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A Troubling Turn

The Vilification of Human Rights Lawyers in Northern Ireland

June 2017

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Introduction

In 1998, the Clinton Administration helped bring peace to Northern Ireland. What had begun in the 1960s as a peaceful effort by the minority Catholic population to secure equal rights had, by the early 1970s, turned into a bloody conflict known as the Troubles. Thousands died over nearly three decades in a bitter dispute regarded as one of the world's most intractable conflicts.

Beginning In 1993, the Clinton Administration, joined by Tony Blair's Labor government and successive Irish governments, pressed for a negotiated political solution. The largest republican paramilitary group, the Irish Republican Army (IRA), entered into a truce and disarmed, as did Loyalist paramilitary groups, including the Ulster Volunteer Force (UVF).

The result was the Good Friday Agreement of 1998. Approved by leaders of paramilitary groups, signed by the British and Irish governments, and endorsed by public referenda in Northern Ireland and the Republic of Ireland, the Good Friday Agreement marked one of the greatest diplomatic achievements of the late 20th Century. It has saved and changed the lives of many people across Britain and Ireland, reformed Northern Ireland's security and political institutions, and introduced a greater level of democracy to Northern Ireland than it ever had before.

Nearly twenty years on, mounting hostility toward human rights lawyers is threatening to bring political violence back to Northern Ireland. As government and private researchers unearth new details about the Troubles' killings, Britain's right-wing press, public officials, and veterans' groups are demonizing solicitors who represent families of those killed by British security forces during the Troubles. These rhetorical attacks inhibit the pursuit of justice and violate the principles of the Good Friday Agreement: the primacy of the rule of law and the incorporation of European human rights law into Northern Ireland.

Prime Minister Theresa May has explicitly said the United Kingdom should leave the European Convention on Human Rights. In an October 2016 speech, she promised to "never again... let those activist, left-wing human rights lawyers harangue and harass the bravest of the brave—the men and women of Britain's Armed Forces." On April 14, 2017 British veterans groups organized marches in London, Glasgow, and Belfast to call for an end to "witch hunts" against former soldiers.¹ British tabloids *The Sun* and the *Daily Mail*, have blasted the so-called "Tank Chase Lawyers". Photographs of the lawyers and details of their homes have been published.²

Such threats are likely to multiply as more former members of the British military are charged. Several lawyers liken the growing hostility toward solicitors to the environment preceding the June 2016 killing of British M.P. Jo Cox, who was murdered by a far-right extremist. "[I]t looks like the media is being encouraged by the state to have a free run at lawyers," said Belfast solicitor John Finucane, the son of Pat Finucane, a lawyer murdered in 1989. "Without being alarmist, we have recently witnessed the murder of an M.P. by someone who was clearly disturbed and influenced by a media that isolates and vilifies."³

Some see the media's attacks on lawyers as part of a wider effort to undermine the credibility of the United Kingdom's justice system. They point to coverage of last year's high court decision on Brexit, when front page headlines branded judges as "Enemies of the People."⁴ How much the United Kingdom should be bound by international human rights standards is an issue in the current United Kingdom general election campaign.

The U.S. government has a long record of highlighting concerns of human rights lawyers in Northern Ireland. Human rights lawyer Rosemary Nelson testified in the U.S. House of Representatives shortly before she was murdered in 1999, and in May 2006 the House passed a resolution by a vote of 390-31 calling for the U.K. government to establish a full "independent public judicial" inquiry into the murder of Pat Finucane.

That inquiry has yet to happen, however, and now new threats to lawyers are emerging.⁵

This report examines these threats and the wider assault on human rights standards in the United Kingdom, discusses the so-called legacy cases related to the Northern Ireland conflict, and outlines what the U.S. government and legal community can do to help protect Northern Ireland’s human rights lawyers. It draws on interviews with lawyers, activists, academics, nongovernmental organizations (NGOs), family members of victims, and victim groups conducted during a research trip to Northern Ireland in March and April 2017.⁶

Background

The Troubles, which lasted from 1969 to 1998, entailed a level of violence not seen in Ireland since the early 1920s, when centuries of struggle against British rule resulted in war and ultimately independence for most of the country. The United Kingdom retained control of the northeast, which—unlike the rest of the island—had a majority-Protestant population that largely wanted to remain in the United Kingdom. A new country, Northern Ireland, was born. But over the ensuing decades, Catholics faced large-scale discrimination, including gerrymandered political districts, an unfair allocation of social services, and underrepresentation in the country’s police force.

Inspired heavily by the U.S. civil rights movement, Catholics in Northern Ireland began marching for equality in the late 1960s. They were met with a repressive crackdown from Northern Ireland’s political elite. The British government supported the crackdown and sent troops to “temporarily” restore order in 1969. These soldiers remained for decades as the IRA, viewing itself as the protector of the Catholic community, embarked on a campaign it described as an armed struggle and the British government defined as terrorism.

Thousands of people were killed by various parties: the British military and police, the IRA and

other anti-British republican paramilitary groups, and anti-republican Loyalist paramilitary groups (loyal to the British government, but operating illegally), including the UVF. The British government waterboarded and otherwise tortured paramilitary suspects. Lawyers representing those charged with crimes were often threatened and depicted as sympathizers of their clients’ groups.

By the early 1990s, key leaