sectarian violence in Northern Ireland.

The evidence that police and military officers of the State were involved in the murders, and that some of their superiors knew of this but failed to take appropriate action, raises a further question: How high up the chain of command in the police, army and intelligence agencies of the British State, did specific knowledge and acquiescence in sectarian crimes go? In the absence of a thorough and transparent inquiry, these questions clearly have a legitimate basis.

Three mutually corroborating, and cumulatively compelling, sources of evidence of the responsibility of agents of the British State for sectarian violence against the Catholic community in the 1970's are the following:

(1) A 1999 affidavit of former RUC Sergeant John Weir, which the panel finds to be credible on the whole, detailing security force involvement and collusion in numerous sectarian murders,

(2) Ballistics evidence received by Justice Barron from the Police Service of Northern Ireland, which links the firearms used in various sectarian murders, including murders committed by RUC officers and UDR members, who used the same weapons employed in other, still unsolved murders of Catholics, and

(3) The failure of Northern Ireland authorities properly to investigate the multiple crimes disclosed by the 1978 confessions by two RUC officers, William McCaughey and John Weir, or even to interrogate the two men they named as principally responsible for a 1977 murder, to which McCaughey and Weir confessed their complicity.

Of the 25 cases examined by the panel, credible but hearsay statements by former RUC officer Weir accuse RUC officers and agents or UDR soldiers of involvement in 11 cases of murder and one of attempted murder. RUC ballistics tests corroborate Weir's allegations in 7 of the 8 cases in which firearms were used. Ballistics tests link five more of the 25 cases to one or more of these same weapons. Criminal convictions link two more cases to involvement by State security forces.

Of the six remaining cases, there is evidence – in some cases strong – of State security force involvement in five. Only one case – the Gilford minibus – appears to lack evidence of involvement by State security forces in the murder. But given the pattern of inadequate investigations, no conclusions can be drawn from this lack of evidence.

Further documentary, testimonial and ballistics evidence suggests that the violent extremists with whom RUC officers and agents and UDR soldiers colluded – or even overlapped -- gained much of their arms and ammunition, and some of their training, information and personnel, from British security forces. All this evidence, taken together, engages British State responsibility for sectarian crimes under the Convention.

In addition, the procedural aspect of State responsibility is demonstrated by the evidence. Credible evidence indicates that some superiors of violent extremist officers and agents, at least within the RUC, were aware of their sectarian crimes, yet failed to act to prevent, investigate or punish them. On the contrary, according to Weir, they made statements that appeared to condone participation in these crimes.

Even after the 1978 confessions by McCaughey and Weir – explosive information that should have blown the lid off RUC and UDR involvement in murdering Catholics – investigations and prosecutions were inadequate by any reasonable standard.

Two decades later, the RUC response to the 1999 public statement by Weir remained inadequate, falling short of the procedural obligations of the British state under the European Convention.

Senior officials of the United Kingdom, as early as 1973, were put on notice of the danger – and indeed of some of the facts – of sectarian violence by UDR soldiers using stolen UDR weapons and ammunition, and supported by UDR training and information.

F. Violence Against the Protestant Community (Chapter VII of the Report)

The panel assessed the responsibility of the British State for sectarian violence in Northern Ireland during the 1970s. It had neither mandate nor resources to investigate sectarian violence committed by armed groups on the Republican side, or to evaluate in depth the cases of victims on the loyalist or Protestant side.

Nonetheless no credible assessment of violence and victimization in Northern Ireland can fail to recognize that violations were committed by both sides, and to acknowledge and respect the suffering endured by both communities. While this panel's inquiry cannot devote equal attention to both sides, any resolution of the conflict and reconciliation of the communities will need to do so. The panel hopes and expects that other inquiries will investigate violence against the Protestant community.

In order to assist the panel to get some sense of the impact of violence on the Protestant side, its counsel, Thomas Vega-Byrnes, met with Protestant victims in Northern Ireland. They related, and the panel's report summarizes, illustrative cases of horrific violence against Protestants from the 1960's through the 1990's.

Because the panel has not investigated these accounts, it can neither confirm nor dispute their accuracy. But the panel believes that, collectively, these statements by victims and family members tell a larger truth: The human suffering on both sides is equally painful. Whoever the perpetrator and whatever the cause, victims are left crippled or dead, families bereft and society polarized.

There are other similarities. One is impunity. Protestant families, like the Catholics interviewed by the panel, reported that the crimes they suffered had not been brought to justice. At least for some victims, the thirst for justice continues – understandably so.

Another similarity is the continuing trauma. Protestant victims stressed the need for more counseling services, especially for children who suffered losses in their families.

There were also allegations by at least one former RUC man that the police force of the Republic of Ireland was not cooperative in bringing fugitives to justice.

The panel has had its hands full examining the responsibility of the British State. It is in no position to take on the additional assignment of examining the possible responsibility of another State. However, the panel will bring these allegations to the attention of Irish authorities, and suggest that they deserve to be looked into.

More direct responsibility for crimes of violence against the Protestant community rests, of course, with the armed groups whose members committed them. The panel's recommendations are addressed to these groups, as well as to State authorities in Northern Ireland with reference to their crimes.

G. Recommendations (Chapter VIII of the Report)

The panel has found significant and credible evidence of involvement of police and military agents of the United Kingdom, both directly and in collusion with loyalist extremists, in a pattern and practice of sectarian murders of members of the Catholic community in Northern Ireland in the 1970's. At least 24 of the 25 cases examined by the panel, involving 74 of the 76 total murders, and possibly all 25 cases, appear to fall within this pattern and practice.

The panel has also found that at least some police superiors in Northern Ireland knew of and expressed approval of instances of this conduct, and that senior officials in London had information sufficient to put them on notice of the serious risk of such conduct.

At minimum, these findings suffice to engage the responsibility of the United Kingdom to conduct effective, official investigations, in compliance with article 2 of the European Convention on Human Rights, not only into the particular murders and attempted murders examined by the panel, but also into the broader pattern and practice of which they appear to be a part.

Moreover, in cases where the evidence makes out a *prima facie* case of State responsibility, and this evidence is not countered by contrary findings resulting from adequate, official investigations, the responsibility of the State for involvement or collusion of its officers and agents in gross violations of human rights gives rise to the State's duty under international law to provide adequate reparations to victims and their families.

The panel urges the government to conduct a thorough and inclusive consultation with all interested groups and individuals in relation to the choice and nature of measures adopted to fulfill the obligations referred to in this report.

1. What Victims and Families Want

In meeting with victims and family members, the panel was deeply impressed by how acutely they continue to feel their loss, and how severely they still suffer the effects of the injustices today, some three decades after the murders. What happened long ago has not been forgotten or relegated to the past. Their wounds have not been healed. Their suffering has not been alleviated.

The panel was also impressed by the consistency with which victims and families attributed their anguish, not only to the murders, but also to the State's lack of investigative and prosecutorial response. Many families received only perfunctory, often belated contact from the police. Many were given little or no notice of or real opportunity to contribute to coroners' inquests. Worse, some allege that they were harassed by police.

Most victims and family members seem to believe that the message was and is all too clear: the State, whose first duty is to safeguard the lives of human beings within its jurisdiction, simply does not care about these families or their murdered loved ones. On the contrary, it seems content to overlook the responsibility of its officers and agents for their loss.

The panel was at pains to ask victims and families what relief they now hope to secure. In spite of individual variations, there was a striking consistency in the overall tone and content of their answers.

Generally – with some exceptions -- they were not much interested in criminal prosecutions at this late date. In part this is for practical reasons. But it is also because after so many years, punishing perpetrators is not the highest priority for most of these victims and survivors. Most see other measures as more likely to provide them psychological relief.

Nor did most victims and survivors focus on monetary compensation for the loss of their loved ones.

Instead, the panel heard a consistent message from most victims and survivors: They want the truth about the perpetrators and the role of the State to be found and made known. They want to know who decided to target them or their family and why. They want the State officially to acknowledge its responsibility where the culpability of State officers or agents is demonstrated by adequate investigation. And they want the State to give a public apology in cases where its officers or agents committed or colluded in the murders.

2. Inadequacy of Measures to Date

The Committee of Ministers of the Council of Europe is currently doing an admirable job of overseeing compliance by the United Kingdom with six recent judgments of the European Court of Human Rights, holding the State responsible for failing adequately to investigate alleged security force involvement in deaths in Northern Ireland. As the Committee recognizes, such violations call for both general remedial measures and measures specific to individual cases.

Beginning in 2004 the United Kingdom has reported to the Committee a series of general remedial measures it has taken. These initiatives relate to the police ombudsman, police investigations, public scrutiny and judicial review of decisions not to prosecute,

coroners' inquests, public interest immunity certificates, and a new law that revises the procedures for Inquiries.

The State has subsequently established a Historical Enquiries Team, reporting to the Chief Constable of the Police Service of Northern Ireland and headed by a senior, former Commander of the Metropolitan Police. With a budget of more than 30 million pounds, the Team has a staff of 89 persons. They are tasked to investigate some 3,268 deaths in Northern Ireland between 1968 and 1998. By April 2006 they had reportedly identified 78 deaths in which police conduct was questioned, and notified the Police Ombudsman of those cases. However, by early October 2006, they had referred only 11 cases to the Ombudsman for investigation.

Cumulatively these steps are positive and substantial. However, they are not sufficient, either to meet the obligations of the United Kingdom under the European Convention on Human Rights, or to provide the broader remedial measures called for by widely accepted international guidelines on reparations for gross violations of human rights.

The main deficiencies of the measures to date are as follows:

- a. ***Effectiveness Uncertain.*** Their effectiveness has yet to be established.
- b. ***Intelligence Agencies.*** They appear to leave untouched the possible role of and knowledge by intelligence agencies in regard to past sectarian violence.
- c. ***Senior Officials.*** They do not envision a comprehensive inquiry into what was known and done by senior government officials in Belfast and London.
- d. ***Past Cases.*** They are largely prospective in effect; most will not benefit the victims and their families in the 25 cases reviewed by the panel and in similar cases.
- e. ***Independence and Adequacy of Investigations.*** Although the Historical Enquiries Team and Police Ombudsman do review past cases involving allegations against police, legitimate concerns have been raised about their investigations. To date the Team has referred very few cases to the Ombudsman, who in any event lacks jurisdiction to investigate murders committed by UDR soldiers.
- f. ***Moral Reparations and Satisfaction.*** Measures to date do not appear to contemplate important elements of moral reparations and satisfaction for victims of gross violations of human rights, including full disclosure of the truth, State acknowledgment and apologies, and symbolic measures.

The panel recommends that State authorities of the United Kingdom take United Nations Guidelines into account and provide such measures of moral reparation and

satisfaction to victims and family members in the 24 cases (and possibly all 25 after investigation) and similar cases of past collusion.

The United Kingdom has already taken substantial steps to meet the needs of victims and survivors. However, these steps relate to victims of violence in Northern Ireland generally. They are not adequate remedies for victims of State participation or complicity in gross violations of human rights.

To the extent adequate official investigations substantiate State responsibility in sectarian violence, the panel recommends that senior officials of the United Kingdom officially acknowledge and publicly apologize for the State's responsibility, and that the State memorialize and show respect for victims of State violence and their families through symbolic measures as well.

3. Prosecutions

Amnesties for serious international crimes against human rights are condemned by international law and practice. On the other hand, where cases are three decades old, the interests of justice do not necessarily demand prosecution. Perpetrators or witnesses may have died or become infirm. Belated prosecutions may sometimes be unduly burdensome to elderly survivors. The result may be that in such cases there will be neither amnesty nor prosecution.

The 1998 Good Friday Agreement contained an early release provision for prisoners imprisoned for serious crimes after two years, provided certain conditions are met. It is not clear to the panel whether any potential prosecutions of State security officers in the 25 cases it reviewed would meet the conditions for early release. Although early release is not an amnesty, the same policy that condemns amnesties for serious international crimes – avoiding impunity – also counsels against unduly lenient punishments for those same crimes.

4. Removal and Suspension of Public Officials and Employees

The panel recommends that the United Kingdom take into account, where applicable, United Nations guidelines on removal from public service of persons responsible for gross violations of human rights.

5. Crimes Against Members of the Protestant Community

Reconciliation toward a common, constructive future for Northern Ireland will be made more difficult by perceptions that the State treats one community more favorably than the other.

Even so, there are factual and legal differences in the State's role in the violence affecting the two communities. Whatever difficulties police may have encountered in conducting murder investigations generally in an insecure environment, in cases of

murders of Protestants, RUC investigators did not typically face the added obstacle of having the truth concealed by their own colleagues.

The State, then, has a special responsibility to ensure adequate investigation and reparation of crimes committed by its own officials and agents. Where these crimes entail gross violations of human rights – such as sectarian murders – that duty is imposed by the European Convention on Human Rights.

As a matter of policy and even-handedness, the State may choose to go beyond its duty to examine thoroughly its own house, and extend its gaze equally to all sectarian murders, regardless of suspected perpetrator or victim. To some extent the United Kingdom has committed to doing so through the Historical Enquiries Team, whose mandate is to investigate all 3,268 murders in Northern Ireland between 1968 and 1998. However, by referring cases involving suspected police perpetrators from that Team to the Police Ombudsman for further investigation, the United Kingdom provides these cases a different, if not necessarily more searching, scrutiny.

Many, but not all shortcomings noted by the panel in the work of the Historical Enquiries Team and Police Ombudsman are particular to cases, like those reviewed by the panel, where State officials or agents may have been perpetrators or complicit. While the Team may be made adequate to investigate murders generally, it does not appear to suffice for cases of possible State responsibility.

The panel has heard allegations that Irish State officials or agents were complicit in violence against members of the Protestant community. However, no significant evidence to support these allegations has been brought to the attention of the panel. The panel had neither resources nor mandate to pursue any such evidence on its own initiative. If such evidence exists, it would trigger a corresponding duty of inquiry by the Republic of Ireland.

6. Armed or Formerly Armed Groups

Finally, there is a responsibility of armed or formerly armed groups involved in violence on both sides to assist in the truth-seeking process. While international human rights law imposes the duty to investigate on the State, common decency suggests that organizations whose members committed acts of sectarian violence should now do what they can to cooperate with credible official investigations.

II. THE PANEL AND ITS MISSION

In May 2004 the Pat Finucane Centre of Derry, Ireland, asked Professor Douglass Cassel, then of Northwestern University School of Law, Chicago, Illinois, USA, to convene and chair an independent international panel of inquiry into alleged collusion by members of United Kingdom security forces in sectarian murders and other serious crimes in Northern Ireland¹ in the mid-1970's – and particularly the activities of the so-called “Glenanne group.”

The panel's central mission is to examine whether the British State has a case to answer with respect to allegations of collusion, in terms of both its substantive and procedural responsibilities under international law, such that further, official investigation is required by international human rights law.

The panel focused on two inter-related topics, both calling for exposure of the truth about these crimes: moral reparations for the victims, and accountability of the State for alleged acts and omissions of its agents. (See Appendix A, Terms of Engagement.)

In May and June 2004 the panel met with victims, family members and witnesses in Ireland, giving them an opportunity to tell their stories to independent listeners sensitive to their suffering – in most cases for the first time. These encounters, we believe, were cathartic for many survivors. The simple message – someone cares – may have had a healing tendency.

By memorializing their stories with respect and sympathy in this report, the panel hopes to add balm to what, in the end, can never be fully healed: the traumatic shock of losing loved ones to brutal violence. In most cases this shock was aggravated by a lingering sense of betrayal, brought on by the perceived failure of the State, whose duty is to protect and to punish, either to protect the victims in the first instance, or to take seriously its duty to prosecute those responsible for these horrendous crimes.

The Independent International Panel consists of four members, assisted by their counsel (see Appendix B for brief biographical information), as follows:

- **Professor Douglass Cassel** teaches international human rights, international humanitarian and international criminal law, formerly at Northwestern University and currently at Notre Dame Law School in the United States of America. He has experience as a United States Navy prosecutor, as legal adviser to the United

¹ Many Irish people consider that Ireland should be a unified nation and might refer to the “northern part of Ireland” in lieu of “Northern Ireland.” However, the panel's mandate is to consider the responsibility of the State under international law. Under international law the State responsible for this part of Ireland is the United Kingdom of Great Britain and Northern Ireland. It is in this sense that the panel refers to “Northern Ireland.” The panel takes no position on the broader questions of the appropriate political status of the region.

Nations Commission on the Truth for El Salvador, and as a consultant on transitional justice in several countries.

- **Susie Kemp** is an international lawyer based in The Hague who is Legal Adviser to Impunity Watch. She represented victims of wartime atrocities in lawsuits against the Guatemalan military and was technical advisor to state prosecutors on behalf of the International Center for Transitional Justice. During 2005-06 she worked with the International Criminal Court.
- **Piers Pigou, who** lives in South Africa, served as an investigator for the South African Truth and Reconciliation Commission, as well as an international advisor to the Truth Seeking Division of East Timor's Commission for Reception, Truth and Reconciliation.
- **Stephen Sawyer** is Senior Counsel and Clinical Assistant Professor of Law at the Center for International Human Rights of Northwestern University School of Law in the United States of America. He has served as a New York City prosecutor, trying cases of murder and official corruption, and as Assistant General Counsel and chief litigation counsel of a major multinational corporation.
- The panel retained **Thomas Vega-Byrnes**, a Chicago-based attorney with extensive international experience, as its counsel. He has worked with two major United States law firms and most recently has served as general outside legal counsel to ShoreCap International, Ltd, assisting with the financing of microfinance institutions in Asia and Africa.

The panel was established by initiative of the Pat Finucane Centre, a human rights organization named after a murdered Catholic human rights lawyer, and the principal activities of which involve addressing human rights violations by the State. The Finucane Centre paid for some of the panel's expenses. The panel's mandate – to examine collusion by agents of the British State in sectarian crimes – focuses by nature on crimes committed against members of the Catholic community.

Nonetheless the panel is professionally independent of the Finucane Centre. Its terms of engagement (Appendix A to this Report) are to investigate and report “in an independent and impartial manner according to its professional judgment.” Its sole mandate is to consider the rights of victims and survivors and the responsibility of the United Kingdom under international law for acts and omissions of the State in regard to the crimes examined by the panel. The panel's conclusions are based exclusively on the evidence available to it and on international law, mainly the European Convention on Human Rights, as interpreted by the European Court of Human Rights. (See chapter IV.) Its final report, pursuant to its terms of engagement, “will be published independently of whether the [Finucane Centre] agrees with its conclusions.” This commitment has been fulfilled.

The panel's limited resources did not permit extensive inquiry into sectarian violence against the Protestant community. However, its terms of engagement specify that the panel will seek information from agencies and persons "who may have interests or views adverse to those of the victims." The panel's counsel interviewed alleged victims of IRA or Provisional IRA violence, as well as groups predominantly representing or providing service to such victims. (See chapter VII.) The panel's recommendations take this information into account. (See chapter VIII.)

Finally, no panel member has been involved in or taken a stance on the broader political controversies that beset Northern Ireland. The panel takes no position on these controversies or their possible political resolutions.

Before publishing its report, and pursuant to its terms of engagement, the panel provided draft copies to the Finucane Centre, to the Secretary of State for Northern Ireland and to the Police Ombudsman for Northern Ireland, inviting any comments and corrections. The panel has taken all comments received into account in this final version.

The Private Secretary to the Secretary of State commented on the draft as follows:

... [T]he European Court of Human Rights is currently considering the admissibility of a group of five cases in which it is alleged that the UK Government failed to comply with its obligations under Article 2 of the European Convention of Human Rights (ECHR). These cases are (adopting the terminology used in chapter III of your report): Donnelly's Bar, Silverbridge; the Reavey family; the O'Dowd family; McCartney and Farmer; and the Rock Bar, Keady. The Government has submitted very detailed information to the Court relating to the investigation of these cases, including the investigation into allegations made by John Weir, which are explored in detail in your report. In view of the current legal proceedings, I hope you will appreciate that the Secretary of State considers that it would not be appropriate for him to comment either on the detail of the cases or on your panel's conclusions about the extent to which the UK Government has met its obligations under the ECHR.

You will also be aware from your discussions with the PSNI that many of the cases mentioned in your report are the subject of ongoing police investigations by the Historic Enquiries Team (HET). A number of cases in which police officers are alleged to [have] been involved have also been referred to the independent Police Ombudsman of Northern Ireland. The Secretary of State notes that you raise concerns about the HET, but he continues to believe that police investigations are the best way of ensuring that allegations of collusion are fully investigated and that any individuals who have committed offences are brought to justice.²

² Letter dated 17 October 2006 from Mark Larmour, Private Secretary to the Secretary of State for Northern Ireland, to Douglass Cassel (on file with the panel).

The panel responds to these comments at the end of its concluding chapter on recommendations (chapter VIII). The panel also takes into account the observations of the British Government in one of the cases before the European Court, including information relating to the credibility of a key witness and to the adequacy of the prior police investigations (chapter VI.C).

In her comments the Police Ombudsman, Mrs. Nuala O'Loan, provided certain factual information relating to HET referrals to her office, inquired about the panel's preliminary conclusions regarding her investigations, noted statutory limits on her powers, and advised that she is currently investigating two cases examined by the panel, namely the murder of Sergeant Joe Campbell and the investigation of the murder of the Reavey brothers.³

The panel has incorporated this helpful information in the body of its report.

The panel encourages readers of the report to take into account the overall picture it presents and not to excerpt only selected portions which, taken out of context, might not fairly reflect the central focus on British State responsibility, substantive and procedural, for collusion in partisan violence.

The panel understands that in the polarized atmosphere of Northern Ireland, it is difficult for any assessment of human rights violations to be accepted as objective by all sectors. Nonetheless the panel hopes that its transparent effort to examine the evidence in an independent, impartial and professional manner, will suggest the importance of a more thorough, official inquiry, with full access to State files, and independent of the police and army and other agencies allegedly involved in collusion. Only so can the British government make clear to victims, to history – and to itself – the extent to which its agents participated or colluded in or tolerated gross violations of human rights, for which its offices have, to date, failed to conduct due investigations and prosecutions or to make due disclosure and reparation.

³ Letter dated 9 October 2006 from Mrs. Nuala O'Loan, Police Ombudsman for Northern Ireland, to Douglass Cassel (on file with the panel).

III. THE PANEL'S INQUIRY

The panel's inquiry consisted of interviews and document reviews. During May and June 2004, the panel interviewed victims and survivors in the following 25 cases of alleged sectarian violence against members of the Catholic community in the 1970s. The 25 cases involve a total of 76 murders as well as attempted murders. Most of the cases were believed by the Pat Finucane Centre to be connected to the "Glenanne group," an alleged band of violent Protestant extremists, said to include members of the Royal Ulster Constabulary ("RUC") and the Ulster Defense Regiment ("UDR").⁴ (The cases are summarized in chapter V; the Glenanne group and the role of British security forces are discussed in chapter VI.) Dates shown are those of the crimes; where the resulting death was not immediate, the date of death is also given:

Patrick Connolly	Oct. 4, 1972
Francis McCaughey	Oct. 28, 1973 (died Nov. 8, 1973)
Patrick Campbell	Oct. 28, 1973
Boyle's Bar	Jan. 17, 1974
Traynor's Bar	Feb. 19, 1974
Dublin Monaghan Bombings	May 17, 1974
Falls Bar (Falls)	Nov. 20, 1974
John Francis Green	Jan. 10, 1975
Owen Boyle	April 11, 1975 (died April 22, 1975)
Bowen home, Killyliss	April 21, 1975
Bleary Dart's Club	April 27, 1975
Grew family	May 24, 1975
Miami Showband	July 31, 1975
Gilford Minibus	August 1, 1975
McCartney and Farmer	August 24, 1975
Peter and Jennie McKearney	Oct. 23, 1975
Donnelly's Bar, Silverbridge	Dec. 19, 1975
Kay's Tavern, Dundalk	Dec. 19, 1975
Reavey Family	Jan. 4, 1976
O'Dowd Family	Jan. 4, 1976
Castleblayney Bomb	March 7, 1976
Hillcrest Bar, Dungannon	March 17, 1976
Eagle Bar, Charlemont	May 15, 1976

⁴ In a document submitted to the British Government entitled, *A Case to Answer*, the Pat Finucane Centre refers to a longer list of attacks allegedly linked to the "Glenanne Gang." For example, a bomb attack on Clancy's Bar (May 15, 1976) was carried out at the same time as the gun attack on the nearby Eagle Bar, yet the panel was able to consider only the latter incident. Likewise the Finucane Centre document alleges that an attack on the Step Inn, Keady was carried out by perpetrators based at Glenanne. The panel is not in a position to comment on these and other cases on the longer list of attacks, since it did not have an opportunity to interview the families of the bereaved. The logistical difficulty of contacting families and arranging interviews, together with the resource limitations of the panel, ultimately determined the number of cases that realistically could be given proper consideration. Further investigation may confirm the full extent of collusion in the area at the time, beyond the 25 cases examined by the panel.

Rock Bar, Keady
Sgt. Joe Campbell

June 5, 1976
Feb. 25, 1977

The panel also interviewed four former members of government security forces in Northern Ireland during the 1970's (three in person and one (Weir) by telephone):

- Fred Holroyd, former British Army Intelligence Officer
- Billy McCaughey, former RUC officer and alleged member of the Glenanne group
- Colin Wallace, former British civil servant who worked for Army Intelligence
- John Weir, former RUC officer and confessed member of the Glenanne group

In addition, the panel met with two senior government officials: Chief Constable Sir Hugh Orde, the highest ranking officer of the Police Service of Northern Ireland, and members of his staff; and the Chief Commissioner of the Human Rights Commission for Northern Ireland. Requests to meet with other British government officials either were not granted or were granted only subject to limiting conditions.

During the May-June 2004 visit, the panel also met with experts for background briefings on the history and current status of human rights violations in Northern Ireland.

In October 2004 the panel's counsel, Thomas Vega-Byrnes, met with victims and survivors of alleged sectarian violence against the Protestant community, and with two groups predominantly representing such victims: FAIR (Families Acting for Innocent Relatives), Markethill; and SAVER/NAVER, Markethill. He also met with WAVE trauma Centre in Belfast, which serves members of both the Protestant and Catholic communities. (See chapter VII.)

The panel reviewed voluminous documents, including files assembled by the Finucane Centre of publicly available materials and news articles relating to individual cases; complaints filed in five cases in the European Court of Human Rights in September 2004; the January 3, 1999 affidavit of John Weir;⁵ and a few British government documents, including a recently declassified document, evidently from 1973, entitled "Subversion in the UDR" and its appendix E.⁶

Especially helpful were two reports by the Hon. Henry Barron, former Justice of the Supreme Court of the Republic of Ireland. First is the Report of the Independent Commission of Inquiry into the Dublin and Monaghan Bombings, presented to An Taoiseach, Bertie Ahern, on 29 October 2003 (hereafter "Barron I"), accompanied by Justice Barron's statement to the Oireachtas Joint Committee, on 10 December 2003.⁷

⁵ The full text of the Weir affidavit is accessible at www.seeingred.com (last visited May 30, 2006).

⁶ The full text of the document and its appendix E are accessible at www.patfinucanecentre.org (last visited July 10, 2006).

⁷ Appendices E and D, respectively, to Houses of the Oireachtas, Joint Committee on Justice, Equality, Defence and Women's Rights, *Interim Report on the Report of the Independent Commission of Inquiry into the Dublin and Monaghan Bombings*, December 2003.

Second is the Report of the Independent Commission of Inquiry into the Bombing of Kay's Tavern, Dundalk, presented to Mr. Ahern in February 2006 (hereafter "Barron II").⁸

Justice Barron's discussion of allegations (e.g., Barron I, pp. 254-62) that some of those responsible for bombings in the Republic of Ireland may also have been involved in sectarian violence against the Catholic community in Northern Ireland in the mid-1970's make his Reports important sources of information for the present report.

The importance of Justice Barron's information for the present report is even greater, in view of the panel's difficulty in securing access to British police documents relating to the cases within its purview and to the possible responsibility of agents of British security forces. Prior to the panel's meeting with Chief Constable Orde in June 2004, the panel requested information relevant to its inquiry, but at the meeting, it was provided only a few pages on the general organization, procedures and activities of the police in Northern Ireland in the 1970's. At the meeting the panel was given to expect substantial cooperation and was invited to submit requests for documents. The panel promptly submitted a written request for a broad array of documents pertinent to its inquiry. However, in August 2004 it was advised by Chief Constable Orde's office that no documents would be forthcoming. In fact, despite the panel's follow-up requests, none of the documents requested by the panel has been made available.

In meetings with the Finucane Centre, both before and during the panel's work, officials of the Police Service of Northern Ireland and the British government did provide certain information both orally and in documentary form. While such information is limited and incomplete, the panel has made use of it.

Justice Barron, too, encountered difficulties in gaining access to British police, army and government files relating to his inquiry. In general, he received only brief summaries, but "little or no original documentation." The British government explained these difficulties on the basis of security concerns and the large volume of potentially relevant documents.⁹

Both a committee of the Irish Parliament and victims of the Dublin Monaghan bombings have publicly denounced the lack of cooperation by the British government with the Barron inquiry.¹⁰ A further inquiry report by Irish senior barrister Patrick

⁸ Justice Barron's Report on the Dundalk bombing was made public in July 2006 by the Houses of the Oireachtas, Joint Committee on Justice, Equality, Defence and Women's Rights, *Interim Report on the Report of the Independent Commission of Inquiry into the Bombing of Kay's Tavern, Dundalk*. Although Justice Barron has also prepared other reports, the two reports referred to herein contain the most pertinent information for purposes of the panel's inquiry.

⁹ Barron Statement, 10 Dec. 2003, p. 3.

¹⁰ See J. Humphreys, *Oireachtas Body Backs Criticisms in Bomb Report*, IRISH TIMES, Feb. 17, 2005, p. 11; K. Murray, *Bomb Case 'Out of Time'*, SUNDAY MIRROR, Oct. 16, 2005, p. 14.

MacEntee, who reportedly has received additional information from British sources, is currently due by October 2006.¹¹

Nonetheless Justice Barron's reports benefited from, and took into account, a wealth of information not otherwise available to the panel. His inquiry was "satisfied that it has received all relevant documentation from official sources" within the Republic of Ireland "that has not been lost or destroyed." In addition, his inquiry met with serving and retired members of the Northern Ireland police, from which it received a "considerable amount of information." These included:

- key documents relating to two guns used to murder John Francis Green in 1975 and "[f]urther ballistic evidence relating to a number of weapons and incidents in which they were used,"
- RUC reports of 1984 into the allegations of former Military Intelligence Officer Fred Holroyd, and of 2000 into the claims of former RUC Sergeant John Weir, and
- "records relating to the arrest and questioning in December 1978 of a number of RUC officers suspected of participating in attacks on Catholic civilians," including "statements of those arrested as well as daily record sheets detailing the substance of the police interviews with those arrested."¹²

The panel has studied Justice Barron's lengthy reports with care. As one would expect from an eminent jurist, although constrained by the limited information made available by the British government, his reports are meticulous, judicious and fair-minded. In reaching its own conclusions, the panel places great weight on the conclusions reported by Justice Barron, insofar as they are relevant to the role of British security forces in sectarian violence against the Catholic community in the 1970's, and subject to the need, recognized by Justice Barron, for further information.

The information now publicly available about the murders examined by the panel is far too limited for the British government to meet its obligations under the European Convention on Human Rights of investigation and disclosure to victims and survivors and to the public. Much more is needed. It does not appear that the Historical Enquiries Team, initiated by the police in January 2006, will meet that need to the standards of the European Convention. (See chapter VIII.)

¹¹ V. Robinson, *The Republic's forgotten victims*, IRISH NEWS, Oct. 2, 2006, p. 22; V. Robinson, *Deadline for 1974 report extended*, IRISH NEWS, June 1, 2006, p. 11; V. Robinson, *Survivors Demand Inquiry*, IRISH NEWS, May 17, 2006, p. 15.

¹² Barron Statement, 10 Dec. 2003, at 3-4; Barron I at 15.

IV. LEGAL STANDARDS

The panel's mandate is to "evaluate whether the central allegations related to the activities of the Glenanne group warrant further official investigative or other measures," to do so "within the context of international human rights law and humanitarian law," and to "make recommendations on whether the UK has a case to answer."

The panel therefore must address two legal issues:

1. Whether a 'case to answer' exists in relation to State responsibility for the attacks themselves. This covers allegations of collusion and issues of how high up within the State authorities any collusion may have reached.
1. The State's obligations in relation to investigations and other remedies.

The following are the parameters of the panel's inquiry:

- The panel uses the legal standards of the European Convention on Human Rights, a human rights treaty binding the United Kingdom at all relevant times, and which does not require evaluation of whether the strife in Northern Ireland amounted to an "armed conflict," such as to trigger the applicability of international humanitarian law.
- The panel considers individual responsibility only insofar as relevant to State responsibility.
- The panel applies only legal standards binding on the UK at the relevant time.
- In applying these standards to the facts, the panel follows the practice of international courts, which is to take into account any relevant information, without being bound by formal rules on admissibility of evidence.¹³
- The panel refers to international instruments and principles additional to the European Convention on Human Rights only as tools for interpreting the Convention.
- The panel does not purport to pre-empt any future decisions of national courts or the European Court in relation to these events, but simply applies the international human rights legal standards relevant to State responsibilities.¹⁴

¹³ See, e.g., *Khashiyev v. Russia*, Application no. 57942/00, Judgment of 24 February 2005, paragraph 144.

¹⁴ Thus, the panel does not consider issues that relate to the jurisdiction or competence of the European Court of Human Rights. For example, issues of whether applications comply with the six-month rule for filing cases, or whether the Committee of Ministers rather than the Court is competent to supervise investigations, may lead the European Court to rule a case inadmissible or to deny judicial relief. E.g., Eur. Comm. H. Rts., *McDaid and others v. United Kingdom*, App. no. 25681/94, Decision of April 1996 (Bloody Sunday massacre not "continuing" for purposes of six-month rule); *Finucane v. United Kingdom*, Judgment of 1 July 2003, par. 89 (Committee of Ministers, not Court, competent to address need for continuing investigation). While such issues may or may not oust the European Court of a supervisory role in a particular case, they do not relieve the State of its substantive responsibility to meet its obligations under the Convention, including the conduct of appropriate investigations.

This distinction is particularly pertinent in relation to five of the cases examined by the panel which are the subject of applications made to the European Court of Human Rights on 10th September 2004 (McCartney and Farmer, Donnelly's Bar, Reavey family, O'Dowd family and Rock Bar).

A. Framework: The European Convention on Human Rights

The panel applies the legal standards, both of State obligations and of the rights of individuals, of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“the European Convention”).¹⁵ The Convention has been in force since 1953 and the UK became a State party on 3rd September of that year. The Convention created its own mechanism for dealing with alleged violations through the establishment of the European Commission (which no longer exists) and the European Court of Human Rights.¹⁶ These bodies have applied the European Convention to various situations in Northern Ireland and have made important determinations on issues relevant to the panel’s task.

In 2004 the House of Lords ruled that there was no domestic legal obligation under the Human Rights Act 1998, which entered into force in 2000, to conduct investigations of pre-1998 deaths in accordance with European Convention standards.¹⁷ However, the United Kingdom properly acknowledges before the Committee of Ministers of the Council of Europe that, regardless of domestic judicial enforceability, Britain as a party to the European Convention recognizes that it is obligated by international law to meet Convention standards for pre-1998 investigations.¹⁸

¹⁵ The Convention was signed in 1950. The panel was asked to consider the application of two branches of international law: (i) human rights law and (ii) humanitarian law. As noted above it has decided to focus only on the first of these. While the identification of State obligations under human rights law is largely a legal analysis, the same is not true of international humanitarian law. It is not sufficient to show that at the time of the attacks the UK was a State party to the Geneva Conventions including Common Article 3, which governs non-international armed conflicts. The State’s obligations (as well as those of any armed group involved in armed conflict with State forces) under Article 3 are triggered only when a non-international armed conflict comes into existence. Although legal definitions are available, determining the existence of a non-international armed conflict at the time of the allegations examined by the panel would require a full factual investigation and analysis not only of the level, intensity and nature of the conflict between the parties across Northern Ireland, but also of the level of organisation within armed rebel and paramilitary groups. The panel has not undertaken this inquiry for the purposes of the present study.

¹⁶ Under Protocol No. 11 to the Convention, which came into force on 1 November 1998, the part-time Court and Commission were replaced by a single, full-time Court.

¹⁷ *In re McKerr* [2004] UKHL 12. The English Court of Appeal has since developed an alternative legal theory to require investigations in accord with the European Convention, at least in certain cases. *Commissioner v. Christine Hurst*, [2005] EWCA 890, decided 21 July 2005. The appeal of that decision is expected to be heard by the House of Lords in 2007. Council of Europe, Committee of Ministers, document CM/Inf/DH(2006)4 revised 2, 23 June 2006, *Cases concerning the action of security forces in Northern Ireland – Stocktaking of progress in implementing the Court’s judgments*, Memorandum prepared by the Secretariat incorporating information received up to 12 June 2006, (hereafter “*Stocktaking*”), par. 194 and note 16, accessible at [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf/DH\(2006\)4&Sector=secCM&Language=lanEnglish&Ver=rev2&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75#RelatedDocuments](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf/DH(2006)4&Sector=secCM&Language=lanEnglish&Ver=rev2&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75#RelatedDocuments).

¹⁸ *Stocktaking*, par. 188.

B. State Obligations and Individual Rights

The United Kingdom was the State within whose jurisdiction most of the alleged violations took place, whose citizens allegedly committed all or most of the violations, and is the State which retains jurisdiction over most individual victims and family members up to the present.

Under the European Convention the following are the principal obligations of the UK related to the incidents examined by the panel:

1. To protect the right to life.¹⁹
2. To refrain from torture, or cruel, inhuman or degrading treatment.²⁰
3. To provide an effective remedy to anyone whose rights or freedoms under the Convention have been violated.²¹
4. Generally to secure the human rights set out in the Convention to all persons within its jurisdiction and to do this without discrimination.²²

Each of these State obligations also gives rise to corresponding rights of victims and family members.

The State's obligations are both substantive and procedural. A *substantive* violation of a human right occurs when actions or omissions attributable to the State directly prevented the enjoyment of the right or directly caused the prohibited conduct. If for example a police officer shoots a person to death without lawful cause, the State may be held to have violated his right to life.²³

A *procedural* violation relates not to the State's responsibility for causing death or injury itself, but for failing to prevent it or to respond adequately afterwards.²⁴ This procedural obligation exists even when it is not proved that the State caused the death. In the example, say the victim was shot by a person or persons unknown. It is suspected by his family that the perpetrators were police officers but they have no evidence. There follows no investigation, or a deficient internal inquiry. In such a situation, even though the family cannot prove that the State was responsible for the actual death, it may be determined that the State committed a *procedural* violation of his right to life, because it did not carry out an adequate investigation into his killing. The basis of this kind of

¹⁹ Article 2.

²⁰ Article 3.

²¹ Article 13.

²² Article 1, and Article 14 (the latter requires the protection of the Convention human rights without any form of discrimination)

²³ See for example in relation to the right to life *Orhan v Turkey* (2002) Judgment of 18th June 2002, paragraph 331 and in relation to the protection from torture, inhuman or degrading treatment or punishment *Ireland v United Kingdom* (1978) 2 EHRR 25 paragraph 168.

²⁴ *McCann v. United Kingdom* (1996) 21 EHRR 97 paragraph 161, (also cited as *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A , No. 324.) This is applicable not only in cases of death or torture but physical integrity, see *Orhan v Turkey* (2002) Judgment of 18th June 2002 paragraph 348, *Osman v. United Kingdom*, (1998) 29 EHRR 245, paragraph 128.

obligation lies in the State's general obligation under the Convention to implement domestic laws in an effective manner so as to protect the right. The European Court has determined that one of the main ways the State can do this is to carry out effective investigations where there is an allegation of unlawful killing.

In addition to the procedural obligation arising under Article 2 of the European Convention, the adequacy of the *overall* State response to any substantive violation, including of the right to life, is regulated by article 13 of the Convention. Article 13 demands that the State provide an 'effective remedy' to victims. The procedural requirement of article 2 – i.e. the State's obligation to conduct an effective investigation – is one component of an effective remedy.²⁵

C. Assessing State Responsibility

Under international law States can be held liable only for actions or omissions which are (a) attributable to the State and (b) which violate the State's international obligations. In the field of international human rights, this concept has been applied to a broad range of factual situations. The European Court of Human Rights has extensive jurisprudence regarding State responsibility for actions and omissions of agents or officials, as well as for acts of private individuals in certain circumstances.

States can be responsible in three main ways:

- (i) By causing the harm itself through the acts of their agents, official or organs,
- (ii) By failing in certain circumstances to take necessary measures to prevent the harm, and
- (iii) By failing to take appropriate measures after the fact.

1. Substantive Responsibility for the Attacks Themselves

In order for a State to be responsible for damage to person or property it is necessary to show some involvement by an agent of the State. A State is generally responsible for the acts and omissions of its officials and organs acting in their official capacity. Human rights law generally attributes actions or omissions to the State when they are those of an agent of the State, or of a person acting with the consent or acquiescence of a public official.²⁶

²⁵ For example, if the state has not carried out an effective investigation but has provided some other remedy which is accepted as effective, a violation of article 13 may not have occurred.

²⁶ The European Court has applied this formulation in, e.g., *Nilsen and Johnson v Norway* (2000) 30 EHRR 878 and a series of cases involving Turkey including *Kilic* (2001) 33 EHRR 1357, *Akkoc* (2002) 34 EHRR 41 and *Mahmut Kaya*, Eur. Ct. H.R. 2000-III, 149.

A State can still be held responsible even if the official or organ was acting clearly in excess of its authority, or even contrary to instructions.²⁷ The European Court held in the case of *Ireland v U.K.* that under the Convention, the higher authorities of the State “are strictly liable for the conduct of their subordinates; they are under a duty to impose their will on subordinates and cannot shelter behind their inability to ensure that it is respected.”²⁸

The question of who is an agent of the State depends on the circumstances of each case, but serving members of armed or security forces are ordinarily considered State agents.

In relation to actions or omissions of persons or groups who cannot be considered agents of the State, human rights law still allows a finding of State responsibility if they acted with the consent or acquiescence of the State.²⁹ The European Court also holds States responsible for acts which have sufficiently direct repercussions on Convention rights, for example, actions by States that knowingly place persons at risk of violent abuse by third parties.³⁰

The allegation presented by the Finucane Centre is that members or agents of UK security or armed forces colluded in various ways with loyalist paramilitary groups to carry out the attacks examined by the panel.

In order to consider State responsibility in relation to this allegation, the panel will consider:

²⁷ See European Court of Human Rights cases *Ireland v United Kingdom (1978) 2 EHRR 25* judgment of 18 January 1978, Series A no. 25; *Timurtas v. Turkey* Application no. 23531/94, Judgment of 13 June 2000; *Ertak v. Turkey*, Application no. 20764/92, Judgment of 9 May 2000; Inter-American Court of Human Rights: *Velasquez Rodriguez case* paragraph 169-172. See also the U.N. Human Rights Committee Communication no. 23531/94, (Sri Lanka) CCPR/C/78/D/950/2000 views of 31st July 2003 which relies on this jurisprudence of the European Court of Human Rights and the Inter-American Court as well as article 7 of the ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts. Note also the views of the Council of Europe “...the participation, acquiescence or connivance of the authorities of a Contracting State in the acts of the agents of another State affecting Convention rights may engage the Contracting State’s responsibility under the Convention and that such responsibility may also be engaged where that State’s agents are acting *ultra vires* or contrary to instructions.” Terry Davis, U.K. MP and Secretary General COE, Letter of 21 November 2005 to the Ministers of Foreign Affairs of all member States.

²⁸ According to the European Court, ‘It is inconceivable that the higher authorities of a State should be, or at least should be entitled to be, unaware of the existence of such a practice. Furthermore, under the Convention those authorities are strictly liable for the conduct of their subordinates; they are under a duty to impose their will on subordinates and cannot shelter behind their inability to ensure that it is respected.’ *Ireland v United Kingdom (1978) 2 EHRR 25* judgment of 18 January 1978, Series A no. 25, p. 64, paragraph 159. More recent case law affirms this principle, see for example *Assanidze v Georgia*, Application no. 71503/01, Judgment of 8 April 2004, paragraphs 146, 149.

²⁹ The Court has also used ‘connivance’ but does not provide a full explanation: ‘The acquiescence or connivance of the authorities of a Contracting State in the acts of private individuals which violate the Convention rights of other individuals within its jurisdiction may engage the State’s responsibility under the Convention’ see *Cyprus v. Turkey* [GC], no. 25781/94, ECHR 2001-IV, paragraph 81.

³⁰ *Ilaşcu and Others v. Moldova and Russia* [GC], Application no. 48787/99, Judgment of 8 July 2004, paragraphs 317, 382, 384-85 and 393. In determining whether this responsibility is effectively engaged, regard must be had to the subsequent behaviour of that State.

- Whether one or more of the perpetrators could be considered State agents,
- Whether they were acting in their official capacity at the time,
- If they were acting outside the powers assigned to them did they nonetheless, in carrying out the attack, use any powers or methods which were placed at their disposal by virtue of their service as State officials? ³¹
- Did the State consent or acquiesce in any way to the activities of the perpetrators?
- Did the acts of the perpetrators amount to a breach of the UK's international obligations under the European Convention on Human Rights?

In adjudicating whether a State has violated the right to life under article 2 or the freedom from torture and cruel, inhuman or degrading treatment under article 3 of the European Convention, the European Court of Human Rights applies a very high standard of 'beyond reasonable doubt.'³² The panel does not apply this standard of proof, however, since its task is not to adjudicate, but merely to determine whether the UK has a case to answer and whether further official investigation is warranted.

The panel interprets a "case to answer," in light of international law, to mean that the information in its possession relating to allegations of State responsibility is sufficient to warrant further official investigation.

2. *Procedural Responsibility for Failing to Prevent or to Respond Adequately to the Attacks*

The procedural forms of State responsibility include failure to take reasonable steps to prevent gross violations of human rights, or afterward to investigate or provide suitable remedies.³³

The Convention not only obliges the higher authorities of a State to respect the rights and freedoms it embodies, but has the additional consequence that, in order to secure the

³¹ Whether or not the perpetrators were on duty at the time they committed the attack, the analysis should include whether they used any equipment, arms, vehicles, information, or other assistance obtained by them using their capacity as RUC officials.

³² *"The Greek case"* (1969) 12 Y.B. Eur.Conv. on H.R., p. 196, paragraph 30; *Ireland v United Kingdom* (1978) 2 EHRR 25; *Assenov v Turkey* in relation to torture (1998) EHRR-VIII; *Kaya v Turkey* in relation to unlawful killing (judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, p. 329). The Court takes the view that where such serious allegations are made it must ensure a particularly thorough scrutiny of the facts (*Orhan v Turkey* (2002) Judgment of 18th June 2002, paragraph 265; *Ribitsch v. Austria* judgment of 4 December 1995, Series A no. 336, paragraph 32). A complainant who alleges state involvement would ordinarily have difficulty satisfying this standard of proof because it would usually depend on his being able to obtain evidence from the same authorities that he accuses of committing the violation. For this reason, the Court accepts that it is also possible to prove this type of allegation on the basis of inferences or presumptions which can be drawn from the surrounding facts and circumstances ("the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact." *Ireland v United Kingdom* (1978) 2 EHRR 25 paragraph 161). Such an approach is in line with the formulation used by the UN Committee against Torture, which can make substantive findings that conduct amounts to torture on the basis of uncontested hearsay, (CAT/C/SR.297/Add.1 (9th May 1997) paragraph 5).

³³ Or cruel, inhuman or degrading treatment or punishment.

enjoyment of those rights and freedoms, the State must take reasonable steps to prevent or remedy any breach.³⁴

Because the Convention is a treaty designed to protect individual human beings, it also must be interpreted and applied in a way that makes those protections practical and effective.³⁵ According to the European Court of Human Rights,³⁶ the obligation to protect the right to life is closely linked to the State's general duty under Article 1 to secure to everyone within its jurisdiction the rights and freedoms defined in the Convention. The Court has interpreted this link to mean that there should be some form of effective official investigation in cases where it is alleged that a death was an unlawful killing.³⁷

The State's duty under Article 2 to investigate suspected wrongful killings obtains, regardless of whether the suspected perpetrator was a State agent. This has been made clear by the European Court:

“The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life *and, in those cases involving State agents or bodies*, to ensure their accountability for deaths occurring under their responsibility.”³⁸

Extrapolating from the *Ireland v U.K.* case, it can be said that the State's duty to investigate is triggered once it has knowledge of the allegation. Just as knowledge of a risk can trigger a duty to take measures to protect life, so knowledge of an allegation that the State was involved in an unlawful killing can trigger a duty to investigate.

State knowledge can be based on direct evidence or inferred from the surrounding facts.³⁹ It is not necessary for an allegation to fulfill any particular requirements or to reach any particular standard before the State's duty to investigate it is triggered.

If the authorities attend the crime scene of a killing and initiate an investigation, it can be presumed that the State has accepted an obligation to investigate that killing.

In the *Ireland v U.K.* case, the European Court placed the burden on the State to demonstrate to the Court that it had in fact investigated the allegations adequately.⁴⁰ This allocation of the burden of proof is essential to avoid a situation where the victim is

³⁴ *Ireland v. the United Kingdom, Ireland v United Kingdom* (1978) 2 EHRR 25, pp. 90-91, paragraph 239

³⁵ *Soering v. the United Kingdom*, judgment of 7 July 1989, Series A no. 161, p. 34, paragraph 87; *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, pp. 45-46, paras. 146-147; *Jordan v United Kingdom* (2003) 37 EHRR 52 paragraph 102

³⁶ The main tests and case law are taken from the case of *Shanaghan v United Kingdom* unreported, Application no. 37715/97 judgment of 4th May 2001, paras 88 to 92.

³⁷ *McCann v. United Kingdom* [1996] 21 EHRR 97 judgment, cited above, p. 49, paragraph 161; *Kaya v. Turkey* 19 February 1998, Reports of Judgments and Decisions 1998-I, p. 329, paragraph 105.

³⁸ E.g., *McKerr v. United Kingdom*, Application no. 28883/95, Judgment of 4 May 2001, paragraph 111 (emphasis added).

³⁹ *Ireland v United Kingdom* (1978) 2 EHRR 25 paragraph 118.

⁴⁰ *Ireland v United Kingdom* *ibid* paragraph 118.

otherwise denied access to the very information possessed by the State which would demonstrate the inadequacy of its investigation.

3. *What is an effective investigation?*

The panel assesses the investigations conducted by the UK authorities against standards developed by the European Court after the mid-1970s. This is not however a retroactive application of the law to the facts, but the application of currently defined standards of effectiveness to the State's current and continuing legal obligation to investigate.⁴¹

Certain standards⁴² must be met for an investigation to be considered 'effective'⁴³:

- State initiative. The authorities must initiate the investigation once the matter comes to their attention. They cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures.⁴⁴
- Independence. The persons responsible for and who carry out the investigation must be independent from those implicated in the events.⁴⁵ This means not only a lack of hierarchical or institutional connection but also a practical independence. A lack of practical independence can be demonstrated where an investigating body is functionally independent but in practice the way it carries out its activities shows partiality.⁴⁶
- Assessing Force. The investigation must be capable of leading to a determination whether the force used in such cases was justified in the circumstances.⁴⁷
- Identifying Perpetrators. The investigation must be capable of leading to a determination of the identification and punishment of those responsible.⁴⁸ That is

⁴¹ Whether a State must now conduct a proper investigation of past crimes depends on whether an investigation can still "usefully be carried out or provide any redress, either to the victim's family or to the wider public by ensuring transparency and accountability." *Finucane v. United Kingdom*, Judgment of 1 July 2003, par. 89. For the reasons given in this report, investigations of the 25 cases examined by the panel can still be useful, both to the families and to the public.

⁴² In setting out these standards, the European Court relied specifically on the United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted on 24 May 1989 by the Economic and Social Council Resolution 1989/65, (UN Principles on Extra-Legal Executions) and on the "Minnesota Protocol" (Model Protocol for a legal investigation of extra-legal, arbitrary and summary executions, contained in the UN Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.) The requirements for effectiveness are therefore in broad agreement with an internationally negotiated minimum.

⁴³ The cases of *McCann v. United Kingdom (1996) 21 EHRR 97 v UK* and *Jordan v United Kingdom (2003) 37 EHRR 52* are useful in outlining these component parts.

⁴⁴ *Shanaghan v United Kingdom* unreported, Application no. 37715/97 judgment of 4th May 2001 paragraph 88.

⁴⁵ *Finucane v United Kingdom*, paragraph 68 citing *Güleç v. Turkey* judgment of 27 July 1998, *Reports* 1998-IV, paragraphs 81-82; *Öğür v. Turkey*, [GC] no. 21954/93, ECHR 1999-III, paragraphs 91-92).

⁴⁶ *Ibid.* and see *Ergi v. Turkey* judgment of 28 July 1998, *Reports* 1998-IV, paragraphs 83-84.

⁴⁷ *McKerr v. United Kingdom*, Application no. 28883/95, Judgment of 4 May 2001 paragraph 113 citing *Kaya v. Turkey*, *Reports of Judgments and Decisions* 1998-I p. 324, paragraph 87.

⁴⁸ *Ibid.*

not to say it must identify and punish them, but simply that it must have the capacity and means to do so. This implies that the authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including among other things eye witness testimony⁴⁹, forensic evidence⁵⁰ and, where appropriate⁵¹, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk running afoul of this standard.

In addition, an effective investigation should seek to determine “any pattern or practice which may have brought about that death.”⁵²

- **Timeliness.** The investigation must be begun promptly and carried out within a reasonable timescale even though there may be obstacles or difficulties which prevent progress in an investigation in a particular situation.⁵³ The Court regards this requirement as essential in maintaining public confidence in the State’s maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.
- **Public Scrutiny.** There must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case – this includes access to documents by a victim or family members. In all cases, however, the next of kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests.⁵⁴

4. Pressures on the authorities

A prevailing security situation which includes violent armed clashes and high incidence of fatalities does not remove or modify the State’s obligations under Article 2 to ensure that an effective, independent investigation is conducted into deaths arising out of clashes involving the security forces.⁵⁵

⁴⁹ *McKerr v United Kingdom*, *ibid.* note 24 paragraph 113 citing *Tanrikulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, paragraph 109.

⁵⁰ *McKerr v United Kingdom*, *ibid.* note 24 paragraph 113 citing *Gül v. Turkey*, no. 22676/93, [Section 4], paragraph 89; *Ognyanova and Choban v Bulgaria*, Judgment of 23.2.06.

⁵¹ *McKerr v. United Kingdom*, Application no. 28883/95, Judgment of 4 May 2001 paragraph 113 citing *Salman v. Turkey* [GC] no. 21986/93, ECHR 2000-VII, paragraph 106.

⁵² Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Recommended by UN Economic and Social Council resolution 1989/65 of 24 May 1989, Principle 9. These Principles are taken into account by the European Court in determining what constitutes an effective investigation for purposes of Article 2 of the European Convention. E.g., *McKerr v. United Kingdom*, Application 28883/95, Judgment of 4 May 2001, pars. 95-96.

⁵³ *McKerr v United Kingdom (2002) EHRR* 325 paragraph 114 citing *Yaşa v. Turkey* judgment of 2 September 1998, *Reports* 1998-IV, pp. 2439-2440, paragraphs 102-104; *Çakıcı v. Turkey*, [GC] ECHR 1999- IV, paragraphs 80, 87 and 106; *Tanrikulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, paragraph 109; *Mahmut Kaya v. Turkey*, no. 22535/93, [Section I] ECHR 2000-III, paragraphs 106-107.

⁵⁴ *McKerr v United Kingdom (2002) EHRR* 325 paragraph 115 citing *Güleç v. Turkey* judgment of 27 July 1998, *Reports* 1998-IV, p. 1733, paragraph 82; *Öğür v. Turkey*, [GC] no. 21954/93, ECHR 1999-III, paragraph 92; *Gül v. Turkey (2000) 34 EHRR* 38, paragraph 93.

⁵⁵ *Mehmet Kaya v. Turkey*, 1998-I Reports of Judg. & Dec. 297, 28 EHRR 1, paragraph 91.

5. *Access to documents by victims and families*

Allowing victims and families access to documents is a requirement in certain circumstances⁵⁶ depending in part on the adequacy of other measures taken to ensure the investigation is effective. Aspects such as the form of participation of the victim or family in the process, including their access to documents or other information and provision to them of legal aid, are relevant matters in assessing the adequacy of that process.

6. *Inquests and inquiries*

The overall requirements of an effective investigation apply equally to inquests and inquiries as to actions of the police or other investigative bodies and the State prosecution service. In respect of cases in which inquests have taken place, the European Court jurisprudence on Northern Ireland has set out standards by which the compatibility of such proceedings with Convention rights can be measured.

- Inquests should be capable of ‘addressing the serious and legitimate concerns of the family and the public.’ Under this test inquests have been found inadequate where allegations of collusion between the State and the physical perpetrators of the crimes were not pursued because the authorities deemed those issues outside the scope of an inquest.⁵⁷ This does not however mean that coroners must probe all allegations of collusion, planning or organisation of a crime in every case of suspicious death. Whether the scope is too limited to satisfy the requirements of the Convention will depend on the facts and circumstances of each inquest.⁵⁸
- Inquiries should also be public and the victim or family regularly informed of any findings, and the investigators should be accessible and independent.⁵⁹
- The form of participation the victim or family has in a criminal investigation is equally to be considered in evaluating whether an inquest or inquiry is an ‘effective investigation.’

7. *Civil actions*

While potentially sufficient to constitute an ‘effective remedy’ under article 13, even adequate civil remedies are not sufficient to satisfy the requirements of the procedural obligation under Article 2. As explained by the European Court:

“While, civil proceedings would provide a judicial fact finding forum, with the attendant safeguards and the ability to reach findings of unlawfulness, with the possibility of an award of damages, it is however a procedure undertaken on the

⁵⁶ It is not an automatic right, *Jordan v. the United Kingdom*, no. 24746/94, [Sect.3], judgment of 4 May 2001, § 121.

⁵⁷ *Shanaghan v United Kingdom* unreported, Application no. 37715/97 judgment of 4th May 2001; *Finucane v United Kingdom (2003) 22 EHRR 29*.

⁵⁸ In *McCann v. United Kingdom* the inquest proceedings were considered adequate enough to discharge the state’s procedural obligations under Article 2.

⁵⁹ *Finucane v United Kingdom (2003) 22 EHRR 29* at para 80.

initiative of the applicant, not the authorities, and it does not involve the identification or punishment of any alleged perpetrator. As such, it cannot be taken into account in the assessment of the State's compliance with its procedural obligations under Article 2 of the Convention.”⁶⁰

⁶⁰ *McShane v United Kingdom*. 43290/98 [2002] ECHR 465, paragraph 125 (see also *Jordan v. the United Kingdom*, cited above, § 141).”

D. What is an Effective Remedy?

Article 13 of the Convention requires that effective remedies before national authorities be made available for those who claim to have suffered a breach of their Convention rights.⁶¹ The form that these remedies take depends on the circumstances of the violation, the kind of harm caused, and the circumstances and needs of the victims. There is therefore no list of remedies which must be provided in all cases. Remedies can include a criminal investigation if the human rights violation is also a crime under national or international law, as well as non-judicial investigations, remedies such as damages under civil law and non-judicial compensation payments such as those made by the Criminal Injuries Compensation Scheme. Other responses from the State can also be taken into account as part of an overall remedy, such as public or private apologies from the authorities, disciplinary procedures for those individually responsible and measures to remember the deceased.⁶²

For the most serious violations of the Convention, the European Court requires that there be an effective investigation (in the terms noted above) and that in principle victims and families should be able to receive compensation for the non-monetary harm suffered.⁶³

Logically there is some overlap in an effective remedy under article 13 and an effective investigation under article 2.⁶⁴ The obligation under Article 13 to provide an effective remedy is however broader than the obligation under Article 2 to conduct an effective investigation. If the State fails to conduct an effective criminal investigation, this usually means that the remedy was not effective either. However, this is not always the case. The Court has found that there was no violation of article 13 in cases where the investigation was ineffective, but suitable civil proceedings were ongoing⁶⁵.

It is not enough for the remedies to exist on the statute book - they must work in practice also.⁶⁶ This means that the actions or omissions of the authorities should not interfere with the availability of an adequate remedy to the victims or their families.

⁶¹ Dinah Shelton provides a comprehensive guide to remedies which would be a useful tool for lawyers and policy makers alike, *Remedies in International Human Rights Law* 2nd Ed. OUP New York.

⁶² See discussion in chapter VIII.

⁶³ See *Z and Others v. the United Kingdom* [GC], no. 29392/95, paragraph 109, ECHR 2001-V, and *Keenan v. the United Kingdom*, no. 27229/95, paragraph 129, ECHR 2001-III.

⁶⁴ *Kaya v Turkey* paragraph 107 'where those relatives have an arguable claim that the victim has been unlawfully killed by agents of the State, the notion of an effective remedy for the purposes of Article 13 entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the relatives to the investigatory procedure (see, *mutatis mutandis*, the above-mentioned *Aksoy* and *Aydin* judgments at p. 2287, § 98, and pp. 1895–96, § 103, respectively).'

⁶⁵ *Jordan v United Kingdom (2003) 37 EHRR 52* paragraphs 162-5; *McKerr v United Kingdom (2002) EHRR 325* paragraphs 174 – 6; *Shanaghan v United Kingdom* unreported, Application no. 37715/97 judgment of 4th May 2001 paragraphs 138-9; *Kelly v UK* 30054/96 [2001] ECHR 328 paragraphs 157-8; *McShane* 43290/98 [2002] ECHR 465 114-5.

⁶⁶ *McKerr v United Kingdom (2002) EHRR 325* paragraph 170, citing *Aksoy v. Turkey* 18 December 1996, *Reports* 1996-IV, p. 2286, paragraph 95; the *Aydin v. Turkey* 25 September 1997, *Reports* 1997-VI, pp. 1895-96, paragraph 103; *Kaya v. Turkey*, pp. 329-30, paragraph 106.

E. Decisions by the Authorities Not to Prosecute

A decision not to prosecute must be assessed in the light of both the State's procedural obligation linked to the Article 2 right to life and its obligation under Article 13 to provide an effective remedy for any breach of Convention rights. Clearly at the end of any criminal investigation, there is a possibility that a suspect will not be found, or that sufficient evidence will not be obtained in order to mount a prosecution. In addition, in common law legal systems the prosecution authority may have a discretionary power not to prosecute if it would not be in the public interest. For these reasons, international human rights law does not consider a decision not to prosecute as automatically constituting a breach of the State's obligations to carry out an effective investigation or provide an effective remedy.

In the recent case of *Jordan v UK*,⁶⁷ the European Court commented:

“However, where the police investigation procedure is itself open to doubts of a lack of independence and is not amenable to public scrutiny, it is of increased importance that the officer who decides whether or not to prosecute also gives an appearance of independence in his decision-making. Where no reasons are given in a controversial incident involving the use of lethal force, this may in itself not be conducive to public confidence. It also denies the family of the victim access to information about a matter of crucial importance to them and prevents any legal challenge of the decision.”⁶⁸

Decisions not to prosecute should therefore be evaluated as part of the overall State response (which may include police investigations, inquests or inquiries, civil cases for damages, awards of compensation and so on.) These decisions should also be examined in the light of the effectiveness of the investigation itself. If a decision not to prosecute for lack of sufficient evidence follows a deficient investigation, the State may be considered to have violated its obligations.

F. Alleged Crimes Committed by Agents of the British State in the Republic of Ireland

Under the European Convention on Human Rights, British State responsibility is not necessarily limited to alleged crimes committed within the territorial boundaries of the United Kingdom. Where bombings were committed by agents of the British State within Ireland, which was a member State of the Council of Europe at all relevant times, the British State remains responsible for any attendant violations of their human rights.⁶⁹

⁶⁷ *Jordan v United Kingdom (2003)* 37 EHRR 52 paragraphs 80-81.

⁶⁸ *Jordan v United Kingdom* *ibid* paragraph 123.

⁶⁹ Compare *Bankovic v. Belgium*, App. No. 52207/99, Grand Chamber Decision on Admissibility, pars. 27-33, where the European Court found a lack of jurisdiction over an alleged NATO bombing in Belgrade because the Federal Republic of Yugoslavia was not part of the “legal space” of the Council of Europe.

V. CASE SUMMARIES

The panel met with victims and relatives in 25 cases of violence against members of the Catholic community in the mid-1970s. Twenty-three cases involved murders, which took the lives of a total of 76 people, while two cases (the Grew family and Rock Bar) appear to be attempted murders. Twenty-one of the attacks took place in Northern Ireland. Four cases (Dublin Monaghan, John Francis Green, Kay's Tavern Dundalk, and Castleblaney bomb) took place in the Republic of Ireland, but with strong evidence of involvement by loyalist forces from Northern Ireland. The 25 cases are as follows:

Patrick Connolly	Oct. 4, 1972
Francis McCaughey	Oct. 28, 1973 (died Nov. 8, 1973)
Patrick Campbell	Oct. 28, 1973
Boyle's Bar	Jan. 17, 1974
Traynor's Bar	Feb. 19, 1974
Dublin Monaghan Bombings	May 17, 1974
Falls Bar (Falls)	Nov. 20, 1974
John Francis Green	Jan. 10, 1975
Owen Boyle	April 11, 1975 (died April 22, 1975)
Bowen home, Killyliss	April 21, 1975
Bleary Dart's Club	April 27, 1975
Grew family	May 24, 1975
Miami Showband	July 31, 1975
Gilford Minibus	August 1, 1975
McCartney and Farmer	August 24, 1975
Peter and Jennie McKearney	Oct. 23, 1975
Donnelly's Bar, Silverbridge	Dec. 19, 1975
Kay's Tavern, Dundalk	Dec. 19, 1975
Reavey Family	Jan. 4, 1976
O'Dowd Family	Jan. 4, 1976
Castleblaney Bomb	March 7, 1976
Hillcrest Bar, Dungannon	March 17, 1976
Eagle Bar, Charlemont	May 15, 1976
Rock Bar, Keady	June 5, 1976
Sgt. Joe Campbell	Feb. 25, 1977

Part A below provides brief summaries of the cases in chronological order. Four cases are from the Republic of Ireland (Dublin Monaghan, John Francis Green and Kay's Tavern, Dundalk, and Castleblaney bomb) and have been extensively reported on by Justice Barron.⁷⁰ Justice Barron's reports also discuss several cases from Northern Ireland, including detailed summaries of the cases of the Miami Showband,⁷¹ McCartney

⁷⁰ On the Dublin and Monaghan bombings, see the entire Barron I. On the murder of John Francis Green, see appendix 2 to Barron I. On Kay's Tavern, Dundalk, see the entire Barron II. On the Castleblaney bomb case, see Barron II, Appendices, *Attack on Three Star Inn, Castleblaney, 7 March 1976*, pp. 145-55.

⁷¹ Barron II, Appendices, *Attack on the Miami Showband*, July 1975, pp. 156-60.

and Farmer,⁷² Donnelly's Bar in Silverbridge,⁷³ the Reavey family,⁷⁴ the O'Dowd family,⁷⁵ and the Rock Bar attack.⁷⁶

Part B below offers general observations on the 25 cases.

A. Individual Case Summaries

The 25 cases reviewed by the panel, in chronological order, are as follows:

Patrick Connolly. On October 4, 1972, Patrick Connolly, a young, single Catholic, was killed by a hand grenade thrown through a window into his home. His mother and brother were injured.

No one was ever prosecuted for the murder. However, in June 1973 a man was convicted of disorderly behavior for threatening Connolly two days before the murder, and sentenced to six months in prison. By letter of January 26, 2004, the Police Service of Northern Ireland informed the Finucane Center that the grenade was of a type manufactured in the United Kingdom "for use by the British Armed Forces and probably other Commonwealth forces."⁷⁷

Francis McCaughey. On October 28, 1973, Francis McCaughey of Glasdrummond, a 33-year-old Catholic footballer, was injured by a booby trap bomb at the door of a dairy on the family farm. He died 12 days later. (His brother-in-law, Owen Boyle, was later shot to death; see below.)

The Police Service of Northern Ireland advised the Finucane Centre by letter dated April 7, 2003 that it is believed that a loyalist paramilitary group, the UFF, which made a claim of responsibility at the time, was responsible. However, no one has been prosecuted for the crime.

Patrick Campbell. On October 28, 1973, Patrick Campbell was shot dead in the door of his home in Cline Walk in Banbridge. He was 34 years old, married and the father of three children.

After Campbell's wife identified alleged RUC Special Branch Agent Robin Jackson in an RUC line-up as the killer, Jackson was charged with the murder in November 1973. But

⁷² Barron II, pp. 114-15.

⁷³ Barron II, pp. 78-92.

⁷⁴ Barron II, pp. 101-02.

⁷⁵ Barron II, pp. 102-03.

⁷⁶ Barron II, pp. 95-96.

⁷⁷ Letter from DCI Patterson (PSNI) to Finucane Centre, Jan. 26, 2004.

the charge was withdrawn in January 1974 by direction of the Director of Public Prosecutions. No successful prosecution for the murder ever took place.

Boyle's Bar. On January 17, 1974, gunmen entered Boyle's Bar in Cappagh, County Tyrone, and opened fire. Daniel Hughes was hit at least 11 times and died instantly. Three other men were injured, including Alfred Wilson, who survived even though he was shot at least five times in the chest and body.

No one was ever prosecuted for this attack. However, a .455 revolver used in the attack may have been the same gun used to murder Owen Boyle (see below) and Patrick Falls,⁷⁸ for which a former UDR soldier was convicted (see below).⁷⁹

Traynor's Bar. On February 19, 1974, a bomb exploded at Traynor's Bar, Kilmore, County Armagh, killing Patrick Molloy and Jack Wylie. Molloy was a 46-year-old Catholic, and Wylie a 45-year-old Protestant. Two other men were injured.

In 1981 a UVF member allegedly confessed to the attack and received a life sentence for this and other crimes, including the attack on the Grew family (see below). A former member of the RUC at the time of the attack denied involvement, but was sentenced to 15 years in prison. A third man pled guilty to possessing explosives and was jailed for two years.

However, the UVF man recanted his confession at trial and pled not guilty. Credible but hearsay evidence from former RUC officer John Weir indicates that the UVF man was innocent and that the attack was led by alleged RUC Special Branch agent Robin Jackson.⁸⁰

Dublin Monaghan bombings. On May 17, 1974, three car bombs exploded in Dublin, killing 26 people.⁸¹ Later that day another car bomb exploded in Monaghan Town, also in the Republic of Ireland, killing seven people. A full-term, unborn child of one victim died later and was recognized by the Dublin City Coroner as the 34th victim of the bombings. According to Justice Barron, "The case remains the highest number of people killed in a single day of the Troubles."⁸²

No one has been prosecuted for these bombings. In December 1999, the Taoiseach Bertie Ahern appointed Mr. Justice Liam Hamilton to undertake a thorough examination

⁷⁸ Finucane Centre, Recovery of Living Memory Archive, Factfile: Ballistic Links, May 2004, chart entitled "Ballistic Links – Attacks" (based on information provided by RUC or PSNI to Justice Barron or to Finucane Centre).

⁷⁹ Barron II, Appendices, pp. 179-81 and 184-86.

⁸⁰ Finucane Centre meeting with John Weir, noted in PFC Factfile: Traynor's Bar.

⁸¹ Justice Barron reports that one more victim, the daughter of one of those killed, was stillborn in August 1974. Barron I, p. 2.

⁸² Barron I, p. i.

of the bombings. The inquiry began work early in 2000. In October 2000 Justice Henry Barron was appointed to succeed Justice Hamilton.

In October 2003 Justice Barron issued his Report on the Dublin and Monaghan bombings. He concluded that they were carried out by two groups of loyalist paramilitaries, one based in Belfast and the other in the area around Portadown/Lurgan; that it was “likely” that the farm of James Mitchell at Glenanne played a “significant part” in the preparation for the attacks; and that it was “likely” that UDR and RUC members “either participated in, or were aware of those preparations.”⁸³

However, he found that while “there are grounds for suspecting that the bombers may have had assistance from members of the security forces,” the evidence was not sufficiently strong to support that inference, unless “further information comes to hand ...”⁸⁴

A further official Inquiry by Irish senior barrister Patrick MacEntee has reportedly received additional information from British sources. His report is currently due by October 2006.⁸⁵

Falls Bar. On November 20, 1974, two gunmen burst into the Falls family pub in Aghamullan, County Tyrone, killing 49-year-old Patrick Falls, father of six young children. A patron was also seriously wounded.

In 1980 former UDR member James Joseph Somerville, who was being prosecuted for the Miami Showband killings, was also charged with the murder of Patrick Falls. He eventually pled guilty at trial. He received four life sentences for the total of four murders, plus additional sentences on other charges.

RUC records made available to Justice Barron indicate that the gun used to kill Falls was the same one used in the murders of Daniel Hughes at Boyle’s Bar (see above) and of Owen Boyle (see below) and in several other murders, namely the murders of Francis and Bernadette Mullan on August 5, 1973, and the murders of James and Gertrude Devlin on May 7, 1974.⁸⁶ Although these murders were not among those investigated by the panel, the use of the same gun in all of them is further evidence that the murder of Patrick Falls was part of a broader pattern of sectarian violence committed by related perpetrators including UDR members.

⁸³ Barron Statement pp. 10-11.

⁸⁴ Barron Statement, p. 12.

⁸⁵ V. Robinson, *The Republic’s forgotten victims*, IRISH NEWS, Oct. 2, 2006, p. 22; V. Robinson, *Deadline for 1974 report extended*, IRISH NEWS, June 1, 2006, p. 11; V. Robinson, *Survivors Demand Inquiry*, IRISH NEWS, May 17, 2006, p. 15.

⁸⁶ Justice Barron reported that the same gun was also used in an unidentified incident at the Argory, County Armagh, on June 13, 1973. Barron II at 180.

John Francis Green. On January 10, 1975, John Francis Green was shot dead in the home of Gerry Carvill at Comaghy, Castleblaney, County Monaghan, in the Republic of Ireland, less than a mile from the border with Northern Ireland.

No one was ever prosecuted for the murder.

The RUC later identified one of the two pistols used to kill Green, a Luger pistol, as also having been used in the Miami Showband murders in July 1975 (see below). This Luger was later found at the same time and place as a 38 ACP Colt pistol, which was used to murder Peter and Jenny McKearney in October 1975 (see below). Attached to the Luger was a homemade silencer, on which the fingerprints of alleged RUC Special Branch agent Robin Jackson were found. Jackson was charged but not convicted of a weapons offense.

Justice Barron reviews the evidence concerning the Green murder at length but does not explicitly reach a definite conclusion. As he explains, some details of allegations by former British military intelligence officer Fred Holroyd, who claimed that British Army Captain Robert Nairac was involved in the murder, based on alleged statements by Nairac to Holroyd, do not appear to be consistent with photographic and crime scene evidence.⁸⁷ On the other hand, a number of details Holroyd says he got from Nairac “were confirmed by the Garda investigation and were not details which Holroyd or Nairac would have been expected to know.”⁸⁸

Credible but hearsay evidence from former RUC officer John Weir, also noted by Justice Barron, alleges that Green was murdered by UDR soldier Robert McConnell and alleged RUC Special Branch agent Robin Jackson,⁸⁹ and that Nairac was with them.⁹⁰

Owen Boyle. On April 11, 1975, 41-year-old Owen Boyle, a husband and father of eight children, was shot five times at his home at Glencull, near Aughnacloy. He died eleven days later. (His brother-in-law, Francis McCaughey, had been killed by a bomb at his farm in 1973; see above.)

No one was ever questioned, let alone prosecuted for the murder, even though RUC records made available to Justice Barron indicate that the gun used to kill Boyle was the same one used in the murders of Daniel Hughes and Patrick Falls (see above) and in several other murders.⁹¹ The “Protestant Action Force” claimed responsibility for the murder.

⁸⁷ See Barron I, appendix 2.

⁸⁸ Barron I, p. 193.

⁸⁹ Weir affidavit, par. 9

⁹⁰ Barron I, appendix 2, pp. 20-21.

⁹¹ Barron II, pp. 179-81 and 184-86.

Bowen home, Killyliss. On April 21, 1975, a booby trap bomb exploded inside a house at Killyliss. The house was being renovated for occupancy by Marion Bowen and her husband. The bomb killed Marion Bowen, age 21 and seven months pregnant, along with her two brothers, Seamus and Michael McKenna, ages 23 and 27 respectively.

Despite a claim of responsibility by the “Protestant Action Force,” no one was ever prosecuted for the murders.

Bleary Darts Club. On April 27, 1975, gunmen burst into the Bleary darts club in Bleary, County Armagh and opened fire with a machinegun, shotgun and pistol. Three Catholic men were killed: 45-year-old John Feeney, married with eight children; 48-year-old Joseph Toman, married with six children; and 38-year-old Brendan O’Hara, married with four children. Protestant Freddie Thompson was seriously injured.

No one was ever prosecuted for the murders. The “Protestant Action Force” claimed responsibility for the attack. Circumstantial evidence implicates alleged RUC Special Branch agent Robin Jackson in the murder. Among other evidence, a witness recognized him in a car near the club the Sunday before the murders, and saw the same car near the club again, about a half hour before the murders.

Grew family. On May 24, 1975, the adult members of the Grew family of Moy, County Tyrone, went out to a dance. They left their 14-year-old son, Oliver, to care for his five brothers and sisters. During the evening Oliver heard a car pull up to the house and a window break. He saw three men with guns. Then a bomb exploded. Although most of the house was destroyed and the children were taken to hospital, none was seriously injured.

In 1981, three men, a former UVF member, a former RUC officer and serving part-time UDR member, and a former UDR soldier were convicted for a series of offenses, including the attack on the Grew family and the murders of two men at Traynor’s Bar in February 1974 (see above). One received a life sentence, one a 15-year-sentence, and one a 2-year prison sentence.

Miami Showband. On July 31, 1975, five members of the well-known Miami Showband, after performing in Banbridge, encountered a bogus UDR checkpoint on the main road between Belfast and Dublin, at a location in Buskhill, County Down. At the checkpoint a bomb was planted on their minibus, but exploded prematurely, killing UDR soldiers Harris Boyle and Wesley Somerville. The remaining assailants then opened fire, shooting to death three band members – 23-year-old Anthony Geraghty, who was engaged to be married; 33-year-old Brian McCoy, a married man with two children; and 29-year-old Francis O’Toole, also a married man with two children. O’Toole was shot 22 times as he lay on the ground, including 12 times in the face. A fourth band member was seriously injured by gunfire, and a fifth was blown over the hedge by the explosion.

RUC ballistics tests revealed that a 9 mm Luger pistol, one of at least six weapons used in the attack, was also used in the murder of John Francis Green (see above).⁹² McCoy was killed by this Luger, which was later found at the same time and place as a .38 ACP Colt pistol used to murder Peter and Jenny McKearney in October 1975 (see below). When the Luger was found, it was attached to a homemade silencer, on which the fingerprints of alleged RUC Special Branch agent Robin Jackson were found. Jackson was charged but not convicted of a weapons offense.

In addition, the Police Service of Northern Ireland informed the Finucane Centre in a September 21, 2002 meeting that a Sterling sub-machine gun used in the Miami Showband murders was also used to murder members of the O'Dowd family in January 1976 (see below).

In 1976 two UDR soldiers, Thomas Crozer and James McDowell, were tried for the murders and sentenced to life in prison. In 1981 former UDR member James Joseph Somerville was also convicted for the murders and was sentenced to four life sentences, one for each of the three Miami Showband murders, and one for the murder of Patrick Falls in 1974 (see above). However, numerous allegations link other individuals to the attack, including Robin Jackson, who was arrested and questioned but never charged for the murders.

One surviving victim told Justice Barron, and said he also told RUC investigators at the time, that one man at the roadblock, to whom the others appeared to defer, spoke with “an educated English accent.” Both former RUC officer John Weir and former British Army Captain Fred Holroyd allege that English Army Captain Robert Nairac was involved in the Miami Showband murders. Justice Barron reports that after being shown a photograph, the survivor did not believe the Englishman to have been Nairac.⁹³ However, the survivor told the Finucane Centre that he could not say one way or the other whether the photo was Nairac.⁹⁴

Gilford Minibus. On August 1, 1975, about one quarter mile from Gilford, County Armagh, gunmen opened fire on a minibus carrying nine mostly elderly people, who were returning from a bingo session at a church hall in Banbridge, County Down. Passenger Joseph Toland, 78 years old and married with 12 children, was shot in the head and killed. James Marks, the driver, a 51-year-old married man and father of two young children, was also shot in the head. He died five months later. Mrs. Rose McConville of Bleary was left confined to a wheelchair for the remaining ten years of her life. Several other passengers were wounded.

No one was ever prosecuted for this attack. There are conflicting theories of responsibility. The RUC contended that the murderers were Republicans. This was

⁹² Barron II, Appendices, p. 158.

⁹³ Barron II, Appendices, p. 160.

⁹⁴ Email dated 1 August 2006 from Finucane Centre to panel.

based in part on the fact that according to RUC public statements in 1975 and 1980, the three weapons used – an M1 carbine, an Armalite rifle and a Thompson submachine gun – were normally used by the IRA. However, the Northern Ireland Secretary of State advised the Prime Minister in 1975,⁹⁵ and the Police Service of Northern Ireland advised the Finucane Centre in 2003,⁹⁶ that only two weapons were used – the carbine and the rifle.

Moreover, Loyalists have reportedly claimed responsibility,⁹⁷ and Republicans have consistently denied responsibility, for the attack.

McCartney and Farmer. On August 24, 1975, 22-year-old Colm McCartney and 30-year-old Sean Farmer, married and father of four sons aged four to nine years, were shot dead in the townland of Altnamackin, near Newtownhamilton in south Armagh. They were returning from an All-Ireland Gaelic football match in Dublin. Immediately prior to their death a bogus vehicle checkpoint, manned by armed men wearing military style uniforms, was in operation on the Blaney Road (A25), a few hundred yards from where the bodies were found.

Even though credible evidence from former RUC officer John Weir indicates that an RUC officer confessed to Weir that he participated in the murders, together with a UDR member and members of the UVF,⁹⁸ no one was ever prosecuted for these murders.

Before the shooting an RUC patrol came across the bogus checkpoint near the border, but the RUC did not respond in a timely and appropriate manner. For example, there was apparently a delay of almost one hour before the Castleblaney Garda station was notified.⁹⁹

A 9 mm Luger pistol used in the murder was later used in the shooting at the Rock Bar, for which several RUC officers were convicted (see below), and both that weapon and a .455 Webley revolver used in the murder were later used to kill the Reavey brothers (see below).¹⁰⁰ Justice Barron reports that a .45 ACP pistol, also used in these murders, is linked to the gun used to murder William Strathearn on 19 April 1977,¹⁰¹ for which RUC officers William McCaughey and John Weir confessed and were convicted.¹⁰²

⁹⁵ Memorandum dated 7 August 1975 from Northern Ireland Secretary Merlyn Rees, MP, to Prime Minister Harold Wilson, par. 2 (on file with panel).

⁹⁶ Letter dated 5 June 2003 from C. Patterson, D/Chief Inspector, Craigavon DCU, Police Service of Northern Ireland, to Pat Finucane Centre (on file with panel).

⁹⁷ *Lost Lives* (2001 edition), n. 10.

⁹⁸ Weir affidavit, par. 13 (iii).

⁹⁹ Barron II, p. 115.

¹⁰⁰ Barron II, Appendices, pp. 179-81 and 184-88.

¹⁰¹ Barron II, Appendices, pp. 184-88.

¹⁰² Barron II, pp. 93-94, 97.

Peter and Jennie McKearney. On October 23, 1975, 63-year-old Peter and 58-year-old Jenny McKearney, parents of four sons and a daughter, were shot to death in their home at Listamlet, Moy, County Tyrone. Peter was shot up to 18 times, and Jenny 11 times.

A contemporary newspaper article reported that “army issue ammunition” was used in the murders.¹⁰³ RUC ballistics tests confirmed that the Sterling submachine gun used in the murders was later used in the murders at Donnelly’s Bar in December 1975, of the Reavey brothers in January 1976, and at the Eagle Bar in May 1976 (see below).¹⁰⁴ A .38 ACP Colt pistol, also used to murder the McKearneys, was found at the same time and place – the property of Edward Tate Sinclair, according to Justice Barron a “suspected UVF member”¹⁰⁵ -- as a Luger previously used to murder John Francis Green and Miami Showband members (see above).

In 1981 a former UVF member, Garnet Busby, was convicted of the murders of Peter and Jennie McKearney and of the four Hillcrest Bar murders (see below) and sentenced to serve six life sentences, concurrently. In December 1981 Edward Sinclair, on whose premises the Colt used to murder the McKearneys was found, was charged with their murders. However, the charge was dropped by the Director of Public Prosecutions in April 1982.

According to credible but hearsay evidence from former RUC officer John Weir on the murders of the McKearneys, alleged RUC Special Branch agent Robin Jackson “was the real gunman but he was never questioned.”¹⁰⁶

Donnelly’s Bar, Silverbridge. On December 19, 1975, a group of gunmen arrived by car at Donnelly’s Bar, Silverbridge, in County Armagh. They threw a bomb and fired a machine gun at people in and outside the bar.¹⁰⁷ Patrick Donnelly, age 24, Trevor Brecknell, a 32-year-old married man with three children, and 14-year-old Michael Francis Donnelly were killed.

Credible evidence from the former RUC officer who led the investigation indicates that police believed they knew who the perpetrators were, and that RUC and UDR officers were among the murderers. This officer believed that “members of the gang responsible for Silverbridge” were also involved in other attacks investigated by the panel. These included the Dublin Monaghan (see above) and Kay’s Tavern bombings (see below), and the shootings of Farmer and McCartney (see above) and of the Reavey brothers (see below).¹⁰⁸

¹⁰³ *The Observer*, 23 November 1975.

¹⁰⁴ Barron II, Appendices, pp. 179-81 and 184-88.

¹⁰⁵ Barron I, appendix 4, p. 1.

¹⁰⁶ Undated note from Weir to “William,” supplied by Justice for the Forgotten to the Finucane Centre.

¹⁰⁷ Although the RUC officer at the inquest testified that only a Sterling 9mm sub-machine gun was fired, other evidence suggests that a handgun was also used. Barron II, p. 79.

¹⁰⁸ Barron II, pp. 86-87.

RUC ballistics tests revealed that the Sterling submachine gun used in the Silverbridge murders was used previously to murder Peter and Jenny McKearney (see above) and later to murder the Reavey brothers and Frederick McLoughlin at the Eagle Bar, Charlemont (see below), as well as other murders not investigated by the panel.¹⁰⁹

However, no one has ever been prosecuted for the Silverbridge murders. Charges against two persons, including an RUC officer, but only for withholding information, were later brought and then dropped in circumstances that remain questionable.¹¹⁰

Justice Barron inquired extensively into the Silverbridge attack,¹¹¹ which occurred on the same night and not far from the bombing which was the main subject of his second inquiry (Kay's Tavern, Dundalk, see below). According to credible but hearsay evidence from former RUC officer John Weir, the two attacks were coordinated, with the "Glenanne group" being responsible for the Silverbridge attack.

Justice Barron concluded:

“ ... [T]he Inquiry believes that the attacks on Dundalk and Silverbridge were coordinated; [and] that those who carried out the Silverbridge attack came from the 'Glenanne group', [T]he information available to the Inquiry suggests the involvement of some members of the security forces in the Silverbridge attack ... ”¹¹²

Kay's Tavern, Dundalk. On December 19, 1975, the same date as the Silverbridge attack and only ten miles from Silverbridge, a car bomb exploded outside Kay's Tavern in Dundalk, Republic of Ireland, killing 61-year-old Jack Rooney and 60-year-old Hugh Watters, and injuring 20 other people.

Despite credible but hearsay evidence given to the RUC in 1978 by former RUC officer John Weir, identifying alleged RUC Special Branch agent Robin Jackson as leader of the gang responsible for the bombing, no one was ever prosecuted.

After an extensive investigation, Justice Barron concluded that the bombing was “carried out by loyalist extremists, most probably associated with the Mid-Ulster UVF,” with some assistance from Belfast loyalists, and probably with advance knowledge by some members of the “group of loyalist extremists based around Mitchell's farm at Glenanne [which] contained members of the RUC and the UDR ... ”¹¹³

¹⁰⁹ Barron II, Appendices, pp. 179-81, based on ballistics information supplied by the Police Service of Northern Ireland in November 2001 to the Finucane Centre. The other murders included those of D. Mullan at Aughnalig, Dungannon, on September 1, 1975, and P. McNeice at Derrygarvagh Road, Loughgall, on July 25, 1976. The same gun was also used in a shooting at Glenside Bar, Bessbrook, on May 7, 1976.

¹¹⁰ See Barron II, pp. 87-92.

¹¹¹ Barron II, pp. 78-92.

¹¹² Barron II, p. 134, par. (3).

¹¹³ Barron II, p. 134, pars. (1) and 5(i).

O'Dowd family. On January 4, 1976, alleged loyalist paramilitaries attacked the O'Dowd home in Ballydougan, Gilford, County Down. Barry, age 24, Declan, age 19 and their 61-year-old uncle, Joseph O'Dowd, were shot and killed. Their father, Barney O'Dowd, miraculously survived after being shot nine times. Four children under age ten in the room witnessed the shootings of their family members.

Witnesses allegedly saw UDR members the day before in the fields beside the house, which the attackers would have had to cross on foot.¹¹⁴ Although credible but hearsay evidence from former RUC officer John Weir indicates that RUC officers coordinated their attack that same night on the Reavey family (see below) with Robin Jackson, who Weir credibly alleges was responsible for murdering the O'Dowds,¹¹⁵ no one has ever been prosecuted for the murder of the O'Dowds. Barney O'Dowd says that RUC detectives told him in the 1980's that Jackson was the murderer, but that there had not been enough evidence to charge him.¹¹⁶

The Police Service of Northern Ireland informed the Finucane Centre in a September 21, 2002 meeting that a Sterling sub-machine gun used to murder the O'Dowd brothers had also been used in the murders of Miami Showband members in July 1975 for which several UDR members were later convicted (see above). Justice Barron reports that this gun was also used in the murders of James and Gertrude Devlin on 7 May 1974,¹¹⁷ for which a former UDR member was convicted and received a life sentence.¹¹⁸

Reavey family. On the same night as the O'Dowd attack, alleged loyalist paramilitaries attacked the Reavey family home at White Cross near Markethill, in County Armagh. Brothers John and Brian Reavey, ages 24 and 22 respectively, were killed and their 17-year-old brother Anthony Reavey was injured, but died of a brain hemorrhage one month later.¹¹⁹

Although credible but hearsay evidence from former RUC officer John Weir indicates that RUC and UDR members were involved in the attack, and family member Eugene Reavey states that he received the same information from the RUC investigating officer, and years later (in 1988) from RUC officer William McCaughey through an intermediary,¹²⁰ no one has ever been prosecuted for this double murder.

RUC ballistics tests identified four weapons used in the Reavey murders. One, a Sterling submachine gun, had been used to murder Peter and Jenny McKearney in October 1975, as well as the victims at Donnelly's Bar in December 1975 and in other murders (see

¹¹⁴ Barron II, p. 102.

¹¹⁵ Weir affidavit, par. 13(v).

¹¹⁶ Barron II, p. 103.

¹¹⁷ Barron II, Appendices, pp. 184-88.

¹¹⁸ The former UDR member was William Thomas Leonard. (Information supplied by Finucane Centre.)

¹¹⁹ Barron II, p. 101.

¹²⁰ Barron II, p. 101.

above). A second weapon, a .455 Webley revolver, had been used to murder McCartney and Farmer in August 1975 (see above). A third firearm, a 9 mm Luger, had also been used to murder McCartney and Farmer, and was later used in the shooting at the Rock Bar, for which several RUC officers were later convicted (see below).¹²¹ The fourth weapon, a 9 mm Parabellum submachine gun, was also later used in the shooting at the Rock Bar.¹²²

Castleblaney Bomb. On March 7, 1976, a car bomb exploded outside a bar in Castleblaney in County Monaghan, Republic of Ireland, killing Patrick Mone and wounding his wife Anna and their neighbor Mary Hughes, whom the Mone had driven to town to catch a bus.

Irish police investigated but no arrests were made or charges filed. Their “only conclusion” was that “someone from Northern Ireland” was responsible.¹²³

According to credible but hearsay evidence from former RUC officer John Weir, the attack was carried out by RUC officer Laurence McClure and UDR soldier Robert McConnell, using explosives provided by UDR Captain John Irwin and stored beforehand at James Mitchell’s farmhouse in Glenanne.¹²⁴

Hillcrest Bar. On March 17, 1976, a car bomb exploded outside the Hillcrest Bar in Dungannon, County Tyrone. It killed 56-year-old Joseph Kelly, 61-year-old Andrew Small, and two 13-year-old boys, Patrick Barnard and James McCaughey. A dozen other people were seriously injured. The Hillcrest Bar, jointly owned by a Catholic and a Protestant, had been the target of an incendiary bomb the year before.

In 1981 a former UVF member was convicted of the four Hillcrest murders and the murders of Peter and Jennie McKearney (see above) and sentenced to serve six life sentences, concurrently.

Eagle Bar, Charlemont. On May 15, 1976, gunmen shot into the Eagle Bar in Charlemont, killing 48-year-old Frederick McLoughlin, a married man with four children. McLoughlin, a former Protestant, had converted to Catholicism. Several other people were injured.

Moments before, the same gang left a bomb in the hallway of Clancy’s Bar, about 100 yards away. Its explosion left three men dead: Vincent Clancy, a widower and father of two; Sean O’Hagan, who had been married for about a year; and Robert McCullough, who was single. Others were injured.

¹²¹ See Barron II, Appendices, pp. 179-81 and 184-88.

¹²² Barron II, Appendices, p. 181, weapon “C”.

¹²³ Barron II, Appendices, p. 155.

¹²⁴ Weir affidavit, par. 13 (vi); Barron II, p. 155.

Garfield Gerard Beattie and David Henry Kane were later convicted and sentenced to life in prison for the murder of Frederick McLoughlin, and were also given lesser sentences on other charges. They were not convicted for the plainly related attack on Clancy's Bar. However, UDR member Joey Lutton was later convicted of participating in both the Eagle Bar and Clancy's Bar attacks, and was given a life sentence.¹²⁵

Questions of security force collusion or participation persist. Locals informed the Finucane Centre that the UDR had been patrolling the town and had set up vehicle checkpoints each night, but were absent the night of the attacks. An RUC Sergeant was reportedly transferred away from the local police station within days. RUC ballistics tests revealed that a 9mm Sterling submachine gun weapon used to kill McLoughlin was also used in the murders of the McKearneys and Reaveys and in the murders at Donnelly's Bar, Silverbridge (see above), among others.¹²⁶

Rock Bar. On June 5, 1976, a car carrying three RUC officers arrived at the Rock Bar near Keady, County Armagh. They detonated a bomb which failed fully to explode. At least one – RUC officer William McCaughey -- also shot patron Michael McGrath twice in the stomach, seriously injuring but not killing him.

In late 1978, after being arrested for kidnapping a Catholic priest and allegedly under mental stress, McCaughey confessed. He stated that after he shot the victim, “the two other men were both firing at the injured man on the ground.” Victim McGrath also reported multiple shooters: “They opened up with guns at me. One boy, . . . , aimed at my heart. One fired with a revolver out of the car and then another came out of the car and fired at me from a longer gun.”¹²⁷

Yet only McCaughey was convicted for the shooting. Although two other RUC officers confessed their participation and were charged with wounding with intent, they were convicted only for less serious offenses to which they pled guilty (possession of firearms and explosives and causing an explosion). The wounding with intent charges were dropped when the Director of Public Prosecutions entered “nolle prosequi” rulings (which he reportedly had no lawful authority to enter). Only McCaughey, who confessed to the shooting and was sentenced to seven years in prison, actually served prison time; the other two were given suspended sentences, as was a fourth RUC officer, who was convicted only for failing to disclose prior knowledge of the attack.¹²⁸

RUC ballistics tests connected two weapons used at the Rock Bar, a 9 mm Luger and a 9 mm Parabellum submachine gun, with earlier murders. The Luger had been used to murder McCartney and Farmer in August 1975, as well as the Reavey brothers in January

¹²⁵ Barron II, Appendices, pp. 172-73.

¹²⁶ Barron II, p. 179-81.

¹²⁷ Barron II, p. 95.

¹²⁸ Barron II, p. 96.

1976 (see above). The submachine gun had also been used in the murders of the Reavey brothers.¹²⁹

Sergeant Joe Campbell. RUC Sergeant Joe Campbell was shot to death on February 25, 1977, at the Cushendall RUC Station, County Antrim.

RUC officer Charles McCormick was tried for the murder in 1982. He was found not guilty of the murder, but was convicted of other charges. On appeal he was acquitted on all charges. His co-defendant, one of his agents who was also an IRA double agent, was convicted and sentenced to 18 years in prison for various terrorist offenses. However, this man was released in 1984 after being granted a Royal Prerogative by the Secretary of State.

Credible but hearsay testimony by former RUC officer John Weir alleges that the murder was committed by alleged RUC Special Branch agent Robin Jackson, RUC officer William McCaughey, and R.J. Kerr. None of them was ever prosecuted for the murder.

B. General Observations

Of the 25 cases reviewed by the panel, the earliest was in October 1972 (Patrick Connolly) and the latest in February 1977 (Joe Campbell). Their criminal means and targets were as follows:

- Ten cases involved attacks on homes, of which six were with guns,¹³⁰ and four with bombs;¹³¹
- Seven cases involved attacks on bars with guns or bombs – attacks which are inherently indiscriminate as to the individual victims, although targeted at bars owned or patronized by Catholics;¹³²
- Four cases involved even more indiscriminate car bombs, three placed outside Catholic bars,¹³³ while in one case the targets – the most indiscriminate of all -- were public places in Irish cities;¹³⁴
- Two cases involved shootings or bombs at bogus checkpoints;¹³⁵ and

¹²⁹ Barron II, p. 181 (weapon “C”).

¹³⁰ Patrick Campbell, John Francis Green, Owen Boyle, the McKearneys, the O’Dowds and the Reaveys.

¹³¹ Patrick Connolly, Francis McCaughey, the Bowen home and the Grew family.

¹³² Boyle’s Bar, Traynor’s Bar, Falls Bar, Blearly Darts Club, Donnelly’s Bar, Eagle Bar and Rock Bar.

¹³³ Kay’s Tavern, Castleblayney and Hillcrest Bar.

¹³⁴ Dublin Monaghan bombings.

¹³⁵ Miami Showband and Farmer and McCartney.

- One case involved a shooting at a bus,¹³⁶ and another the deliberate assassination of a targeted police officer outside his police station.¹³⁷

Firearms were used in 16 of the 25 cases. In 12 of those 16 cases, ballistics tests link eight weapons and through them the perpetrators, including members of the Northern Ireland security forces (RUC and UDR).¹³⁸ In three of the 16 cases no information about the firearms used is available to the panel;¹³⁹ while in one case the arms were of a kind normally used by Republican groups.¹⁴⁰ In nine cases only explosives were used, not firearms.¹⁴¹ The linkages among the cases and perpetrators, including members of the security forces, based on ballistic and other evidence, are discussed in chapter VI below.

Convictions were obtained in only nine of the 25 cases, and several of those convictions are suspect as erroneous and incomplete. (See discussion in chapter VI, part C below.)

As discussed in chapter VI, the evidence in at least 24 of the 25 cases, involving at least 74 of the 76 murders, suggests that the crimes were committed by loyalist extremists, including members or agents of the RUC and UDR. In most cases the evidence to this effect is strong. In the Gilford minibus case, there are conflicting claims about responsibility, as well as inconsistencies in the evidence. The panel lacks sufficient information to resolve those inconsistencies.

In evaluating British State responsibility for these crimes and for the failure properly to investigate and prosecute them, the panel did not undertake to investigate whether the victims were in all cases innocent civilians, or instead might have been involved in illegal activities on the Republican side. It refrained from doing so for three fundamental reasons.

First, as a matter of law, any affiliation a victim or family member might have had is simply irrelevant. Under international human rights law, the right to life is inviolable. Under domestic law, murder is not excused by motive. Any belief by the perpetrator that a victim was involved in unlawful activities is no defense to murder or attempted murder. (In no case reviewed by the panel was there evidence that the killers or would-be killers acted in lawful self-defense, in the face of an immediate threat to life or limb.)

Second, while we recognize that affiliation may bear on the credibility of a witness, there is little or no publicly available evidence on the basis of which to suspect that most of these victims were targeted for any reason other than their Catholic identity (or in a few cases, for being Protestants who associated with Catholics). In only one case

¹³⁶ Gilford Minibus.

¹³⁷ Sergeant Joe Campbell.

¹³⁸ Boyle's Bar, Falls Bar, John Francis Green, Owen Boyle, Miami Showband, McCartney and Farmer, McKearneys, Donnelly's Bar, O'Dowds, Reaveys, Eagle Bar and Rock Bar.

¹³⁹ Patrick Campbell, Bleary Darts Club and Sergeant Joe Campbell.

¹⁴⁰ Gilford Minibus.

¹⁴¹ Patrick Connolly, Francis McCaughey, Traynor's Bar, Dublin Monaghan bombings, Bowen home, Grew family, Kay's Tavern, Castleblayney and Hillcrest Bar.

has it been credibly reported that intelligence agencies considered the victim to be involved in extremist activities on the Republican side.¹⁴²

Finally, to subject these victims to inquiries implying that they might somehow have deserved what befell them, would be unconscionable. They need and deserve measures designed to heal, not to compound their already intolerable injuries. (See chapter VIII below.)

¹⁴² Barron I, Appendix 2 (John Francis Green).

VI. UNITED KINGDOM STATE RESPONSIBILITY

There is substantial evidence of State responsibility of the United Kingdom, under the standards of international human rights law, for sectarian violence against the Catholic community in Northern Ireland in the 1970's. In some cases examined by the panel, if this evidence were presented in proper form before a court of law, it would arguably suffice to amount to a *prima facie* showing of State responsibility. In other words, by itself, unless persuasive rebuttal evidence were presented, the evidence would suffice to justify a finding of British State responsibility. In all cases examined by the panel, the evidence suffices to trigger the State's duty under the European Convention on Human Rights to conduct a full and transparent investigation.

To be clear, the limited evidence available to the panel is not sufficient, by itself and without further inquiry, to justify a finding of complicity by senior officials of the British State or of an official State policy to support or condone the murders of members of the Catholic community in the 1970's.

However, there is compelling evidence that officers of the British State – in particular, RUC officers and UDR members and their agents -- were involved in sectarian murders of Catholics. There is credible evidence that their activities were known and supported, tacitly and in some cases explicitly, by some of their RUC and UDR superiors and, to some extent, by some British intelligence and army officers. Despite this knowledge, appropriate criminal investigations and prosecutions of these murders were not conducted, even in the face of evidence amounting to probable cause for arrest.

The panel has also seen clear documentary evidence that senior officials of the British government were informed of facts that should have, and did, put them on notice of the risk of collusion between State security forces and Loyalist paramilitaries in sectarian violence in Northern Ireland.

By themselves, these facts suffice to suggest State responsibility. In legal terms, the British State is responsible for the actions of its officers and agents, even when those actions violate British law and official State policy.¹⁴³ In addition, the State is procedurally responsible under international law for its failure to conduct proper investigations and prosecutions of the murders, independently of whether its agents committed them in the first instance.

The evidence that police and military officers of the State were involved in the murders, and that some of their superiors knew of this but failed to take appropriate action, raises a further question: How high up the chain of command in the police, army and intelligence agencies of the British State, and in the British government, did specific knowledge and acquiescence in sectarian crimes go? In the absence of a thorough and transparent inquiry, these questions clearly have a legitimate basis.

¹⁴³ See chapter IV.

Three mutually corroborating, and cumulatively compelling, sources of evidence of the responsibility of agents of the British State for sectarian violence against the Catholic community in the 1970's are the following:

(1) The January 3, 1999 affidavit of former RUC Sergeant John Weir, especially when read in light of its evaluation by Justice Barron,

(2) Ballistics evidence received by Justice Barron, which links the firearms used in sectarian murders of Catholics by RUC officers and UDR members with other, unsolved murders of Catholics, and

(3) The failure of Northern Ireland investigative authorities properly to investigate the multiple crimes disclosed by the 1978 confessions by two RUC officers, William McCaughey and John Weir, or even to interrogate the two men they named as principally responsible for the murder of Catholic shopkeeper William Strathearn in 1979.

Additional evidence, consistent with the foregoing, is provided by the statement of former British Civil Service officer Colin Wallace, read in light of its evaluation by Justice Barron, as well as other evidence.¹⁴⁴

A. Former RUC Sergeant John Weir

In a January 3, 1999 affidavit prepared to assist a journalist in a libel suit, former RUC Sergeant John Weir, who served in the Royal Ulster Constabulary from 1970 until his arrest in 1979, claimed to have knowledge of extensive security force involvement in murders committed by Loyalist extremists against Catholics in Northern Ireland in the 1970's.¹⁴⁵

The 62-paragraph affidavit details crimes in which Weir confesses participation, names alleged accomplices, recounts what he was allegedly told about some crimes by other British security officers, and reports what his RUC superiors allegedly said and knew about these crimes over a period of years. Much of his affidavit purports to be based on direct personal knowledge. Some of it is hearsay which, while not sufficient to justify findings of fact, warrants investigation if Weir is deemed reliable.

Members of the panel reviewed Weir's affidavit and interviewed him by telephone. Without being able to check his allegations against RUC files, and without the RUC response to his allegations, the panel might have been able to conclude only that his allegations warrant – indeed, demand – investigation.

¹⁴⁴ Justice Barron placed limited and qualified reliance on the statements of former British Military Intelligence officer Fred Holroyd, who was also interviewed by the panel. Barron Statement, pp. 9-10. In view of other compelling evidence of state responsibility, for the purposes of this report, the panel does not find it necessary to rely on the statements of Mr. Holroyd.

¹⁴⁵ The full text of the Weir affidavit is accessible at www.seeingred.com (last visited May 30, 2006).

In the panel's view, however, the evidentiary weight of the Weir affidavit is enhanced by the Reports of Justice Barron. Unlike the panel, Justice Barron had access to several sources of information that enabled him to test the credibility and reliability of Weir's allegations. Specifically, as noted in chapter III, Justice Barron had access to the RUC's 2000 report on Weir's allegations; to the witness statements and police interview notes of Weir and others arrested during the 1978 RUC investigation following the wide-ranging confession by RUC officer William McCaughey; and to ballistics evidence relevant to Weir's allegations.

As Justice Barron notes, Weir is a "convicted criminal: between 1980 and 1992, he served a prison sentence for his part in the murder of one William Strathearn."¹⁴⁶ Weir is also a disgruntled former RUC member. He feels he "suffered an injustice" because he was one of the few to be punished, even though he did not act alone in his crimes and "my superiors in the RUC were well aware of what my RUC colleagues and I were doing."¹⁴⁷

One ought to approach the allegations of a convicted, disgruntled former officer with caution. Such caution is apparent in Justice Barron's report. After reviewing all evidence available to him with regard to Weir, and subject to certain caveats, Justice Barron found that Weir's "evidence overall is credible." Here is Justice Barron's assessment in his first report:

Having regard to his own admitted conduct, and his relationships with those with whom he was admittedly involved at Glenanne, John Weir was certainly in a position through conversations and observation to have obtained the information which he now claims to be true. While it is possible that he obtained all these details from other sources since his conviction, this is unlikely. The amount of details on which he has been proven correct suggests that his sources were authentic and contemporary.

Bearing in mind that Weir was an active member of the security services, and that his allegations relating to the period from May to August 1976 have received considerable confirmation, the Inquiry believes that his evidence overall is credible, and is inclined to accept significant parts of it. Some reservation is appropriate in relation to his allegations against police officers having regard to his possible motive in going public, and also in relation to his own part in the offenses which he relates.

This view is one based also on a meeting with Weir, in which he came over as someone with considerable knowledge of the events which were taking place in the areas where he was stationed and who was prepared to tell what he knew. The Garda officers who interviewed him were of the same opinion. In the light of all of the above, the Inquiry agrees with the view of An Garda Síochána that Weir's

¹⁴⁶ Barron Statement, p. 8.

¹⁴⁷ Weir affidavit, par. 51.

allegations regarding the Dublin and Monaghan bombings must be treated with the utmost seriousness.¹⁴⁸

Justice Barron adds in his second report that “such new information as the Inquiry has obtained tends to reinforce Weir’s credibility.”¹⁴⁹

The panel respects these assessments by Justice Barron and finds them consistent with its own, more limited basis for assessing Weir’s credibility. Accordingly the panel agrees that Weir’s “evidence overall is credible” and “must be treated with the utmost seriousness.”

Weir alleges that a group of RUC and UDR officers, operating from a base at RUC reserve officer James Mitchell’s farmhouse at Glenanne, carried out a number of sectarian attacks on members of the Catholic community. Weir identifies at least the following British security officers and agents as among the alleged participants or accomplices in one or more murders or attempted murders organized from the Glenanne farm: RUC officers Weir, James Mitchell, Ian Mitchell, Johnny Mitchell, Laurence McClure, Gary Armstrong and William McCaughey; RUC Special Branch agent Robin Jackson; UDR officers Captain John Irwin and Captain Billy Hanna, and UDR soldier Robert McConnell.¹⁵⁰

Justice Barron found that the UDR and RUC members identified by Weir as “part of the Glenanne group” were of “particular significance” to his Inquiry. He described their activities as a “continuous course of conduct existing since at least 1973.”¹⁵¹ He concluded that it is “likely” that the Mitchell farm at Glenanne played a “significant part” in the preparation for the Dublin Monaghan bombings, and that it is “likely” that members of the UDR and RUC “either participated in, or were aware of those preparations.”¹⁵²

Justice Barron also reported that the Northern Ireland Office confirmed that the RUC had intelligence at least as of January 1976, and probably much earlier, that the Mitchell farm at Glenanne was used by the UVF as a base for bombing operations.¹⁵³ It would appear, he added, “that following the search of James Mitchell’s farm at Glenanne in December 1978, the UVF needed a new place to store their arms and ammunition.”¹⁵⁴

¹⁴⁸ Barron Statement, p. 9.

¹⁴⁹ Barron II, p. 112.

¹⁵⁰ Weir affidavit pars. 9, 10, 13

¹⁵¹ Barron I, pp. 285-86.

¹⁵² Barron I, p. 287.

¹⁵³ Barron II, pp. 130-31 and n. 153, citing letter from NIO to the Inquiry, 27 June 2005, and noting the allegation of former British army intelligence operative Colin Wallace that “knowledge of the farm’s UVF connections may date back to 1972 ...”; and p. 134 (“security forces in Northern Ireland knew that Mitchell’s farm was a centre for illegal activities on as early as January 1976, and probably for some time before that.”)

¹⁵⁴ Barron II, p. 107.

Weir's allegations about the Glenanne group are further partially corroborated by the statements of former British civil servant Colin Wallace, who worked for the security forces in propaganda and psychological operations in Northern Ireland during 1972 to 1975. In Justice Barron's view, shared by the panel, which interviewed Wallace, "When speaking of matters directly within his own experience, the Inquiry believes Wallace to be a highly knowledgeable witness. His analysis and opinions, though derived partly from personal knowledge and partly from information gleaned since his time in Northern Ireland, should also be treated with seriousness and respect."¹⁵⁵

Justice Barron reports Wallace's statement "that one location frequented by members of the mid-Ulster UVF [Ulster Volunteer Force, a violent paramilitary group] in the mid-1970's was a farm near Glenanne, owned by a member of the RUC Reserve, James Mitchell. ... Wallace told the Inquiry that information that loyalist extremists were meeting at the farm was circulating on Army intelligence documents from late 1972."¹⁵⁶

Upon joining the *de facto* Glenanne group,¹⁵⁷ Weir says he learned from RUC officer McClure that members of the group had already carried out the following attacks:¹⁵⁸

- (1) The 1974 bombings in Dublin and Monaghan in the Republic of Ireland, which were the subject of Justice Barron's Inquiry;
- (2) A bomb and gun attack on two pubs in Crossmaglen in November 1974, in which an individual named Thomas McNamee was killed;
- (3) The "murder of two Gaelic football supporters at Tullyvallen, near Newtownhamilton in August 1975" (which the panel interprets as the murders of Sean Farmer and Colm McCartney on August 24, 1975, at Altnamackin, near Tullyvallen, on their return from the All-Ireland Gaelic football semi-finals);
- (4) The December 1975 gun and bomb attack on Donnelly's bar in Silverbridge;
- (5) An attack the same night in December 1975 in Dundalk in the Republic of Ireland (which the panel interprets as the attack on Kay's Tavern in Dundalk);
- (6) The January 1976 murder of the Reavey brothers;
- (7) The January 1976 murder of the O'Dowd brothers;
- (8) The March 1976 car bomb in Castleblaney in which one man was killed; and
- (9) The June 1976 attack on the Rock Bar, resulting in "just one serious injury" because the bomb failed to explode.¹⁵⁹

Weir also alleges that he "became aware" that the murder of John Francis Greene was committed by Glenanne group members Robert McConnell and Robin Jackson.¹⁶⁰ Only

¹⁵⁵ Barron Statement, p. 9. Wallace was dismissed from the civil service in 1975, and convicted of manslaughter for a death in 1980. However, in 1990 an official review recommended that his dismissal was unjustified and that he be paid compensation, and in 1996 his conviction was quashed. Barron I, pp. 166-68.

¹⁵⁶ Barron I, p. 176.

¹⁵⁷ Justice Barron notes that "membership of such groups is fluid and difficult to determine." Barron II, p. 100.

¹⁵⁸ Weir affidavit, par. 13.

¹⁵⁹ Weir affidavit, pars. 10 and 11.

years later, after Weir was arrested for the murder of William Strathearn, did he allegedly learn that Robin Jackson was an RUC Special Branch agent,¹⁶¹ an allegation corroborated by Colin Wallace,¹⁶² and not discounted by Justice Barron.¹⁶³

Weir further alleges that members of the Glenanne group murdered two people at a Catholic pub in Keady, South Armagh, on August 17, 1976.¹⁶⁴

Weir also recounts how he, together with McConnell, Jackson, RUC officer William McCaughey and Loyalist paramilitary R.J. Kerr, participated in the operation to murder Catholic shopkeeper William Strathearn (murdered April 19, 1977).¹⁶⁵

Weir further recites hearsay statements suggesting that the person arrested for the murder of RUC Sergeant Joe Campbell was innocent, and that in fact “Campbell came to be murdered by Robin Jackson.”¹⁶⁶

In separate statements Weir alleges the involvement of Robin Jackson in the murders in Traynor’s Bar and of the McKearneys.¹⁶⁷

If true, this direct involvement of a dozen or more security officers in murdering members of the Catholic community would, by itself, suffice to engage the responsibility of the British State for the actions of its officers and agents.

Weir’s allegations, however, go further. He also alleges widespread knowledge and acquiescence (if not more) in the murders on the part of his superiors, as well as knowing omissions to investigate or prosecute some of those individuals – including Robin Jackson, the “most notorious Loyalist paramilitary in Northern Ireland.”¹⁶⁸

Weir alleges “that this collusion between Loyalist paramilitaries such as Robin Jackson and my RUC colleagues and me was taking place with the full knowledge of my superiors.”¹⁶⁹ Among other superiors he names as allegedly in the know are RUC Chief

¹⁶⁰ Weir affidavit, pars. 9, 13,

¹⁶¹ Weir affidavit, par. 39.

¹⁶² Barron I, p. 172.

¹⁶³ Barron I, p. 261 (although some RUC officers worked to prosecute Jackson, “the possibility that Jackson had an individual relationship with a ‘handler’ in the security forces cannot be ruled out”); Barron II, pp. 104-05. Barron II, p. 124 states that, although there was no evidence that Jackson was in fact an agent, a retired CID officer told the Inquiry that “he would consider it inconceivable that the Special Branch and/or the British Army would not try to recruit someone as influential as Jackson for intelligence purposes. In his view, it would have amounted to a dereliction of their duty if they did not attempt to do so.”

¹⁶⁴ Weir affidavit, par. 18.

¹⁶⁵ Weir affidavit pars. 8, 24, 25, 26 and 27. Weir states that he was “arrested just before Christmas 1979 for my part in the murder of William Strathearn 20 months earlier.” (Weir affidavit par. 36.) In fact, Weir was arrested in late 1978, not 1979. His actual arrest thus indeed came about 20 months following the murder of Strathearn in April 1977.

¹⁶⁶ Weir affidavit, par. 43; see also pars. 23-24, 42, 44- 45 and 47-49.

¹⁶⁷ See case summaries in chapter V.

¹⁶⁸ Weir affidavit, par. 22.

¹⁶⁹ Weir affidavit, par. 28.

Inspector Harry Breen; Chief Inspector Brian Fitzsimmons, head of the RUC Special Branch in Newry; Inspector Harvey of the Newry CID; Inspector Earl McDowell; Assistant Chief Constable Charlie Rodgers (by hearsay¹⁷⁰); a Major Robertson of the Royal Green Jackets; Crumlin Road Prison governors Rodgers and Craig; and the “Number One” governor in Maghaberry prison.¹⁷¹

Finally, Weir alleges a knowing failure to investigate or prosecute many of these crimes, even after he and RUC officer William McCaughey confessed their involvement and knowledge to RUC interrogators after their arrest in 1978.¹⁷² (See part C below.)

If true, both of these additional allegations – knowledge and acquiescence (at least) by superiors, and knowing omissions to bring to justice government security officers and agents for gross violations of human rights – further engage the responsibility of the British State for murders of members of the Catholic community in Northern Ireland in the 1970’s.

In all, of the 25 cases examined by the panel, John Weir alleges the involvement of RUC police officers or UDR soldiers, usually working out of the Glenanne farm, in at least 12 cases, including 11 murder cases and one (Rock Bar) of attempted murder.¹⁷³

B. Ballistics Evidence

Weir’s allegations about the Glenanne group are corroborated in part by ballistics evidence originally obtained by the RUC in the 1970’s and later made available to Justice Barron. In reference to the Glenanne group, Justice Barron commented, “This joining of RUC and UDR members with members of Loyalist paramilitary organizations is emphasized by the use of the same or connected guns by intermingled groups from these organizations.”¹⁷⁴

Justice Barron explained that the Police Service of Northern Ireland provided him with considerable “evidence from the ballistic examination of weapons found or seized by the security forces in Northern Ireland which draws connections between loyalist paramilitaries and members of the security forces.”

“What is important for the purposes of this Inquiry,” he continued, “is that a number of specific guns were used in more than one sectarian attack between 1973 and 1976. This knowledge, combined with the fact that some of the guns were discovered on the same premises, creates a link between:

¹⁷⁰ Weir affidavit, par. 33.

¹⁷¹ Weir affidavit, pars. 20, 22, 28, 29, 33, 34 and 50.

¹⁷² Weir affidavit, pars. 38-41, 47-48.

¹⁷³ Dublin Monaghan, Traynor’s Bar, John Francis Green, McCartney and Farmer, McKearneys, Donnelly’s Bar, Kay’s Tavern Dundalk, O’Dowds, Reaveys, Castleblaney Bomb, Rock Bar and Sergeant Joe Campbell.

¹⁷⁴ Barron I, p. 286.

- (1) an attack for which RUC officers [William McCaughey, Lawrence McClure and Ian Mitchell] were convicted (the Rock Bar, Keady);
- (2) other attacks in which RUC officers were suspected of taking part (Donnelly's Bar, Silverbridge; Farmer and McCartney [the "Altnamackin" case]; the Reavey family); and
- (3) attacks attributed to loyalist paramilitaries by the security forces (John Francis Green, Dorothy Trainor, the Miami Showband, Peter and Jenny McKearney)."¹⁷⁵

"All this information," concluded Justice Barron in his first Report, "leads strongly to the conclusion that there were one or more groups operating in Northern Ireland involving not only loyalist paramilitaries but also members of the RUC and UDR, and using weapons obtained from some central quartermaster to whom the guns were returned after use." Information obtained by RUC investigators in 1978, he adds, "suggested that whoever the quartermaster may have been, the guns may have been kept at James Mitchell's farm at Glenanne."¹⁷⁶

Firearms were used in 16 of the 25 cases reviewed by the panel. The more complete information in Justice Barron's second report¹⁷⁷ shows that in 12 of those 16 cases, ballistics tests link eight weapons and through them the perpetrators, including members of the Northern Ireland security forces (RUC and UDR).¹⁷⁸ (In three of the 16 cases no information about the firearms used is available to the panel;¹⁷⁹ while in one case the arms were of a kind normally used by Republican groups.¹⁸⁰)

¹⁷⁵ Barron I, p. 256 (footnotes omitted).

¹⁷⁶ Barron I, Appendix 3, *Information Received Concerning Certain Weapons*, pp. 2-3; see also Barron II, Appendices, *Information Concerning Certain Weapons*, pp. 170-89.

¹⁷⁷ Barron II, Appendices, pp. 179-81 and 184-88.

¹⁷⁸ Boyle's Bar, Falls Bar, John Francis Green, Owen Boyle, Miami Showband, McCartney and Farmer, McKearneys, Donnelly's Bar, O'Dowds, Reaveys, Eagle Bar and Rock Bar.

¹⁷⁹ Patrick Campbell, Bleary Darts Club and Sergeant Joe Campbell.

¹⁸⁰ Gilford Minibus.

The following chart summarizes the ballistics evidence relating to arms used in (or found together with arms used in) two or more of the 12 cases (column headings J, M, A, H, I, N, D and C are unique weapons identifiers used in Justice Barron's chart¹⁸¹):

**WEAPONS USED IN OR FOUND WITH WEAPONS
USED IN TWO OR MORE CASES REVIEWED BY PANEL**

	J	M	A	H	I	N	D	C
Case	<u>.455 rev.</u>	9 mm <u>Luger (1)</u>	9 mm <u>Luger (2)</u>	<u>.38 ACP</u>	<u>.455 Webley</u>	9 mm St. <u>SMG (1)</u>	9 mm St. <u>SMG (2)</u>	9 mm <u>SMG (3)</u>
Boyle's Bar	X							
Falls Bar	X							
Green		X		X*				
Owen Boyle	X							
Miami Band		X		X*		X		
McC/Farmer			X		X			
McKearneys				X			X	
Donnelly's							X	
O'Dowds						X		
Reaveys			X		X		X	X
Eagle Bar							X	
Rock Bar			X					X

* The asterisk indicates that the .9 mm Luger, used in the Green and Miami Showband murders, was later found together with the .38 ACP pistol, used in the murder of the McKearneys.

The foregoing chart understates the extent of collaboration among the murderers who used these weapons. That is because the chart shows only weapons used in two or more of the 12 cases. Other weapons used in these 12 cases matched weapons used in other sectarian murders, not examined by the panel. For example, a .45 ACP Pistol not shown in this chart, was used to murder Farmer and McCartney, and also to murder William Strathearn, whose murder is discussed in part C below.¹⁸²

The linkages among security force perpetrators are even more apparent when the ballistics evidence is combined with the identities of RUC and UDR perpetrators who confessed or were convicted of some of these crimes. For example, where an RUC officer was convicted of a murder, and that murder weapon was also used to commit other murders, the inference arises either that the RUC officer participated in those murders as well, or at least was part of a group sharing the same weapons to commit a series of sectarian murders. For example:

¹⁸¹ Source: Barron II, Appendices, pp. 184-88.

¹⁸² Barron II, Appendices, pp. 186, 188 (weapon F).

- Three RUC officers confessed and were convicted of participating in the Rock Bar attack. They used at least one weapon (and in some cases two) in common with the weapons used to murder McCartney and Farmer, the O'Dowds and the Reaveys -- cases otherwise "unsolved" by the RUC.
- Two RUC officers confessed and were convicted for the murder of William Strathearn on 19 April 1977.¹⁸³ They used the same .45 ACP pistol also used to murder McCartney and Farmer.¹⁸⁴
- Three UDR soldiers were convicted of participating in the attack on the Miami Showband, using at least one weapon also used in the otherwise "unsolved" murder of John Francis Green. That same weapon was later found together with a weapon used to murder the McKearneys -- for which no UDR or RUC members were prosecuted.
- A former UDR soldier was convicted and received a life sentence for the murders of James and Gertrude Devlin on 7 May 1974,¹⁸⁵ in which he used a Sterling sub-machine gun -- the same one used to murder the O'Dowds.¹⁸⁶

Forensic evidence in the nine cases in which no firearms, but only explosives were used, is both less available to the panel and less precise, but is nonetheless suggestive. According to the Police Service of Northern Ireland, the grenade used to kill Patrick Connolly was of a type manufactured in the United Kingdom "for use by the British Armed Forces and probably other Commonwealth forces."¹⁸⁷ In the three bombing cases which took place in the Republic of Ireland, Justice Barron concluded, "The forensic evidence is inconclusive, but the nature of the explosives used does suggest a possible link between the perpetrators of the Dublin Monaghan, Dundalk and Castleblaney bombings."¹⁸⁸

The same type of bomb, whose main constituent seems to have been a mix of ammonium nitrate and fuel oil, was also used in the combination gun and bomb attack on Donnelly's Bar, Silverbridge.¹⁸⁹

This suggests that if equally precise forensic testing were available in the bombing as in the shooting cases, the links among the 25 cases would be even more apparent.

The ballistics evidence also independently corroborates Weir's allegations that James Mitchell's farm at Glenanne played a role in a number of sectarian attacks against

¹⁸³ Barron II, pp. 93-94, 97.

¹⁸⁴ Barron II, Appendices, pp. 184-88.

¹⁸⁵ The former UDR member was William Thomas Leonard. (Information supplied by Finucane Centre.)

¹⁸⁶ Barron II, Appendices, pp. 184-88.

¹⁸⁷ Letter from DCI Patterson (PSNI) to Finucane Centre, Jan. 26, 2004.

¹⁸⁸ Barron II, p. 135, par. 6.

¹⁸⁹ Barron II, p. 78.

Catholics, and that RUC officers, UDR members and loyalist paramilitaries worked together out of Glenanne. The 12 cases in which the ballistics tests link one or more of the firearms used include seven of the 12 cases in which John Weir alleges the involvement of members of the Glenanne group,¹⁹⁰ plus five other cases.¹⁹¹

The mutual corroboration of the Weir affidavit and the ballistics evidence is even more complete when one considers only those cases in which Weir alleges that members of the Glenanne group used firearms. Of eight such cases alleged by Weir, seven are also linked by ballistics evidence showing the use of one or more weapons in common.¹⁹² Only the shooting of Sergeant Joe Campbell is not linked to the other cases by ballistics evidence. Weir's other four cases – Dublin Monaghan, Traynor's Bar, Castleblaney and Kay's Tavern – involved bombings, not shootings, and ballistics evidence was therefore not possible.

C. Failure to Investigate or Prosecute British Security Forces

Of the 25 cases examined by the panel, convictions were obtained in only nine,¹⁹³ including seven murders and the two apparent attempted murders (Grew family and Rock Bar). In two of the nine cases (Traynor's Bar and Sergeant Joe Campbell) there are serious questions as to whether the wrong men were convicted.¹⁹⁴ In at least two others (Miami Showband and McKearneys), convictions were obtained, but there is credible evidence that the principal perpetrator was a man who was not prosecuted -- alleged RUC Special Branch agent Robin Jackson.¹⁹⁵

Even where guilty individuals were prosecuted, the investigations and prosecutions were generally inadequate. Consider the series of convictions that arose, not from timely police investigations, but from a belated, 1978 confession volunteered by a mentally stressed RUC officer, William McCaughey, after he was arrested for another crime (kidnapping a Catholic priest).¹⁹⁶ His confession, in turn, led Weir to confess. Their confessions led to several arrests and convictions, one of which (Rock Bar) is among the cases examined by the panel:¹⁹⁷

- McCaughey and Weir were convicted and sentenced to life in prison for the 1977 murder of William Strathearn (discussed below).

¹⁹⁰ John Francis Green, McCartney and Farmer, McKearneys, Donnelly's Bar, O'Dowds, Reaveys and Rock Bar.

¹⁹¹ Boyle's Bar, Falls Bar, Owen Boyle, Miami Showband and Eagle Bar.

¹⁹² John Francis Green, McCartney and Farmer, McKearneys, Donnelly's Bar, O'Dowds, Reaveys and Rock Bar.

¹⁹³ Traynor's Bar, Falls Bar, Grew family, Miami Showband, McKearneys, Hillcrest Bar, Eagle Bar, Rock Bar, and Sergeant Joe Campbell.

¹⁹⁴ See case summaries in chapter V.

¹⁹⁵ See case summaries in chapter V.

¹⁹⁶ Barron II, pp. 92-97.

¹⁹⁷ Barron II, pp. 92-94. Details and an illuminating analysis of the sentences are provided in Justice for the Forgotten, *Covering Tracks: The Trials of the Members of the RUC Armagh Special Patrol Group*, Submitted to the Independent Commission of Inquiry in the Dublin & Monaghan Bombings of 17 May 1974, 16 July 2003.

- McCaughey and fellow RUC officers Lawrence McClure and Ian Mitchell were convicted for the Rock Bar attack, for which a fourth officer, David Wilson, was convicted of concealing knowledge that the attack was to take place. However, only McCaughey – already sentenced to life in prison for the Strathearn murder, was sentenced to prison (for a seven year term). McClure and Mitchell got 2 years suspended sentences, and Wilson a one-year suspended sentence.¹⁹⁸
- McCaughey and RUC officer Gary Armstrong were convicted of involvement in the kidnapping of a Catholic priest, Father Hugh Murphy. Again, Armstrong got only a two years suspended sentence.¹⁹⁹
- RUC Reserve officer James Mitchell was convicted on charges relating to the discovery of weapons on his land.
- Robin Jackson was arrested in 1979, and convicted in 1981, after pleading guilty to possessing firearms and ammunition in suspicious circumstances. Although sentenced to seven years, he was released in 1983.²⁰⁰

The net result of the wide-ranging confessions by McCaughey and Weir may fairly be characterized as follows: The ensuing interviews produced information about no fewer than seven murder cases, including six reviewed by this panel.²⁰¹ However, few prosecutions were brought, and these only after McCaughey’s confession. Only one murder case – the Strathearn murder to which McCaughey and Weir confessed – was prosecuted.²⁰² All officers except McCaughey were charged in only one case -- despite credible accusations against them in multiple cases. All officers except McCaughey and Weir faced only reduced charges. All but McCaughey, Weir and Jackson got light, suspended sentences.

These meager results illustrate the paucity of prosecutions for sectarian murders of Catholics in Northern Ireland in the 1970’s, which has been alleged to demonstrate a policy of official indifference or worse. Is that allegation justified? Without access to RUC files showing what investigative steps were undertaken in particular cases, it might have been difficult for the panel to reach conclusions on this general allegation.

However, enough information is now publicly available on the 1978 RUC investigation, following McCaughey’s confession, to conclude that Northern Ireland police failed to conduct proper investigations, and to raise serious questions about the conduct of prosecutors and the judiciary as well.

¹⁹⁸ Barron II, pp. 93-94.

¹⁹⁹ Barron II, p. 94.

²⁰⁰ Barron I, pp. 254-55, 261 (Jackson).

²⁰¹ Barron II, p. 97, states that “information emerged linking a number of named persons with certain sectarian attacks including that on Donnelly’s Bar, Silverbridge.” Note 113 adds that the other attacks were those on the Rock Bar (the only case in which no one was killed); the Step Inn at Keady; William Strathearn; the O’Dowds; the Reaveys; Miami Showband; and Farmer and McCartney.

²⁰² See Barron II, pp. 93-94.

The case of the 1977 murder of Catholic shopkeeper William Strathearn is a striking example. McCaughey and Weir admitted participating in the murder together with two other perpetrators: alleged RUC Special Branch agent Robin Jackson and Loyalist extremist R.J. Kerr.²⁰³ Weir claims that he and McCaughey stayed in the car while Jackson and Kerr approached Strathearn's house. Weir and McCaughey allegedly heard but did not see the shooting. When Jackson and Kerr returned to the car, according to Weir, Jackson said that he had "shot the man twice."²⁰⁴

If this version – presumably the same one Weir confessed to RUC investigators – was correct, the shooter was Jackson. McCaughey and Weir would, if anything, be less culpable. Yet they got life sentences, while Jackson was not even questioned, let alone charged for the murder.

According to Weir, in late 1978 McCaughey, "suffering from mental stress," first confessed the murder to an RUC investigator. That led to Weir's arrest. Weir explains, "I was shown the gun used to kill Strathearn and I was then confronted by McCaughey who informed me he had told the RUC everything he knew about the murder and about everything else in which he had been involved." Weir thereupon confessed his own role in the murder.²⁰⁵

Weir named Jackson and Kerr as principals. Yet neither Jackson nor Kerr was charged – or even questioned -- for the murders.

In response to the suggestion that the police were protecting Jackson and Kerr, McCaughey told the panel that the reason for not charging them was, in truth, merely a lack of evidence. McCaughey refused to testify against them in court. Weir agreed to do so only if the murder charge against him were dropped, which the prosecutor understandably refused to do. There was thus no admissible evidence on which to charge Jackson or Kerr.

Justice Barron reported the same information.²⁰⁶ But Justice Barron – who, unlike the panel, had access to the witness statements and interview notes from the 1978 RUC investigation – criticized the failure properly to investigate Jackson and Kerr:

The Inquiry is of the view that the decision not to prosecute Jackson or Kerr is indicative of the attitude adopted by the RUC in the 1978 investigation as a whole. The initial phase was marked by efficiency and enthusiasm: as names of potential suspects came up during interviews, those persons were in turn arrested and questioned. Once this was done, however, the enthusiasm seemed to wane. In

²⁰³ Weir affidavit, pars. 25-26 and 39.

²⁰⁴ Weir affidavit par. 26.

²⁰⁵ Weir affidavit, pars. 37-38.

²⁰⁶ Barron I, p. 258. In contrast, in regard to the Dublin Monaghan bombings, he concluded only that there remains a "deep suspicion" that the investigation was hampered by such factors as the relationships between the alleged bombers and British security forces, "but it cannot be put further than that." Barron I, p. 287-88.

the end, the only persons prosecuted were those who had made admissions, and they were only prosecuted in relation to those crimes for which they had made admissions. Little or no effort was made to obtain further evidence which might support charges against those who had not confessed; as evidenced by the fact that Jackson or Kerr were not even questioned in relation to the Strathearn murder.²⁰⁷

The responsibility of the British State thus appears to have arisen at the investigative stage – the failure to pursue leads which might have generated sufficient evidence on which to base charges. It is difficult to defend a police decision not even to question two suspects named by their alleged accomplice in a murder. It is equally difficult to defend a minimalist approach in which “little or no effort” is made to obtain further evidence of a series of murders.

Weir’s allegations, if true, confirm the inadequacy of the police investigation. McCaughey, he relates, “had confessed about everything in which he had been involved and everything else he knew. This was evident to me from the line of questioning followed by the police and it was, subsequently, personally confirmed to me by McCaughey ...”²⁰⁸ Weir adds that he, too, gave his RUC interrogators a wealth of information, but they were largely not interested in pursuing it:

... I gave my interviewees much information about the terrorist activity in which I had been involved. Initially I denied my involvement but after a time, ..., my interviewers had lost complete interest in all these other incidents some of which I have described in this statement [his 1999 affidavit]. I then suggested to them that we should indeed explore everything in which I and others had been involved or knew about. For example, I said that we should begin by discussing the Dublin and Monaghan bombings. They replied that I should tell them all about it. I then asked whether they did not know all about them already and they made it clear they had no interest in pursuing the matter further. I asked them whether or not McCaughey had told them about the role played in the bombings by Army Intelligence officer and UDR Captain John Irwin but, again, they made it clear they did not wish to discuss the matter. I am confident that the RUC tape-recordings of my interview will corroborate this.²⁰⁹

Such a statement would ordinarily be difficult to accept: why would police refuse to pursue credible confessions of crimes? But Justice Barron – having seen the RUC witness statements and interview notes from the 1978 investigation, as well as the RUC reply to Weir’s allegations – confirms its broad import: the police made “little or no effort” to go beyond the four corners of the confessions and the initial statements by suspects.

Justice Barron was also critical of the failure adequately to charge and punish in the Rock Bar case: “Laurence McClure should have been charged with wounding with

²⁰⁷ Barron I, p. 258.

²⁰⁸ Weir affidavit, par. 40.

²⁰⁹ Weir affidavit, par. 41.

intent, but he was not.” Justice Barron concluded that “McCaughey – who was already serving a life sentence for the Strathearn murder – was scapegoated. Because any sentence imposed in this hearing would be concurrent to his life sentence, it would not involve serving any extra time in jail. This may well explain why lesser sentences were given to other RUC officers.”²¹⁰

These facts alone – failures to conduct proper investigations and prosecutions, whether deliberate or otherwise -- would suffice to trigger British State responsibility for the numerous murders evidenced in the confessions by McCaughey and Weir.

But in a context where, according to Weir’s credible allegations, many superiors in the RUC knew of collusion between the RUC officers and loyalist paramilitaries implicated in these crimes, such omissions to take proper investigative steps cannot realistically be viewed as random or attributed to police incompetence.

The deliberate nature of these omissions is corroborated by the allegations of Colin Wallace. He explains that his psychological operations unit generally targeted loyalist extremists, but was “refused clearance to target a number of key members of the mid-Ulster UVF [Ulster Volunteer Force] during 1973/74, at a time when that group was highly active.” In June 1974 he sought permission to target a large number of named loyalist paramilitaries. However, “a number of those mentioned were already on the ‘excluded’ list – meaning they could not be targeted. These persons included Harris Boyle, Robert Kerr, Billy Hanna, Robin Jackson, Billy Mitchell, Stewart Young and Robert McConnell.”²¹¹

While this referred to their exclusion from targeting for psychological operations, in practice it appears that these persons were also excluded from targeting for prosecution.

For purposes of British State responsibility, it does not matter whether the motivation for sheltering security officers and agents from prosecution was good (to maintain them as continuing sources of intelligence) or bad (to shield them from disclosures that could incriminate them and embarrass the RUC). Either way, the State failed to carry out its duty to conduct adequate criminal investigations of its agents credibly accused of involvement in a series of murders.

Another indication of inadequate police response had to do with James Mitchell’s farm at Glenanne. Noting that Northern Ireland security forces knew that the farm was a center of “illegal activities” at least by January 1976 and probably earlier, Justice Barron observed, “Yet these activities were allowed to continue unhindered until the arrest of William McCaughey and others in December 1978.”²¹²

²¹⁰ Barron I, p. 259.

²¹¹ Barron I, p. 172.

²¹² Barron II, p. 134.

Information about these activities was also omitted from the intelligence supplied by the RUC to Irish police after the Dundalk bombing. Justice Barron noted:

“Taking into account also that the intelligence relating to the farm of James Mitchell at Glenanne was not included in the intelligence provided to An Garda Síochána in January 1976 by the RUC, a suspicion remains that contemporary actions were designed to limit information relating to security force collusion in terrorist activity from reaching the public domain, which in turn did nothing to counteract such activity.”²¹³

Justice Barron found no evidence that senior members of Northern Ireland security forces colluded in the Dundalk bombing. However, he concluded more generally that “by their attitudes towards loyalist violence, and towards violent members of their own forces, some senior members allowed a climate to develop in which loyalist subversives could believe that they could attack with impunity.”²¹⁴

Even after John Weir publicly detailed his allegations of RUC and UDR involvement in sectarian crimes in his 1999 affidavit, the British State response fell short of meeting its procedural obligation under the European Convention to conduct an adequate investigation. As Justice Barron noted,

Not only was the RUC report [on Weir’s 1999 allegations] inaccurate in many of its attempts to adduce evidence contradicting Weir’s allegations, but it also failed to draw sufficient attention to evidence uncovered by the RUC which supported Weir’s stories. The fact that three of the four people named by Weir as having attacked the Rock Bar, ... were subsequently convicted of offenses in relation to it was mentioned. But no mention was made of other evidence arising from interviews conducted with those persons and others arrested following admissions by William McCaughey in December 1978. ...

[I]n relation to the attacks on Donnelly’s Bar (Silverbridge), John Farmer and Colm McCartney, the Reavey family and the O’Dowd family, information was given by one or more of the interviewees which confirmed Weir’s account of who was responsible in each case.²¹⁵

One striking inadequacy in the RUC inquiry into Weir’s 1999 affidavit is especially revealing. The RUC asserted that James Mitchell’s housekeeper, Lily Shields -- named by Weir as allegedly providing the get away car for the murders at Donnelly’s Bar²¹⁶ -- was dead. In fact, as the Irish police (the Garda) later found, she was not only still alive, but living at Mitchell’s farm.²¹⁷ Plainly the RUC inquiry was inadequate.

²¹³ Barron II, p. 134.

²¹⁴ Barron II, pp. 134-35.

²¹⁵ Barron I, p. 151.

²¹⁶ Weir affidavit, par. 13(iv).

²¹⁷ Barron I, p. 149.

In an application to the European Court of Human Rights in September 2004, Ann Brecknell, widow of Trevor Brecknell, one of those killed at Donnelly's Bar, alleges that the RUC post-1999 investigation was deficient by Convention standards in several respects: it lacked sufficient independence, it was not capable of identifying and punishing those responsible, it was unjustifiably delayed, it was not open to public scrutiny, and the next of kin were not given sufficient access to the investigation.²¹⁸

In its response, the British Government argues that an RUC report in 2000 concluded that Weir's credibility was in doubt, in part because he allegedly did not disclose to the police in 1978 the allegations he made public in 1999.²¹⁹ However, the Government concedes that to date it has not been able to locate the complete records of the 1978 investigation,²²⁰ and that its investigation of Weir's allegations is continuing.²²¹

The Government response also laments that from 1999 until 2006, its investigators were unable to locate or communicate with Weir.²²² This is further evidence of a questionable investigation. The panel had no difficulty in locating and interviewing Weir in 2004. If four individuals with no official powers could quickly find a key witness, it is difficult to believe that the British Government, had it made a serious effort, could not have done the same..

Whether the European Court will rule the Brecknell and other pending cases among those examined by the panel admissible and, if so, sustain the allegations and grant judicial relief, cannot be prejudged.²²³ But in the panel's view, given the deficiencies noted by Justice Barron, the post-1999 investigation does not suffice to meet the procedural obligations of the British State under the Convention for an "effective" official investigation.

D. Higher Level Knowledge and Responsibility

To what extent was evidence of involvement by RUC and UDR officers in sectarian violence known by senior officials of the British government, and when, and with what effect?

The answer would require access to government documents not available to the panel. However, enough is known to require, at minimum, further inquiry.

²¹⁸ Application filed by letter of 10 September 2004 (on file with the panel), pars. 15.22 et seq. Similar allegations were made in four other cases examined by the panel which were also filed with the European Court in September 2004 (McCartney and Farmer, Reavey family, O'Dowd family and Rock Bar).

²¹⁹ *Ann Brecknell v. United Kingdom*, App. No. 32457/04, *Observations of the Government of the United Kingdom on the Admissibility and Merits*, (hereafter, "*Observations*"), Pars. 2.36 – 2.41.

²²⁰ *Observations*, Par. 1.17.

²²¹ *Observations*, Pars. 2.36, 2.49.

²²² *Observations*, Pars. 2.40, 2.44, 2.52.

²²³ In part this is because issues of admissibility and judicial remedies before the European Court, such as the six-month limit on filing applications or the division of competence between the Court and the Committee of Ministers, may affect the cases before the Court, but do not relieve the British government of its substantive responsibility under the Convention. See note 14 above.

In August 1975, the Irish Ambassador in London informed senior members of the British government's Northern Ireland Office that Irish police had confidential information that four members of the RUC in the Portadown area were UVF members, "and that one of them was actively engaged in the murder investigations of the Murder Triangle area."²²⁴ One month later a senior official of the Northern Ireland Office informed the Ambassador that the RUC was looking into the matter, "but so far had come up with nothing."²²⁵

Another recently discovered document confirms the need for further inquiry. While reviewing documents in the public records office in London in January 2006, the Finucane Centre found a document entitled, *Subversion in the UDR*, purportedly prepared for the Joint Intelligence Committee at Westminster, and evidently dating from 1973.²²⁶

While not purporting to be exhaustive and acknowledging considerable gaps in knowledge, the paper examined the "evidence and intelligence available to us" concerning subversion in the UDR.²²⁷ It defined subversion either as strong support for or membership in organizations "whose aims are incompatible with those of the UDR," or as attempts by UDR members "to use their UDR knowledge, skills, or equipment to further aims of such organizations."²²⁸

This 1973 report advised senior British officials as follows:

It seems likely that a significant proportion (perhaps 5% - in some areas as high as 15%) of UDR soldiers will also be members of the UDA, Vanguard Service Corps, Orange Volunteers or UVF. Subversion will not occur in every case, but there will be a passing on of information and training methods in many cases, and a few subversives may conspire to 'leak' arms and ammunition to Protestant extremist groups.²²⁹

The report informed that since the beginning of the campaign then underway, "the best single source of weapons (and the only significant source of modern weapons) for Protestant extremist groups has been the UDR."²³⁰ Noting 148 weapons stolen or lost from the UDR and not recovered during 1972 and the first seven months of 1973, the report stated, "We believe that the vast majority of weapons stolen from the UDR during this period are in the hands of Protestant extremists."²³¹

The report added,

²²⁴ Barron II, p. 119.

²²⁵ Barron II, pp. 119-120.

²²⁶ Copy on file with the panel.

²²⁷ *Subversion in the UDR*, p. 1.

²²⁸ *Id.* p. 3.

²²⁹ *Id.* p. 5.

²³⁰ *Id.* pp. 5-6.

²³¹ *Id.* p. 6.

The question of whether there was collusion by UDR members in these thefts is a difficult one. In no case is there proof positive of collusion; but in every case there is considerable suspicion, which in some instances is strong enough to lead to a judgment that the element of collusion is present.²³²

In addition to arms, the report continued, “Intelligence reports have indicated that there is some leakage of UDR ammunition to groups such as the UDA and UVF.... Similarly there have been a number of reports of UDR soldiers giving weapons training to UDA, UVF and OV extremists ...”²³³

In sum:

There can be little doubt that subversion in the UDR has added significantly to the weapons and ammunition stocks of Protestant extremist groups. In many cases ex-UDR weapons are the only automatic and semi-automatic weapons in their possession. ... Several have ... been used and there is strong evidence that they have been in the hands of the most violent of the criminal sectarian groups in the Protestant community.²³⁴

A Sterling SMG stolen from the Lurgan UDR/TAVR Centre, for example, “has been used in at least 12 terrorist outrages, including the murder of a Catholic, and seven other attempted murders.”²³⁵

Among the report’s conclusions: “A fair number of UDR soldiers have been discovered to hold positions in the UDA/UVF/LDV. A number have been involved in overt terrorist acts.”²³⁶

This report shows that at least by the autumn of 1973, senior British officials were on notice that UDR soldiers had “leaked” information and had provided arms, ammunition and training to Protestant extremists, who had used some of those arms in terrorist acts, and that “a number” of UDR soldiers had already been “involved in overt terrorist acts.”

By itself, this information sufficed to trigger the duty of the British State under the European Convention on Human Rights to act to protect all citizens from complicity by State agents in sectarian violence, as well as to conduct proper investigations and prosecutions.

The 1973 report indicates that a vetting process was used to attempt to screen extremists out of recruitment into the UDR, and that numbers of UDR members had been

²³² *Id.* p. 7.

²³³ *Id.* p. 9.

²³⁴ *Id.* p. 10.

²³⁵ *Id.* p. 10. Annex E to the report lists a number of particular such crimes. They do not include any examined by the panel.

²³⁶ *Id.* p. 13.

discharged and others had resigned.²³⁷ Yet as discussed in the previous section, proper investigations and prosecutions were not conducted.

A document from two years later suggests that high level knowledge of extremist compromise of Northern Ireland security forces was continuing. According to a September 1975 memorandum of a meeting between the Prime Minister and Mrs. Margaret Thatcher, the Secretary of State for Northern Ireland advised that “there were certain elements in the police who were very close to the UVF, and who were prepared to hand over information, for example, to Mr. Paisley.”²³⁸

How much more did senior British officials know, and when, of involvement by their security forces in murdering Catholics? Did they ask for or receive further reports on UDR involvement, and comparable reports on involvement by RUC officers, in sectarian violence? What if any steps did they take to ensure proper protection, investigation and prosecution? If they did take steps, why did they fail to ensure proper investigations and prosecutions?

In light of the 1973 and 1975 reports, especially read in the context of the sectarian violence of the time, all these questions deserve answers. Such answers cannot be provided without a serious governmental inquiry, and without disclosure of relevant government documents in Belfast and London.

Fragmentary information disclosed to date might be taken to suggest that senior officials in London were not sufficiently informed of the realities of Northern Ireland. In September 1975, for example – at a time when atrocious murders were being committed with relative impunity by Northern Ireland security forces – the Prime Minister reportedly told Mrs. Thatcher that “the RUC were now much more successful than before at getting people before the Courts,” and that police in Northern Ireland “were of a much better calibre now than they had been previously ...”²³⁹

One might place varying interpretations on such a statement in context. Plainly fuller documentation is needed.

Until credible inquiry and public disclosure are made, justifiable suspicion will linger. As former psychological operations officer Colin Wallace told the panel in June 2004, “To this very day, there are people at high levels whose careers started out at that time who just do not want this looked at.”²⁴⁰

²³⁷ *Id.* pp. 3, 4-5.

²³⁸ Memorandum dated 1 September 1975 from P.R.H. Wright, Office of the Prime Minister, to Ken Jordan, Northern Ireland Office (on file with panel), p. 3.

²³⁹ *Id.* pp. 3-4.

²⁴⁰ Panel interview with Colin Wallace, June 5, 2004.

E. Conclusion on State Responsibility

Even the limited information now publicly available provides strong and in some cases compelling evidence that officers and agents of the British State – and specifically of the RUC and UDR -- were directly involved in sectarian crimes that violated the right to life of members of the Catholic community under the European Convention on Human Rights.

Of the 25 cases examined by the panel, credible but hearsay statements by former RUC officer John Weir accuse RUC officers and agents or UDR soldiers of involvement in 11 cases of murder and one of attempted murder. RUC ballistics tests corroborate Weir's allegations in 7 of the 8 cases in which firearms were used. Ballistics tests further link five more of the 25 cases to one or more of these same weapons.

Criminal convictions link two more cases to involvement by State security forces. Among those convicted for bombing the Grew family home were an RUC officer and a UDR soldier.²⁴¹ The men convicted for the Hillcrest Bar bombing were also convicted for the murders of the McKearneys, which were linked by both ballistics tests and Weir's allegations to State security force involvement.²⁴²

Of the six remaining cases, there is evidence – in some cases strong – of State security force involvement in five.²⁴³ Only one case – the Gilford minibus – appears to lack evidence of involvement by State security forces in the murder. But given the pattern of inadequate investigations, no conclusions can be drawn from this lack of evidence.

As Justice Barron rightly concluded:

“There is no doubt that collusion between members of the security forces and loyalist paramilitaries existed in many instances. It was not just a matter of a few bad apples, as suggested by Northern Ireland authorities.”²⁴⁴

Citing the Miami Showband, Rock Bar and Farmer and McCartney cases, Justice Barron continued:

“These and other incidents paint a clear picture of collaboration between members of the security services and loyalist extremists. The Inquiry would be shutting its eyes to reality if it accepted that such collaboration was limited to the cases in which collusion has been proved.”²⁴⁵

²⁴¹ See case summary in chapter V.

²⁴² See case summary in chapter V.

²⁴³ See case summaries in chapter V for Patrick Connolly, Francis McGaughey, Patrick Campbell, Killyliss and Bleary Darts Club.

²⁴⁴ Barron II, p. 113.

²⁴⁵ Barron II, p. 116.

Further evidence suggests that the violent extremists with whom RUC officers and agents and UDR soldiers colluded – or even overlapped -- gained much of their arms and ammunition, and some of their training, information and personnel, from British security forces. All this evidence, taken together, engages British State responsibility for sectarian crimes under the Convention.

In addition, the procedural aspect of State responsibility is demonstrated by the evidence. Credible evidence indicates that superiors of violent extremist officers and agents, at least within the RUC, were aware of their sectarian crimes, yet failed to act to prevent, investigate or punish them. On the contrary, according to John Weir, they made alleged statements that appeared to condone participation in these crimes:

I recall that after I had told Chief Inspector Breen about my involvement in the Strathearn murder, that he told me to forget about it. I also recall later witnessing a conversation between Chief Inspector Breen and Inspector Harvey who was in charge of Newry CID, when both men discussed with approval McCaughey and Armstrong's continuing activity in Loyalist terrorism with Robin Jackson.²⁴⁶

Even after the 1978 confessions by McCaughey and Weir – explosive information that should have blown the lid off RUC and UDR involvement in murdering Catholics – investigations and prosecutions were inadequate by any reasonable standard.

Two decades later, the RUC response to the 1999 public statement by Weir remained inadequate, falling short of the procedural obligations of the British state under the European Convention. As recently as 2006 Justice Barron, frustrated by the limited response to his inquiries to the Police Service of Northern Ireland, objected that “allegations of collusion have not been answered properly.”²⁴⁷

Finally, senior officials of the United Kingdom were put on notice as early as 1973 of the danger – and indeed of some of the facts – of sectarian violence by UDR soldiers using stolen UDR weapons and ammunition, and supported by UDR training and information. How much more did senior British officials know, and when? What corrective steps did they take? When will relevant government documents of the time be disclosed?

²⁴⁶ Weir affidavit, par. 28.

²⁴⁷ Barron II, p. 60.

VII. VIOLENCE AGAINST THE PROTESTANT COMMUNITY

The panel was tasked with assessing the responsibility of the British State for sectarian violence in Northern Ireland during the mid-1970s. The panel had neither the mandate nor the resources to investigate acts of sectarian violence committed by armed groups on the Republican side, or to evaluate in depth the cases of victims on the loyalist or Protestant side.

Nonetheless no credible assessment of violence and victimization in Northern Ireland can fail to recognize that violations were committed by both sides, and to acknowledge and respect the suffering endured by both communities. While this panel's inquiry cannot devote equal attention to both sides, any resolution of the conflict and reconciliation of the communities will need to do so. The panel hopes and expects that other inquiries will focus on investigating violence against the Protestant community.

In order to assist the panel to get some sense of the impact of violence on the Protestant side, the panel's counsel, Thomas Vega-Byrnes, met with Protestant victims in Northern Ireland in October 2004. He did so through the auspices of three organizations: FAIR (Families Acting for Innocent Relatives), based in Markethill; SAVER/NAVER, also in Markethill; and the WAVE Trauma Centre in Belfast. The first two organizations advocate for victims on the Protestant side. Although the WAVE Centre serves both communities, the victims with whom Mr. Vega-Byrnes met at WAVE were predominantly Protestant.

The panel expresses its gratitude to all three organizations, as well as to all the individuals who kindly agreed to meet with the panel's counsel, for their assistance.

The following are illustrative of victims on the Protestant side who told their stories to the panel's counsel:

- A woman's aunt was killed by a mixed acid and petrol bomb thrown into a bus in Armagh city in 1972. Eighty people required hospitalization. Her aunt's face and legs were burned and her hair gone; she died 6-8 weeks later. No arrests were ever made, so far as the woman knows.
- A woman's husband was on their farm near Mullaghban, cleaning drains. Armed men pulled him from his digger and shot him dead. No arrests were ever made, she believes.
- A former UDR member lost four members of his family to the IRA, including his brother and son-in-law, both RUC men. When one family member was found in his car shot dead, police could not help because they feared the body was booby-trapped, a common IRA tactic. This man also lost four men in his UDR regiment, when a lorry they were traveling in was fired upon.

- A woman told of her husband, a part-time UDR man, also a mechanic and farmer. In September 1977, while they were living in Eglish, County Tyrone, he was machine-gunned down and killed in his car in front of their home, by a sniper or snipers hiding behind a hedge. Although the IRA made a public claim of the attack, no one was ever arrested.
- A woman's husband was one of three UDR men killed in their barracks at Glenanne in 1991, when a lorry carrying a one-thousand pound bomb rolled down the hill into their camp and exploded. As a widow with four children, she was too busy to follow-up with the case or any prosecution.
- A woman's brother was an RUC man killed in 1991 by an explosion on the outskirts of Armagh, on the Killea Road. Her sister-in-law was left widowed with four young children. After the killing, she relates, her parents both took ill and died of broken hearts.
- A woman was a UDR widow left with two children. Her young daughter opened the door to find gunmen who took her father away and killed him. The daughter is still traumatized; she tried to become a teacher but lost her confidence.
- A widow was left with five children and little help. Her husband had been a farmer and a UUP councilor. No police came when he was killed; there was no follow-up.
- A man was shot through the window of his home at teatime. The man was hit by 17 bullets; his 12-year-old son ran to him to try to stop the bleeding. The man spent eight months in the Intensive Care Unit, needing dialysis, suffering from partial paralysis and great loss of blood.
- A woman was left with nine children after her husband, a UDR Lieutenant, was killed in 1976. In 1972 she had been held at gunpoint by a neighbor. She had him put in jail, but he got out on early release. She still sees the man on the street. He comes up to her to say hello, to show his boldness and impunity. Her daughter later married an undertaker, a civilian. In 1984 he opened the door and was blown to bits. The daughter was left with two small children.
- A farmer from South Armagh told of intimidation of Protestant farmers. It went on for 15 or 16 months. He stayed and tried to sell his farm, but his machinery was burnt, causing 16,000 pounds in damages. An RUC man told him he was about to be shot, based on false information that he had been a member of the B Specials. He had to leave, and was out of work for five years from 1969 to 1974. All the Protestant farmers, he says, were forced out of Crossmaglen.

The panel has not investigated these accounts. It can neither confirm nor dispute the specific facts alleged. But the panel believes that, collectively, these statements by victims and family members tell a larger truth.

At the heart of that larger truth is that the human suffering on both sides is equally painful. To lose a husband, father or child is devastating. It does not matter what house of worship may be attended by the victim or perpetrator. It matters not, for this purpose, whether the violence is committed by State security forces, by violent groups allied with the State, or by violent groups opposed to the State. Nor does it matter whether the cause is noble or base. Whoever the perpetrator and whatever the cause, victims are left crippled or dead, families are bereft and society is polarized.

There are other similarities in what the panel heard from victims and families on both sides. One is impunity. Protestant families, like the Catholics interviewed by the panel, reported that the crimes they suffered had not been brought to justice. Whether for lack of forensic resources, absence of a safe environment for investigators, fear on the part of witnesses, or the overriding demands of a war-like situation, the overwhelmingly Protestant police were often unable to prosecute those who committed violent crimes against members of their own Protestant community.

Protestant victims and family members commonly asked the panel's counsel whether persons who commit crimes ought not to be punished. The panel cannot say whether their concerns are representative of broader community sentiment today. What is clear is that at least for some victims, the thirst for justice continues – understandably so.

Another similarity is the continuing trauma. A number of Protestant victims stressed the need for more counseling services, especially for school children who suffered losses in their families.

There were also allegations by at least one former RUC man that the Garda, the police force of the Republic of Ireland, was not cooperative in bringing fugitives who fled across the border to justice. Communications from one local station to another across the border, he said, had to be routed through Belfast and Dublin. Technicalities were seized upon to deny extradition. Known criminals were allowed to roam freely on the other side of the border.

The panel has had its hands full examining and documenting the responsibility of the British State. It is in no position to take on the vast additional assignment of examining the possible responsibility of another State. However, the panel will bring these allegations to the attention of Irish authorities, and suggest that they deserve to be looked into.

More direct responsibility for crimes of violence against the Protestant community rests, of course, with the armed groups whose members committed them. Recommendations directed to these groups, as well as to State authorities in Northern Ireland with reference to these crimes, appear in chapter VIII below.

VIII. RECOMMENDATIONS

The panel has found significant and credible evidence of involvement of police and military agents of the United Kingdom, both directly and in collusion with loyalist extremists, in a pattern and practice of sectarian murders of members of the Catholic community in Northern Ireland in the 1970's. At least 24 of the 25 cases examined by the panel, involving 74 of the 76 murders, and possibly all 25 cases, appear to fall within this pattern and practice.

The panel has also found that at least some police superiors in Northern Ireland knew of and expressed approval of instances of this conduct, and that senior officials in London had information sufficient to put them on notice of the serious risk of such conduct.

At minimum, these findings suffice to engage the responsibility of the United Kingdom to conduct effective, official investigations, in compliance with article 2 of the European Convention on Human Rights, not only into the particular murders and attempted murders examined by the panel, but also into the broader pattern and practice of which they appear to be a part.

Moreover, in cases where the evidence makes out a *prima facie* case of State responsibility, and this evidence is not countered by contrary findings resulting from adequate, official investigations, the responsibility of the State for involvement or collusion of its officers and agents in gross violations of human rights gives rise to the State's duty under international law to provide adequate reparations to victims and their families.

In this chapter the panel recalls the expressed desires of victims, reviews measures taken by the United Kingdom to investigate and remedy past sectarian violence in Northern Ireland, and recommends further measures to afford reparations as contemplated by international law.

This chapter also addresses prosecutions; appropriate approaches to investigating past violence against members of the Protestant community (in which, presumably, agents of the State were not generally involved); and the responsibilities of armed or formerly armed groups on both sides to cooperate with credible official investigations.

The panel urges the government to conduct a thorough and inclusive consultation with all interested groups and individuals in relation to the choice and nature of measures adopted to fulfill the obligations referred to in this report.

A. What Victims and Families Want

In meeting with victims and family members in the 25 cases it reviewed, the panel was deeply impressed by how acutely they continue to feel their loss, and how severely

they still suffer the effects of the injustices today, some three decades after the murders. What happened long ago has not been forgotten or relegated to the past. Their wounds have not been healed. Their suffering has not been alleviated.

The panel was also impressed by the consistency with which victims and families attributed their anguish, not only to the murders, but also to the State's lack of investigative and prosecutorial response. Many families received only perfunctory, often belated contact from the police. Many were given little or no notice of or real opportunity to contribute to coroners' inquests.

Worse, some allege that they were harassed by police. The Reavey family, for example, complains that after they collected a bag of personal effects of their deceased from the hospital, the RUC stopped them and tipped the total contents of the bag onto a roadway. Even though the RUC admitted at the inquest that the family was in no way involved with paramilitary subversives, police were hostile toward the family, "the attitude being that 'your brothers were not shot for nothing.'"²⁴⁸

Most victims and family members seem to believe that the message was and is all too clear: the State, whose first duty is to safeguard the lives of human beings within its jurisdiction, simply does not care about these families or their murdered loved ones. On the contrary, it seems content to overlook the responsibility of its officers and agents for their loss.

The panel was at pains to ask victims and families what relief they now hope to secure. In spite of individual variations, there was a striking consistency in the overall tone and content of their answers.

Generally – with some exceptions -- they were not much interested in criminal prosecutions at this late date. In part this is for practical reasons: most recognize that prosecuting 30-year-old cases would be difficult from the point of view of proof, even where perpetrators are still alive and capable of standing trial. They are also aware of the early release provisions of the Good Friday Agreement, which in some cases might effectively limit the period of imprisonment to two years, even if convictions for murder were obtained.²⁴⁹

But there was another reason. At least after so many years, punishing perpetrators is not the highest priority for most of these victims and survivors. Most see other measures as more likely to provide them psychological relief.

Nor did most victims and survivors focus on monetary compensation for the loss of their loved ones. Some had received a modest compensation from the State. But for most this, too, was not their priority.

²⁴⁸ Barron II, p. 101.

²⁴⁹ See discussion in part C below.

Instead, the panel heard a consistent message from most victims and survivors: They want the truth about the perpetrators and the role of the State to be found and made known. They want to know who decided to target them or their family and why. They want the State officially to acknowledge its responsibility where the culpability of State officers or agents is demonstrated by adequate investigation. And they want the State to give a public apology in cases where its officers or agents committed or colluded in the murders.

As discussed below, these preferences, expressed by victims and survivors to the panel, are consistent with widely accepted United Nations guidelines on reparations for victims of gross violations of human rights.²⁵⁰

B. Inadequacy of Measures to Date

The Committee of Ministers of the Council of Europe is currently doing an admirable job of overseeing compliance by the United Kingdom with six recent judgments of the European Court of Human Rights, holding the State responsible for failing adequately to investigate alleged security force involvement in deaths in Northern Ireland.²⁵¹ As the Committee recognizes, such violations call for both general remedial measures and measures specific to individual cases.²⁵²

In response to those judgments, the United Kingdom has since 2004 reported to the Committee of Ministers a series of general remedial measures it has taken. These initiatives relate to the police ombudsman, police investigations, public scrutiny and judicial review of decisions not to prosecute, coroners' inquests, public interest immunity certificates, and a bill to revise the procedures for Inquiries.²⁵³ The Committee of Ministers has now closed its review of certain issues relating to coroners' inquests and public interest immunity certificates.²⁵⁴

²⁵⁰ *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, United Nations GA Res. A/RES/60/147, adopted 16 December 2005, Annex (hereinafter "*UN Basic Principles on Reparations*").

²⁵¹ They include four cases in which final judgment was given on 8 April 2001: *Jordan v. UK*, app. No. 24746/94; *McKerr v. UK*, app. No. 28883/95; *Kelly and others v. UK*, app. No. 30054/96; and *Shanaghan v. UK*, app. no. 37715/97. Also included are *McShane v. UK*, app. No. 43290/98, final judgment 28 August 2002 and *Finucane v. UK*, app. No. 29178/95, final judgment 1 October 2003. For the latest assessment by the Secretariat of the Committee of Ministers, see Council of Europe, Committee of Ministers, document CM/Inf/DH(2006)4 revised 2 23 June 2006, *Cases concerning the action of security forces in Northern Ireland – Stocktaking of progress in implementing the Court's judgments*, Memorandum prepared by the Secretariat incorporating information received up to 12 June 2006, (hereafter "*Stocktaking*"), accessible at [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf/DH\(2006\)4&Sector=secCM&Language=lanEnglish&Ver=rev2&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75#RelatedDocuments](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf/DH(2006)4&Sector=secCM&Language=lanEnglish&Ver=rev2&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75#RelatedDocuments)

²⁵² Committee of Ministers, Council of Europe, Interim Resolution ResDH (2005) 20, *Action of the Security Forces in Northern Ireland (Case of McKerr against the United Kingdom and five similar cases)*, Measures taken or envisaged to ensure compliance with the judgments of the European Court of Human Rights in the cases against the United Kingdom listed in Appendix III, 23 February 2005 (hereafter "CM").

²⁵³ CM, Appendix I.

²⁵⁴ E.g., *Stocktaking*, pars. 105, 109, 122, 130.

However, except in the six cases in which judgment was rendered by the European Court, the supervision by the Committee of Ministers focuses on reforms oriented toward the future, not on measures to remedy the inadequacies of investigations of past cases of collusion.²⁵⁵

In addition, the State has subsequently established a Historical Enquiries Team, reporting to the Chief Constable of the Police Service of Northern Ireland and headed by a senior, former Commander of the Metropolitan Police.²⁵⁶ With a budget of more than £30 million pounds,²⁵⁷ the Team has a staff of 89 persons. They are tasked to investigate some 3,268 deaths in Northern Ireland between 1968 and 1998.²⁵⁸

Cumulatively these steps are positive and substantial. However, they are not sufficient, either to meet the obligations of the United Kingdom under the European Convention on Human Rights, or to provide the broader remedial measures called for by widely accepted international guidelines on reparations for gross violations of human rights.²⁵⁹

In the view of the panel, the main deficiencies of the measures undertaken to date are as follows:

1. **Effectiveness Uncertain.** As noted by the Committee of Ministers in February 2005, the “effectiveness” of the new measures has yet to be established.²⁶⁰ In May 2006 the Committee on the Administration of Justice, an internationally respected non-governmental human rights group based in Belfast, informed the British government of a number of continuing concerns about the effectiveness of the measures, including those involving past cases.²⁶¹

2. **Intelligence Agencies.** Measures to date relate mainly to police, prosecutors and coroners. They appear to have little impact on, and call for little investigation or disclosure of the possible role of and knowledge by other State agencies, especially the intelligence agencies, in regard to past sectarian violence.

²⁵⁵ See generally, *Stocktaking*.

²⁵⁶ See Police Service of Northern Ireland, Chief Constable’s Annual Report 2005-2006, p. 9, New Police Historical Enquiries Team, and Historical Enquiries Team, press releases January 2006, both accessible at www.psni.police.uk/index (last visited October 14, 2006).

²⁵⁷ “The Northern Ireland Office has committed a ring fenced £24.2 million pounds to this venture, with a further £7.5 million allocated to facilitate forensic science service support ...” *Stocktaking*, par. 54.

²⁵⁸ H. Gavaghan, *Law and order: New ways of shedding light on the past: Police officers in Northern Ireland are using a ‘bespoke database’ to investigate and, they hope, solve more than 3,000 deaths in the country between 1968 and 1998*, THE GUARDIAN (London), May 31, 2006, p. 14.

²⁵⁹ *UN Basic Principles on Reparations*.

²⁶⁰ CM, p. 2.

²⁶¹ *Submission to government by the Committee on Administration of Justice (CAJ) in relation to European Court of Human Rights cases* (May 2006) (hereafter “CAT”) (accessible on CAJ web site, www.caj.org.uk).

3. *Senior Officials*. Measures to date focus on possible violations by officers in the field. They do not envision a close and comprehensive inquiry into what was known and done by senior government officials in Belfast and London.

4. *Past Cases*. Measures to date are largely prospective in effect; most will not benefit the victims and their families in the 25 cases reviewed by the panel and in similar cases.

5. *Independence and Adequacy of Investigations*. The Historical Enquiries Team and Police Ombudsman do review past cases involving allegations against police. However, several legitimate concerns have been raised about the Team's investigations and about the limited statutory powers of the Ombudsman.

(a) Historical Enquiries Team

One concern is the independence of the Historical Enquiries Team in practice from the police agency whose conduct it considers. The Committee on the Administration of Justice has rightly asked

what lines of accountability and responsibility are in place from the Historical Enquiries Team to the Chief Constable; whether the lines of authority are direct or are mediated through PSNI officers who served previously in the Royal Ulster Constabulary and who might be expected to retain some loyalty to that institution and to former colleagues; [and] what proportion of officers are being recruited or seconded from outside the jurisdiction ...²⁶²

The Government has recently explained that the Team is divided into two teams, one of which is composed entirely of investigators from outside Northern Ireland, and that this is the team that investigates cases where RUC officers are implicated. Further, the Team reports directly to the Chief Constable. This structure may largely obviate concerns about independence at the operational level. However, concerns about independence would remain if, as in the case of the outside police enquiry into the murder of Pat Finucane (discussed below), a decision were later taken at a senior or government level not to disclose fully the results of the investigations.

Legitimate concerns have also been raised about whether the Team has sufficient staff and resources to complete its work within the projected five-year or any reasonable time frame;²⁶³ and whether its work will lead to prosecutions where feasible and appropriate.²⁶⁴ It also is not clear to what extent the Team will investigate patterns of violence and possible connections among individual cases. Nor is it clear to what extent

²⁶² *Submission from the Committee on the Administration of Justice (CAJ) to the UN Committee Against Torture on its one-year review of the UK government's response to the Committee's Concluding Observations of November 2004*, December 2005, p. 5 (accessible at www.caj.org.uk).

²⁶³ E.g., J. McCambridge, *PSNI Fury: Cops accuse NIO of diverting money away from unsolved murders team*, BELFAST TELEGRAPH, Sept. 2, 2006; I. Graham, *Extra Funding Urged for Unsolved Murder Squad*, Press Association Newsfile, May 23, 2006, Home News section.

²⁶⁴ E.g., A. Bushe, *Victims' anger over police decision on OHare*, BELFAST NEWS LETTER, June 8, 2006, Ulster Ed., p. 15.

the Team will investigate the role and knowledge of intelligence agencies, and of senior officials in Belfast and London. Although the Team reportedly plans to question former soldiers, objections have been raised by at least one member of Parliament,²⁶⁵ and any enquiry the Team makes of soldiers is limited by the general shortcomings noted in this section.

More fundamentally, as the Secretariat of the Committee of Ministers of the Council of Europe has recognized, Historical Enquiries Team enquiries do not meet the standards of investigation required by article 2 (right to life) of the European Convention on Human Rights. In part this is because they focus only on finding new “evidentiary opportunities.”²⁶⁶

Equally troubling, except where prosecution ensues (which will be rare in cases from the 1970’s), the Team reportedly plans to share its findings only with the victims’ families, and not with the broader public.²⁶⁷ The public’s right to know the truth of what happened – especially in regard to an apparent pattern of collusion – does not appear to be met by the Historical Enquiries Team. The Team thus fails to meet UN Guidelines that recommend that measures of satisfaction and guarantees of non-repetition should include “[v]erification of the facts and full and *public* disclosure of the truth to the extent that such disclosure does not cause further unnecessary harm or threaten the safety of the victim, witnesses, or others.”²⁶⁸

(b) Police Ombudsman

The Historical Enquiries Team by April 2006 reportedly identified 78 cases in which police conduct was questioned and referred those cases to the Police Ombudsman for investigation.²⁶⁹ However, the Ombudsman informed the panel in October 2006 that although she had been notified of 78 cases, only 11 had actually been referred to her. Of the 25 cases examined by the panel, it appears that she is currently investigating only two -- the murder of Sergeant Joe Campbell and the investigation of the murders of the Reavey brothers.²⁷⁰

However, legitimate questions have been raised about the statutory scope of her investigations.²⁷¹ The Ombudsman’s power to investigate the cases reviewed by the panel is severely circumscribed by her lack of competence to investigate violations committed

²⁶⁵ A. Erwin, *Ex-Soldiers Face Questions in Unsolved Murders Probe*, Press Association Newsfile, Aug. 11, 2006.

²⁶⁶ *Stocktaking*, par. 65.

²⁶⁷ An HET spokeswoman reportedly stated in September 2006, “It is the policy of HET only to discuss the private details of cases with the families involved.” D. Young, *Victims’ Groups Clash in Ongoing Missing Files Row*, Financial Times Information, NEWSLETTER, Sept. 19, 2006.

²⁶⁸ *UN Basic Principles on Reparations*, par. 25 (b) (emphasis added).

²⁶⁹ S. O’Neill, *Police at fault in 80 murders says HET*, IRISH NEWS, April 10, 2006, p. 1.

²⁷⁰ Letter dated 9 October 2006 from Mrs. Nuala O’Loan, Police Ombudsman for Northern Ireland, to Douglass Cassel (on file with the panel).

²⁷¹ CAT, especially pp. 2-7.

by the military including the UDR.²⁷² Even in cases where former police officers may be suspects, questions have been raised. In the Reavey case, the Ombudsman informs the panel that she is investigating the police investigation of the murders, but apparently not the murders themselves.²⁷³ Moreover, the Pat Finucane Centre contends that there is currently no “live investigation” of the Reavey case by her office.²⁷⁴

6. Moral Reparations and Satisfaction. Measures to date do not appear to contemplate important elements of moral reparations and satisfaction for victims of gross violations of human rights, including full disclosure of the truth, State acknowledgment and apologies, and symbolic measures:

(a) Full disclosure of the truth about the role of the State in regard to the violations.

As stressed by the Committee of Ministers, the State has a “continuing obligation” to conduct investigations in cases where it has not complied with its article 2 duty under the European Convention.²⁷⁵ Even if that obligation may not be enforceable in domestic British courts under the Human Rights Act 1998,²⁷⁶ the government evidently recognizes, as does the Joint Committee on Human Rights of Parliament, that at least in cases where the European Court has found a violation, international law obligates the United Kingdom to conduct the same sort of investigation in cases of pre-Act deaths as in cases of deaths after the domestic Act went into effect.²⁷⁷

However, it is not clear whether this recognition extends to cases not adjudicated by the European Court. In statements to the Committee of Ministers, the United Kingdom stresses that it views its obligations to conduct proper investigations of the six cases at issue as arising, not under article 2 of the European Convention -- which would apply to all past cases of collusion in partisan murders -- but under article 46, which relates only to compliance with judgments of the European Court.²⁷⁸ This might be interpreted to mean that, in the government’s view, the obligation to conduct

²⁷² *Stocktaking*, par. 173.

²⁷³ See *Stocktaking*, par. 171; letter dated 9 October 2006 from Mrs. Nuala O’Loan, Police Ombudsman for Northern Ireland, to Douglass Cassel (on file with the panel).

²⁷⁴ An email from Pat Finucane Centre to Douglass Cassel, Oct. 30, 2006 (on file with panel) states that “the understanding of the PFC and the Reavey family is that there is currently no live investigation into any aspect of the murders other than that being carried out by the HET [Historical Enquiries Team]. This investigation is not a parallel investigation with OPONI [the Police Ombudsman].”

²⁷⁵ CM, p. 2.

²⁷⁶ *Re McKerr*, House of Lords, [2004] 2 All ER 409 (section 6 of the Act does not apply to pre-Act deaths); but see the judgments of the Court of Appeal in Northern Ireland in *Re Jordan’s Application*, [2004] NICA 29 and 30 (section 3 of the Act applies to current inquests relating to pre-Act deaths); *contra*, *Re McCaughey and Grew’s Application for Judicial Review*, [2005] NICA 1, and *Commissioner v. Christine Hurst*, [2005] EWCA 890 (judgment of Lord Justice Buxton). Leave to appeal to the House of Lords has been granted in the *Jordan* and *McCaughey* cases, and the *Hurst* case is expected to be listed for appeal and heard immediately after *Jordan* and *McCaughey* during 2007. *Stocktaking*, par. 194..

²⁷⁷ *Stocktaking*, par. 188; United Kingdom Parliament, Joint Committee on Human Rights, Thirteenth Report, par. 18 (accessible at www.publications.parliament.uk).

²⁷⁸ *Stocktaking*, par. 189.

an article 2 compliant investigation arises only when a case has first been taken to the European Court. Any such assertion is not only incorrect in law – the United Kingdom has long been obligated to meet European Convention standards as a matter of international law – but also in practical effect. Unless the United Kingdom wishes to encourage a flood of applications to the European Court, it should conduct adequate investigations of all pre-Act deaths involving alleged collusion in Northern Ireland, and not leave victims with no alternative but to file applications in Strasbourg.

Yet to date the United Kingdom has not and is not conducting adequate and effective investigations, either of the 25 cases reviewed by the panel, or of other past collusion cases not yet adjudicated by the European Court. As noted above and as confirmed by the Secretariat of the Committee of Ministers,²⁷⁹ the current enquiries of the Historical Enquiries Team are not article 2 compliant, and the Police Ombudsman lacks competence to investigate central aspects of past collusion cases.

Nor is it clear that special inquiries by police “called in” from elsewhere in the United Kingdom to investigate past collusion cases would necessarily meet article 2 requirements. Such call-in’s are not statutorily mandated and may therefore not occur at all; in addition, the Committee of Ministers has noted that a call-in was “not in itself a sufficient safeguard” in the *Finucane* case,²⁸⁰ and that its efficacy remains an open question in the case of the 1974 death of Patrick Kelly.²⁸¹

Inquiries under the 2005 Inquiries Act also do not appear sufficient to meet the independence and transparency requirements of European Convention article 2 investigations.²⁸² It is unlikely that they would provide victims’ families with a credible measure of solace and put matters to rest.

These seem to be the lessons of the recent experience in the case of the 1989 murder of Catholic solicitor Pat Finucane. In 2003, after three investigations by Sir John Stevens, former Metropolitan Police Commissioner, followed by public disclosure of only 15 pages of his 3,000-page third report, Amnesty International and several other human rights groups issued a statement that, “Nothing short of a full, public, international, impartial and independent judicial inquiry will do.”²⁸³

Now the British government proposes to review the Finucane case under the 2005 Inquiries Act. However, the Finucane family objects, arguing that the new Act allows the government too much control over what is disclosed.²⁸⁴ According to the Committee on Administration of Justice, the 2005 Act “increases the potential for

²⁷⁹ *Stocktaking*, par. 65.

²⁸⁰ *Stocktaking*, par. 48.

²⁸¹ *Stocktaking*, par. 49.

²⁸² See *Stocktaking*, par. (call in’s), pars. (2005 Inquiries Act).

²⁸³ Press Statement from Amnesty International et al., 16 April 2003, accessible at www.amnesty.org.

²⁸⁴ Editorial, *DAILY MAIL*, May 24, 2006, p. 27.

political interference in inquiries [and] has been widely condemned as it will not allow for the transparent and public process that is needed.”²⁸⁵

Recently both the United States House of Representatives (by a vote of 390-5) and the Irish Taoiseach have echoed these rejections of an Inquiries Act approach. They call instead for full, independent, public, judicial investigation of the Finucane murder.²⁸⁶

The Secretariat of the Committee of Ministers of the Council of Europe has noted most recently, with regard to the Finucane case, that the 2005 Inquiries Act

does not dispel all the concerns expressed within the Committee regarding the capacity of an inquiry to fulfill the requirements of an effective investigation within the meaning of Article 2. A number of questions remain, particularly as regards the use of ministerial powers in such matters as the scope of an inquiry, the approach to and use of restriction notices, publication of the full inquiry materials and findings, the control over the conduct of an inquiry, including the possibility to stop an inquiry, as well as regarding the extent of the victims’ family involvement in an inquiry conducted under the Act.²⁸⁷

The panel does not presume to specify the mechanism by which the United Kingdom may meet its investigative responsibilities under article 2 in the cases examined by the panel and in similar cases of apparent past collusion. What seems clear is that by themselves, and without being strengthened or supplemented by other means, neither the Historical Enquiries Team, the Police Ombudsman, a “call-in” or a 2005 Inquiries Act approach, have the scope, independence, transparency and credibility required to assure victims and the public that the truth has been pursued energetically and made known.

Whatever agency or mechanism or combination of approaches may be entrusted to carry out the investigation, the panel recommends that it be assured the powers and procedures necessary to meet all article 2 criteria, to engender public confidence, and at last to provide victims and families the moral reparation and satisfaction they deserve. The panel recommends that the government conduct a thorough and inclusive consultation with all interested groups and individuals in relation to the choice and nature of measures adopted.

In addition, the panel recommends that the United Kingdom take whatever steps may be necessary to ensure that the exemptions contained in the Freedom of Information Act 2005, which bar public access to any and all information from intelligence and certain other State agencies, do not prevent the State from fulfilling its legal

²⁸⁵ CAJ Press Release, 19 May 2006, accessible at www.caj.org.uk.

²⁸⁶ *Id.* and M. O’Regan, *Ahern calls for full inquiry into murder of Finucane*, THE IRISH TIMES, June 21, 2006, Ireland section, p. 8.

²⁸⁷ *Stocktaking*, par. 242.

obligation to carry out an investigation which meets the international law standard of effectiveness.²⁸⁸

(b) Other Measures

Other measures of moral reparations and satisfaction include:

- Appropriate acknowledgment by the State, after due inquiry, of its responsibility.
- Public apology by senior State officials, where warranted, to victims and survivors; and
- Symbolic measures, such as naming of streets and squares, plaques, and establishment of memorial scholarships, to memorialize the suffering and vindicate the dignity and honor of victims and their families.

The European Court of Human Rights and Committee of Ministers have not to date ordered State acknowledgements, apologies or symbolic measures. However, the reason may be that until recently, the Court interpreted its remedial authority under the “just satisfaction” standard of the European Convention,²⁸⁹ as limited to declaring violations and, in a minority of cases, ordering payment of monetary compensation. Committee of Ministers monitoring of retrospective relief largely mirrored these limitations. Only recently has the Court, encouraged by the Committee, begun to pursue broader forms of relief, such as ordering release of wrongfully imprisoned persons.²⁹⁰

In contrast, the Inter-American Court of Human Rights has for years ordered moral reparations and satisfaction measures requiring investigation and disclosure of truth, State acknowledgment of and apologies for responsibility, and symbolic measures.²⁹¹ These measures of satisfaction are likewise recommended by the UN Reparations Guidelines adopted by the General Assembly in December 2005.²⁹² In adopting the Guidelines

²⁸⁸ The Freedom of Information Act came fully into force on 1st January 2005. Article 23 (1) of Act provides that any information whatsoever held by a public authority cannot be disclosed if it was directly or indirectly supplied to that authority by, or relates to, a range of bodies which include the Security Service (MI5) and the Secret Intelligence Service (MI6) as well as the Government Communications Headquarters and the special forces. Article 24(1) exempts any other information where exemption is required for the purpose of safeguarding national security. In those situations, the authorities are not required to confirm or deny the existence of the information.

²⁸⁹ Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, as amended by Protocol No. 11, art. 41.

²⁹⁰ E.g., *Assanidze v. Georgia*, App. No. 71503/01, Judgment of 8 April 2004, paras. 198, 202-03.

²⁹¹ See generally D. Cassel, *The Expanding Scope and Impact of Reparations Awarded by the Inter-American Court of Human Rights*, in *OUT OF THE ASHES: REPARATIONS FOR GROSS VIOLATIONS OF HUMAN RIGHTS*, K. De Feyter, S. Parmentier, M. Bossuyt and P. Lemmens eds. (Intersentia 2005), pp. 191-223.

²⁹² UN *Basic Principles on Reparations*, paras. 22(b)(truth); 22(d) (official declaration); 22(e) (public apology and acknowledgment of responsibility); and 22(g) (commemorations and tributes to victims).

without dissent, the General Assembly recommended that States take the Guidelines into account, promote respect for them, and bring them to the attention of State agencies, the media and the public.²⁹³

The panel recommends that State authorities of the United Kingdom take these Guidelines into account and provide such measures of moral reparation and satisfaction to victims and family members in the 24 cases (and possibly all 25 after investigation) and similar cases.

The panel recognizes that the United Kingdom has already taken substantial steps to meet the needs of victims and survivors, through the Victims Unit of the Northern Ireland Office. Among other measures, the government has provided financial support for victims' groups, established a Memorial Fund to which individuals can apply for assistance, set up trauma centers, analyzed the needs of victims who live in the United Kingdom and developed a strategy for providing practical assistance. There is a Victims Minister in the Northern Ireland Office. The government last year announced plans to appoint a Commissioner for Victims and named an Interim Commissioner; most recently, in the St. Andrews Agreement, the government committed to introduce legislation in autumn 2006 to establish a Victims' Commissioner for Northern Ireland.²⁹⁴

Cumulatively these steps are important. However, they relate to victims of violence in Northern Ireland generally. They are not adequate remedies for victims of State participation or complicity in gross violations of human rights. They do not substitute for State acknowledgments of responsibility and official apologies, where warranted, for involvement of State officers and agents in sectarian murders. Nor do they provide symbolic measures to recognize victims of State involvement or complicity in human rights violations.

While valuable, the United Kingdom's measures to assist victims to date thus do not meet the moral reparations responsibilities of States under the UN Reparations Guidelines. To the extent adequate official investigations substantiate State responsibility in sectarian violence, the panel recommends that senior officials of the United Kingdom officially acknowledge and publicly apologize for the State's responsibility, and that the State memorialize and show respect for victims of State violence and their families through symbolic measures as well.

C. Prosecutions

In general heinous crimes such as murder must be prosecuted. Amnesties for serious international crimes against human rights are condemned by the practice of the United

²⁹³ UN GA Resolution A/RES/60/147, 16 December 2005, par. 2.

²⁹⁴ See generally www.nio.gov.uk/issues/victims.htm; *Agreement at St. Andrews*, Oct. 13, 2006, Annex B, Human Rights, Equality, Victims and Other Issues, accessible at www.nio.gov.uk/st_andrews_agreement.pdf.

Nations,²⁹⁵ the jurisprudence of the European Court of Human Rights,²⁹⁶ and the interpretation of the International Covenant on Civil and Political Rights (to which the United Kingdom is a party) by the Human Rights Committee.²⁹⁷

On the other hand, where cases are three decades old and evidence has disappeared, grown stale or was never collected in the first place, the interests of justice do not necessarily demand prosecution. Perpetrators or witnesses may have died or become incapable of participating credibly in court proceedings. Belated prosecutions may sometimes be unduly burdensome to elderly survivors, especially when it is no longer possible to charge the principal offense of murder, and only a lesser offense can be charged.²⁹⁸

In such situations the result may be that there will be neither amnesty nor prosecution.

In Northern Ireland the 1998 Good Friday Agreement contained an early release provision, contemplating release of prisoners imprisoned for serious crimes after two years, provided certain conditions are met.²⁹⁹ The Agreement was implemented by the Sentences Act 1998.³⁰⁰

It is not clear to the panel whether any potential prosecutions in the 25 cases it reviewed would meet the conditions for early release under the Agreement and legislation. For example, under the terms of these documents, it is not clear that crimes committed by State security forces can be eligible for early release. If any such prosecutions are brought, and consideration were then given to early release, the Agreement and legislation should be interpreted, to the extent possible, in a manner consistent with the international law proscription of amnesties for gross violations of

²⁹⁵ *Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone*, S/2000/915, 4 October 2000, par. 22: “While recognizing that amnesty is an accepted legal concept and a gesture of peace and reconciliation at the end of a civil war or an internal armed conflict, the United Nations has consistently maintained that amnesty cannot be granted in respect of international crimes, such as genocide, crimes against humanity or other serious violations of international humanitarian law.” See also pars. 23-24. Also see *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, UN Doc. S/2004/616, 23 August 2004, par. 10: “United Nations-endorsed peace agreements can never promise amnesties for genocide, war crimes, crimes against humanity or gross violations of human rights”.

²⁹⁶ *Yaman v. Turkey*, App. No. 32446/96, Judgment of 2 November 2004, par. 55 (“where a State agent has been charged with crimes involving torture or ill-treatment, it is of the utmost importance for the purposes of an ‘effective remedy’ that criminal proceedings and sentencing are not time-barred and that the granting of an amnesty or pardon should not be permissible.”)

²⁹⁷ UN Human Rights Committee, General Comment 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, par. 18 (prohibiting amnesties for public officials or State agents who commit gross violations of human rights).

²⁹⁸ Compare Rome Statute of the International Criminal Court, art. 53.1 (c), which authorizes the prosecutor to refrain from pursuing a case where “[t]aking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice.”

²⁹⁹ Agreement, April 10, 1998, Annex B, Review of the Criminal Justice System, Prisoners, par. 3, accessible at www.nio.gov.uk.

³⁰⁰ Northern Ireland (Sentences) Act 1998.

human rights. Although early release after only two years in prison is not an amnesty, the same policy that condemns amnesties for serious international crimes – avoiding impunity – also counsels against unduly lenient punishments for those same crimes.

D. Removal and Suspension of Public Officials and Employees

The panel recommends that the United Kingdom take into account, where applicable, Principle 36(a) of the *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*:³⁰¹

“Public officials and employees who are personally responsible for gross violations of human rights, in particular those involved in military, security, police, intelligence and judicial sectors, shall not continue to serve in State institutions. Their removal shall comply with the requirements of due process of law and the principle of non-discrimination. Persons formally charged with individual responsibility for serious crimes under international law shall be suspended from official duties during the criminal or disciplinary proceedings.”

In 2005 the UN Human Rights Commission took note “with appreciation” of these Principles as a “guideline to assist States in developing effective measures for combating impunity.”³⁰²

E. Crimes Against Members of the Protestant Community

In human terms, murders of members of the Protestant or loyalist communities cause every bit as much suffering to survivors and family members as do the crimes reviewed by the panel. As documented by the panel’s counsel in meetings with groups representing or serving predominantly Protestant victims and survivors, their pain remains as intense as that suffered by members of the Catholic community.

Moreover, in societal terms, reconciliation toward a common, constructive future for Northern Ireland will be made more difficult by perceptions that the State treats one community more favorably than the other.

Even so, there are factual and legal differences in the State’s role in the violence affecting the two communities. The evidence reviewed by the panel shows that officials and agents of the State were involved or complicit in murders of members of the Catholic community. While the panel’s mandate did not include investigation of murders of members of the Protestant community, it would seem implausible that extremists in the overwhelmingly Protestant State security forces, mainly the RUC and UDR,³⁰³ generally

³⁰¹UN Commission on Human Rights, *Report of the independent expert to update the Set of principles to combat impunity*, Addendum, *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, UN Doc. E/CN.4/2005/102/Add.1, 8 February 2005.

³⁰² UN Human Rights Commission, Resolution 2005/81, *Impunity*, 21 April 2005, par. 20.

³⁰³ As of mid-1973 the UDR was reportedly over 96% Protestant. *Subversion in the UDR*, note 226 above, at 1-2.

engaged in a comparable pattern of sectarian murders directed at members of their own community.³⁰⁴

In regard to investigations, the panel has heard complaints that police investigations of murders of Protestants were also not conducted in a timely, efficient and effective manner. Again, whatever shortcomings there may have been in police capabilities at the time, and whatever difficulties police may have encountered in conducting investigations in a violent and insecure environment, at least in cases of murders of Protestants, RUC investigators did not typically face the added obstacle of having the truth concealed by their own culpable or complicit colleagues.

The State, then, has a special responsibility to ensure adequate investigation and reparation of crimes committed by its own officials and agents. Where these crimes entail gross violations of human rights – such as sectarian murders – that duty is imposed by international human rights law, including the European Convention on Human Rights.

As a matter of policy and even-handedness, the State may choose to go beyond its duty to examine thoroughly its own house, and extend its gaze equally to all sectarian murders, regardless of suspected perpetrator or victim. To some extent the United Kingdom has committed to doing so, through the Historical Enquiries Team, whose mandate is to investigate all 3,268 murders in Northern Ireland between 1968 and 1998. However, by referring cases involving suspected police perpetrators from that Team to the Police Ombudsman for further investigation, the United Kingdom provides these cases a different, if not necessarily more searching, scrutiny.

Many shortcomings noted by the panel in the work of the Historical Enquiries Team and Police Ombudsman are particular to cases, like those reviewed by the panel, where State officials or agents may have been perpetrators or complicit. For example, any practical lack of independence from persons still loyal to the RUC, and any failure to examine the roles of other State agencies and of senior government officials in Belfast and London, are important mainly where the State may have had some responsibility in fact for the crimes. Where that responsibility exists, it should be laid bare.

In regard to these deficiencies, then, the Historical Enquiries Team may well be an acceptable investigative approach in cases where there are no indicia of suspected involvement by State officials or agents. Other issues remain, as noted above, including whether the Team has the resources needed to compete its work in a reasonable time frame, and whether prosecutions will be brought where appropriate.

The panel has heard allegations that Irish State officials or agents were involved or complicit in violence against members of the Protestant community. However, no

³⁰⁴ There may have been some cases where State security forces, in order to protect identities of agents or for other reasons, impeded investigations or were complicit in murders of members of the loyalist community, or even of British soldiers. E.g., S. Breen, *Cops grill ex-IRA spy over murder*, SUNDAY LIFE (Belfast), Oct. 1, 2006; D. Granville, *One Eye on Ireland – What do you know?*, MORNING STAR, Sept. 26, 2006.

significant evidence to support these allegations has been brought to the attention of the panel. The panel had neither resources nor mandate to pursue any such evidence on its own initiative. If such evidence exists, it would trigger a corresponding duty of inquiry by the Republic of Ireland.

F. Armed or Formerly Armed Groups

Finally, there is the question of the responsibility of armed or formerly armed groups involved in violence on both sides to assist in the truth-seeking process. While international human rights law imposes the duty to investigate on the State, common decency suggests that organizations whose members committed acts of sectarian violence should now do what they can to cooperate with credible official investigations.

If the African National Congress could lay its own deeds before South Africa's truth-seeking process, there is no reason why armed or formerly armed groups in Northern Ireland should not do the same – at least if the United Kingdom, like South Africa, offers a credibly transparent and independent process.

G. Response to Comments by the British Government

As detailed in chapter II above, the Northern Ireland Office of the United Kingdom government offered three comments on the Commission's draft report.³⁰⁵ They were in substance as follows:

- Comment would be inappropriate because five of the cases examined by the panel are presently before the European Court of Human Rights,
- “Many” cases examined by the panel are the subject of “ongoing” investigations by the Historical Enquiries Team, as well as “a number” by the Police Ombudsman, and
- The Secretary of State for Northern Ireland continues to believe that police investigations are the best way of “ensuring that allegations of collusion are fully investigated and that any individuals who have committed offences are brought to justice.”

As to the first comment, it is understandable that the Government may not wish to comment on the five cases pending before the European Court. However, it is not apparent to the panel why this should preclude comment on the other 20 cases. In any event, the panel has reviewed the Government's filing in one of the cases before the European Court. This document includes the Government's observations on the credibility of John Weir and on the earlier police investigations. The panel is not

³⁰⁵ Letter dated 17 October 2006 from Mark Larmour, Private Secretary to the Secretary of State for Northern Ireland, to Douglass Cassel (on file with the panel).

persuaded by these observations to alter its assessments that Weir's allegations are, in general, credible, and that the prior police investigations were not adequate.³⁰⁶

As to the suggestion that "many" of the 25 cases are the subject of "ongoing" investigations by the Historical Enquiries Team, the lists provided by the Team to families appear to indicate that only four cases have yet been the subject of focused investigations, while four more have recently been noted for future review.³⁰⁷

As to the suggestion that "a number" of the cases are being investigated by the Police Ombudsman, that number is in fact only two, of which one is not an investigation of the murder itself, but only of the investigation of the murder.³⁰⁸

The limited figures to date do not preclude the possibility that all 25 cases examined by the panel will eventually be investigated. They do suggest, at minimum, that those investigations may be long in coming.

More important are the inadequacies of the investigations, if and when eventually conducted. As noted earlier, the Ombudsman lacks power to investigate the army. It is not clear that the Team will investigate intelligence agencies or senior chains of command in the police, military and government in Belfast and London.

Further, while the Team plans to make its results known to families, it reportedly does not plan to make them public. Even if police investigations were the best way to prepare criminal prosecutions, most family members stress that prosecutions are not their priority. They demand, more urgently, full revelation of the truth, not only to themselves but to the public, as well as acknowledgment by the State of its responsibility, along with a public apology to the families. As noted above by the panel, these expressed desires are consistent with United Nations guidelines on moral reparations for victims of gross violations of human rights.

Finally, the government's comment seems to imply that the die has been cast, that the decision on how to handle past cases of collusion has been made. This overlooks the vital need, as highlighted by the panel, for broad and inclusive consultation – in which victims' families play a meaningful role – on how best to redress, not only the violations of law, but the deep wounds that linger in the lives, memories and psyches of the survivors.

³⁰⁶ See discussion in chapter VI.C above.

³⁰⁷ The "Availability Matrix" AM-1 provided to the families lists the following cases: McCartney and Farmer, Donnelly's Bar, O'Dowd's and Reavey's. A further list includes the cases of Patrick Campbell, Daniel Hughes (Boyle's Bar), Owen Boyle and the Bowen home at Killyliss. (Documents on file with the panel.)

³⁰⁸ Letter dated 9 October 2006 from Mrs. Nuala O'Loan, Police Ombudsman for Northern Ireland, to Douglass Cassel (on file with the panel).

APPENDICES:

- A. Terms of Engagement**
- B. Panel Members and Counsel**
- C. Charts of Linkages Among Cases**

APPENDIX A: TERMS OF ENGAGEMENT

May 12, 2004

1. The aims and objectives of the panel are as follows:

The Aims of the Panel:

- To evaluate whether the central allegations relating to the activities of the Glenanne group warrant further official investigative or other measures;
- To review available documents regarding the cases and perpetrators;
- To hear testimony of witnesses and people bereaved allegedly as a result of the activities of the Glenanne group;
- To hear such other witnesses or conduct such other interviews or inquiries as may be necessary; and
- To submit a final report of the findings of the panel.

The Objectives of the Panel:

- To analyse the allegations within the context of international human rights and humanitarian law;
- To provide an opportunity for relatives, survivors and witnesses to tell their stories to independent investigators;
- Drawing on international experience, to make recommendations on:
 - (a) Whether the United Kingdom government has a case to answer; and, if so,
 - (b) The most appropriate mechanism(s) with which the concerns highlighted can be addressed.

2. The panel will investigate, report and reach its conclusions in an independent and impartial manner according to its professional judgement.

3. The panel will be free, in its sole discretion, to seek information and interviews from any person or party with potentially relevant information. In particular it will expect to seek information from the Police Service of Northern Ireland and others who may have interests or views adverse to those of the victims.

4. The panel will take into account that its purpose is not to conduct a full investigation or to substitute itself for the proper authorities, but merely to gather sufficient evidence and input to enable it fairly and properly to assess the quality of the evidence gathered to date by the PFC, and to suggest whether that evidence warrants further investigation through mechanism(s) to be suggested by the panel.

5. The final report of the panel will be published independently of whether the PFC agrees with its conclusions.

6. The final report will protect the anonymity of any family member(s), if requested.
7. While the panel should strive to reach consensus, panel members reserve the right to publish dissenting opinions to be appended to the panel report.
8. The initial target date for completion of the draft report is 31 August 2004. The panel will be free to extend that date if necessary in its judgement to ensure adequate research and interviews.
9. The final draft of the report will be submitted to the PFC and to appropriate government authorities with a 30 day comment period before the final version is published.

APPENDIX B: PANEL MEMBERS AND COUNSEL

Panel Chair: Douglass Cassel

Douglass Cassel is Professor of Law, Notre Dame Presidential Fellow, and Director of the Center for Civil and Human Rights at Notre Dame Law School, in the United States of America, where he teaches international human rights, international criminal and international humanitarian law. Previously he taught and directed similar centers in Chicago at Northwestern University School of Law and DePaul University College of Law.

He is President of the Due Process of Law Foundation in Washington, D.C., and former President of the Board of Directors of the Justice Studies Center of the Americas, to which he was twice nominated by the United States government and elected by the Organization of American States.

During 1973 to 1976 he served as a military prosecutor and defense counsel in the Judge Advocate General's Corps of the United States Navy. In 1992-93 he was Legal Advisor to the United Nations Commission on the Truth for El Salvador.

He has advised governments and non-governmental organizations on transitional justice and truth commissions in Colombia, Guatemala, Ghana, Indonesia, Panama and Peru.

A member of the Executive Council of the American Society of International Law, he co-chairs the International Law committee of the Board of Directors of the Lawyers Committee for Civil Rights Under Law, and the International Human Rights Committee of the Section on Individual Rights and Responsibilities of the American Bar Association. He has also been a consultant on international human rights law to the State Department and the Ford Foundation, and is a member of the Council on Foreign Relations in New York.

His articles are published nationally and internationally in scholarly and professional publications. His commentaries on international human rights are broadcast on Chicago Public Radio and published in the *Chicago Daily Law Bulletin*, and he is a frequent contributor to the *Chicago Tribune*. He has lectured in Africa, Asia, Europe, Canada and Latin America.

Professor Cassel earned his J.D. *cum laude* from Harvard Law School in 1972, and his B.A. *cum laude* from Yale College in 1969.

Panel Member: Susie Kemp

Susan L. Kemp was born in Scotland and is now based in The Hague, The Netherlands.

She is currently Legal Adviser to Impunity Watch, a new international research and policy group based in The Netherlands. Using a new empirical method, it assesses state performance on accountability for international crimes and gross human rights violations, against benchmarks based on legal obligations and the Joinet-Orentlicher principles on impunity. It works with local civil society partners on related policy issues.

She is also pro bono legal adviser in a team formed by the Centre for Justice and Accountability, San Francisco, to advise Spanish prosecutors in the case brought by Rigoberta Menchú against former military and security leaders of Guatemala for wartime atrocities.

Her former positions include:

Investigator, International Criminal Court 2005-2006

Gathering and analysing evidence of crimes committed in the Darfur conflict.

Centre for Human Rights Legal Action, CALDH, Guatemala City. Since 2002, external legal adviser and military analyst on Guatemalan Armed Forces' actions in its counterinsurgency campaign of 1981 and 1983.

International Center for Transitional Justice, New York: Since 2002, Consultant. Technical legal for the Guatemalan state prosecution service on the investigation of violations of international humanitarian law. International legal analysis related to Peruvian prosecutions and trainer of Peruvian prosecutors and judges on the investigation and prosecution of international crimes.

Legal Director and Counsel, CALDH 1998 – 2002 Legal Counsel to the Centre whose staff of over 60 worked on a range of legal actions and advocacy on human rights violations. Head of legal team litigating individual and class actions before national authorities and the Inter-American bodies and representing 23 indigenous communities engaged in domestic criminal proceedings against Guatemalan Military High Command members for genocide, crimes against humanity and war crimes since 2001.

Solicitor, Scottish Refugee Council From 1996 – 1998 legal representative of asylum seekers, at immigration appeals tribunals, legal adviser to applicants.

Solicitor, Skene Edwards W.S., Edinburgh

From 1992 to 1995 litigation covering contract, labour, injuries, debt, divorce, minor criminal offences, bankruptcy and sequestrations. Pro bono solicitor for Citizens Advice Bureau. Admitted to Scottish Bar and as Notary Public, N.P., September 1993.

Her other experience includes human rights monitoring for the UN mission in Guatemala, legal research in Scottish local government, guest lecturer in human rights in Guatemala and Joint Technical Committee for the drafting of the Guatemalan Freedom of

Information Bill, and organiser of the 2003 Conference on Violence against Women in State Custody in 2003 for the Due Process of Law Foundation, Washington D.C.

She was educated at Harris Academy, Dundee and Edinburgh University and holds a Masters Degree LL.M (Public International Law) with Distinction, Honours Law Degree LL.B. and postgraduate diploma in legal practice. She has publications and speaking engagements in Europe and Latin America on extradition and refugee law, investigation and prosecution of international crime, truth seeking and justice issues. She is a member of the Law Society of Scotland, and the International Association of Law Enforcement Intelligence Analysts.

Panel Member: Piers Pigou

Piers Pigou is a 39-year-old resident of South Africa. He was born in the United Kingdom and grew up in the Republic of Zambia. He studied in the UK at the Portsmouth Polytechnic (1985-1989), where he completed a BA Honours degree in Politics. In 1991 he completed his MA in Southern African Studies at the University of York.

Piers came to South Africa in 1992 as a volunteer with Quaker Peace and Service (QPS) to work at the Black Sash advice office in Johannesburg before joining PEACE ACTION in 1993, a violence monitoring organization, as a case worker. He moved on to work with a sister organization, the Independent Board of Inquiry where he monitored and conducted research and investigations into political violence on the reef. In May 1994, he initiated and participated in a massive investigation into torture allegations against the South African Police in the Vaal triangle and Johannesburg.

In October 1995 Piers joined the Potchefstroom University's legal aid clinic in the Vaal, where he ran a human rights legal aid project, focusing on past and contemporary violations by the police force. In April 1996 he was approached to become an investigator in the Johannesburg office of the Truth and Reconciliation Commission, where he worked on cases dealing with a range of gross human rights violations (e.g. he was the principal investigator into allegations against Mrs Madikizela Mandela).

In 1998, Piers joined the Community Agency for Social Enquiry (CASE), an applied research NGO based in Johannesburg (www.case.org.za). Whilst at CASE he worked on a number of projects, including on behalf of the European Union's Foundation for Human rights, an assessment of the general South African population's human rights knowledge, research into refugee rights for the United Nations High Commissioner for refugees, as well as several projects assessing public participation and research capacities in South Africa's provincial legislatures. He also continued to work as a researcher / investigator on an ad hoc basis for lawyers representing families of victims / survivors in various TRC amnesty applications. He was also involved in writing contributions for the TRC's 1998 report and 2003 codicil.

During 2000, Piers began working on a part-time basis for the Centre for the Study of Violence and Reconciliation (CSVR) where he was responsible for the co-ordination of their Violence in Transition Project (VTP) (www.csvr.org.za). He joined CSVR on a full-time basis in November 2001, where, in addition to managing the VTP he worked in a number of other CSVR programme areas, including the Criminal Justice Policy and Transition and Reconciliation programmes. During this time he wrote several book chapters on the major studies into South Africa's Truth and Reconciliation Commission and assisted a number of researchers with their work on the same topic. Piers remains a contributing editor to subsequent publications of the CSVR's Violence and Transition project.

Between January 2003 and December 2004, Piers worked on several projects in South Africa, Zimbabwe and East Timor. In East Timor, he worked for the Commission for Reception, Truth and Reconciliation as an international advisor to the Commission's Truth Seeking Division on behalf of the International Centre for Transitional Justice. He subsequently completed a detailed assessment of the Commission's unique Community Reconciliation Process for the United Nations Development Programme. Piers was also involved in contributions to the Commission's final report. In Southern Africa, Piers conducted a comprehensive review of 'Human Rights Defender' initiatives in the sub continent for the Netherlands Institute for Southern Africa. He also spent six months conducting a review of Zimbabwean Human rights initiatives and transitional justice options and has written several related reports on these subjects.

During 2005, Piers worked at the Zimbabwe Torture Victims project, which he was instrumental in establishing. The Project provides medical, psychosocial, humanitarian and legal support to primary victims of organized violence and torture from Zimbabwe.

Piers has also been involved in a number of other human rights initiatives, relating to access to information, post TRC prosecutions, and the domestication of the UN's Convention against Torture. He has also been closely involved with the development of advice offices and community based paralegals under the rubric of developing frontline access to justice in South Africa. He has been involved in several election observation missions, including the 1999 referendum in East Timor, and the 2005 parliamentary elections in Somaliland, and worked closely with the Kenyan electoral commission in the run up to landmark parliamentary elections in 2002.

In January 2006, Piers became the director of the South African History Archive (www.wits.ac.za/saha), an activist archive dedicated to archiving past and contemporary struggles in South Africa. He is engaged on a temporary basis (until mid – late 2007) to develop SAHA's strategic vision and secure longer term funding.

Panel Member: Stephen Sawyer

Stephen P. Sawyer is Senior Counsel, Center for International Human Rights, and Clinical Assistant Professor of Law, Northwestern School of Law, in Chicago. He joined

Northwestern in January 2004 as General Counsel for the Center and Adjunct Professor of Law, specializing in international human rights law. In January 2006, he was appointed a Clinical Assistant Professor of Law.

At Northwestern he has taught classes and courses on international human rights law, including human rights in transitional democracies, as well as international criminal law, and international law and politics. He is currently developing a course on comparative regional human rights law. In the spring 2006 term, he served as Faculty Adviser to an International Team Project to Russia.

His responsibilities at the Center for International Human Rights have included the following:

- Co-organizer of an international forum in the fall of 2006 entitled *Symposium on the Humanitarian Crises in Darfur and the Democratic Republic of the Congo*;
- Serving as a moderator of a panel discussion at Northwestern University Law School on the *Preventive Use of Force: the Case of Iraq* sponsored by Northwestern and the Catholic University of Leuven (January 2005);
- Work on putting together a public forum to address the risks from a human rights perspective faced by US corporations operating in today's international arena.

Additional activities on the human rights front and at the Law School have included:

- Faculty participant at the Summer Course on Human Rights sponsored by the Catholic University of Leuven, the School of Human Rights Research (Netherlands) and Northwestern University (Summer 2005 and 2006);
- Serving as a panelist in an Amnesty International Community Forum addressing human rights abuses at Abu Ghraib prison in Baghdad (April 2004) ;
- Panelist and speaker in other human rights programs

Prior Professional Experience

Prior to coming to Northwestern, Sawyer engaged in a broad practice of law, including service as a prosecutor in the Manhattan (New York) Office of the District Attorney, trying murder and official corruption cases, as deputy to the New York City Deputy Mayor for Criminal Justice, handling budget review and operations planning for NYC criminal justice agencies, and, most recently, as Assistant General Counsel at a large multinational corporation. At the corporation, among other responsibilities, Sawyer was chief litigation counsel and served as the company's primary liaison with federal and state governmental agencies on competition issues.

Education: BA (Economics), New York University; LLB, New York University Law School.

Prior Affiliations

Faculty, American Law Institute/American Bar, Airline Labor and Employment Law; Faculty, Practising Law Institute, Trial Advocacy; Faculty, The New School (New York City), Trial Advocacy Course; Panelist at forum on airline distribution issues sponsored by the Progress & Freedom Association; Hearing Participant before the United States Department of Transportation on Computer Reservation Systems Regulations; Panel member at the 2003 Annual Conference of the American Bar Association Forum on Air & Space Law, “Legal and Regulatory Issues on the Global Stage in 2003”; Association of the Bar of the City of New York: Chairman, Committee on the Civil Court; member, Committee on the Judiciary; American Bar Association, Committees on Labor Law and Litigation and on Antitrust; Member, Chicago Bar Assn.

Panel Counsel: Thomas Vega-Byrnes

Thomas Vega-Byrnes is a Chicago-based attorney in solo practice with broad country and industry sector experience in international transactions. He provides assistance to a wide range of clients throughout the world, including Fortune 500 companies, major commercial and financial institutions, governmental entities, as well as small and midsize companies.

Education:

University of Chicago Law School, Chicago, Illinois, USA, J.D. with honors received in 1990

Loyola University of Chicago, Chicago, Illinois, USA, B.A. Fine Arts, summa cum laude, May 1980

Professional Experience:

Thomas Vega-Byrnes, LLC, May 2002 - , Chicago, Illinois, Solo practice

Diverse international corporate practice, handling matters in Europe, Asia, and Latin America: foreign investments; corporate restructurings; M&A; joint ventures; software and technology licensing and services agreements; project financed engineering and construction projects of electric power and chemical plants; international and US project finance and secured lending.

Winston & Strawn, 1998 – 2002, Chicago, Illinois, Partner

International and US project finance, structured finance and commercial lending; major engineering and construction projects; M&A; joint ventures; international commercial lending and secured transactions.

Baker & McKenzie, 1990-93, 1994-1998, Chicago, Illinois

Associate in the Latin America Practice Group, adjunct member of Banking, Finance and Major Projects Practice Group.

International mergers, acquisitions and reorganizations, privatizations and concessions, Latin America, Europe, Asia/Pacific Basin; joint ventures, distribution and licensing, real estate and construction projects. Software distribution and licensing. Advised on corporate, tax, labor and other legal aspects of doing business in Latin America, including stock option and other benefits plan roll-outs.

Member, Chicago Office Hiring Committee, 1996-1998.

Baker & McKenzie, Monterrey, Mexico, 1993-94

Associate

Mexican real estate and construction projects, corporate, tax and labor matters.

Baker & McKenzie, Mexico, D.F., Summer 1989

Summer Associate, International Clerkship Program

Admitted to Bar: Illinois, 1990; New York, 2003.

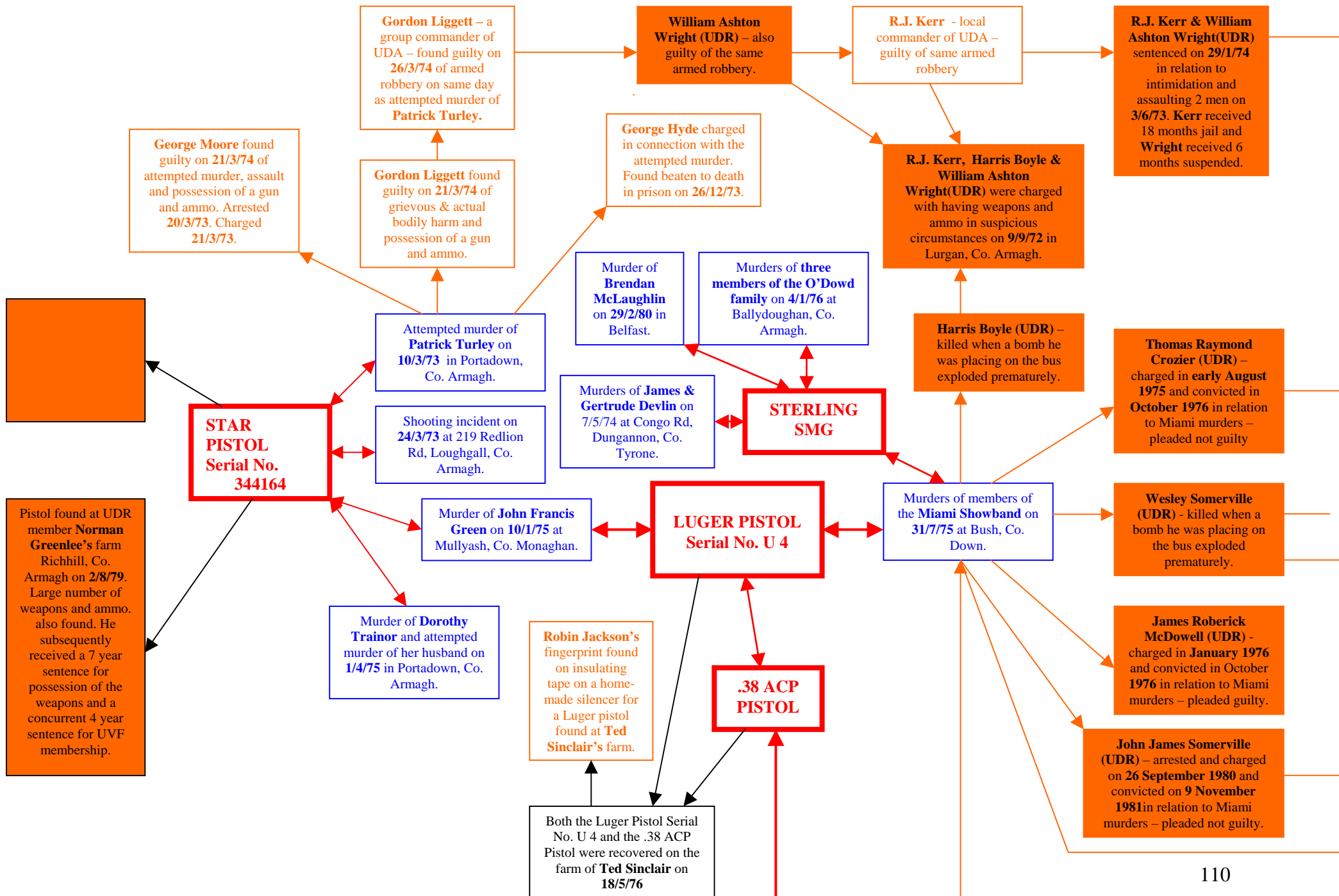
Languages: Fluent in Spanish; Portuguese; read Italian and French.

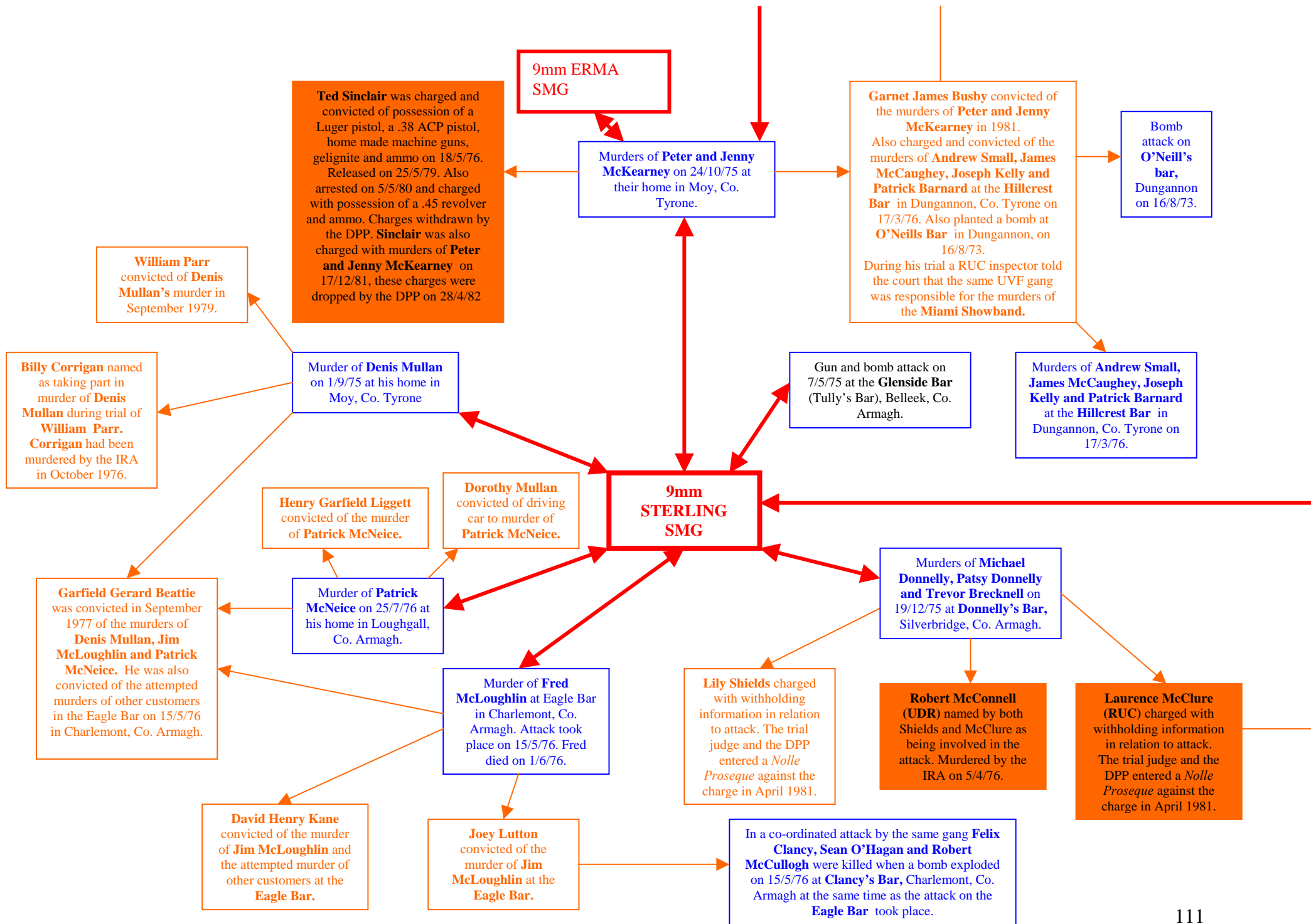
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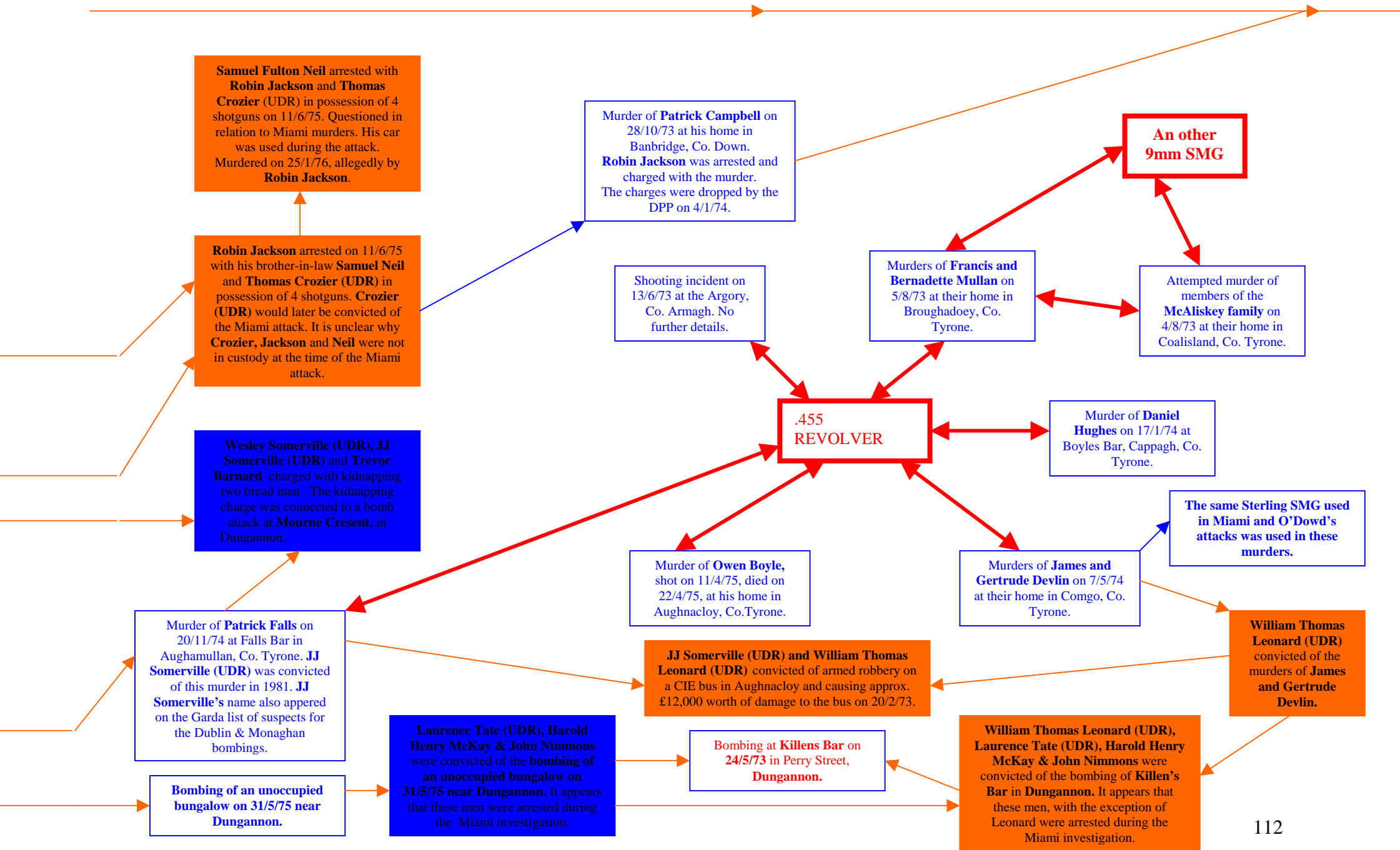
American Bar Association (Member, Sections of Business Law and International Law and Practice, Construction Law Forum); Illinois and New York State Bar Associations; Panelist, CPR Institute for Dispute Resolution, Panel of Distinguished Neutrals; Advisory Committee, Center for International Human Rights, Northwestern University School of Law.

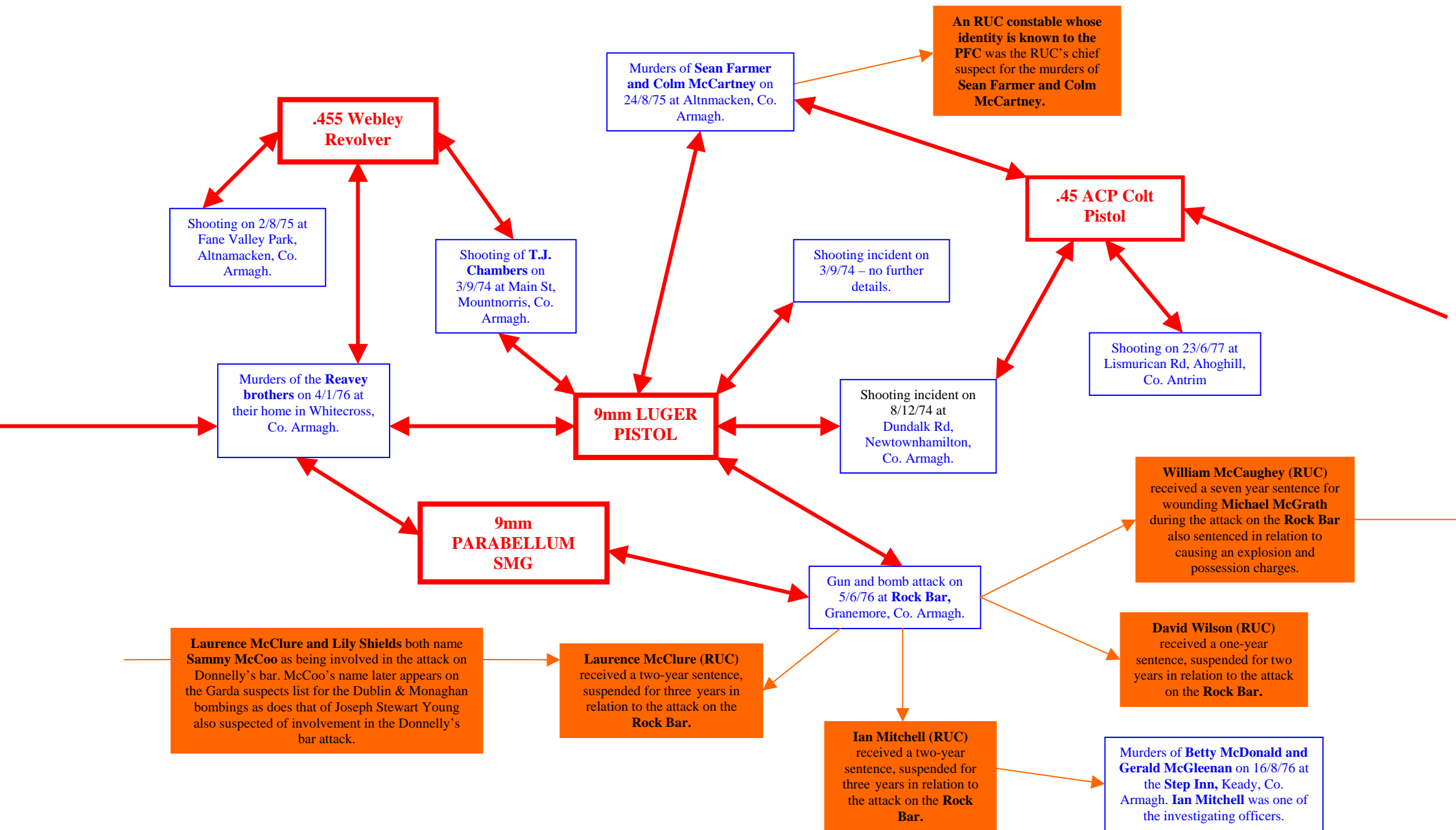
APPENDIX C: CHART OF LINKAGES AMONG CASES

Note: The following chart (which displays in six panels) was provided to the Panel by the Pat Finucane Centre. The Panel has verified the linkages shown only to the extent set forth in the text of its Report, with regard to the 25 cases it examined. The Panel has not undertaken to verify the chart with respect to cases not among those it examined. Nonetheless, we include the chart as an appendix, because we believe it merits official investigation and, if confirmed, would demonstrate a pattern of collusion even broader than the one already found by the Panel.









Robert (Robin) John Jackson, Robert Joseph Thompson & Edward William Silcock sentenced to 7 years each for possession of a .22 pistol, a .38 revolver, a magazine and 13 rounds of ammunition in suspicious circumstances in Oct. 1979. Sentenced in Jan. 1981. **Jackson's** name appeared on the Garda suspects list for the Dublin & Monaghan Bombings.

Robin Jackson and R.J. Kerr named in court as the two people who murdered **William Strathern, John Weir (RUC) and William McCaughey (RUC)** said they stayed in the car while **Kerr and Jackson** carried out the murder. The court was told by a RUC officer that **Jackson and Kerr** were not before the court as part of "police strategy".

Key
Blue Box = Attacks
Orange Box = Perpetrators
Completely Coloured Box = Perpetrators with security force connections
Red lines = Ballistics links
Orange Lines = Perpetrator links
Blue Lines = Attacks linked
Black Lines = weapons finds linked

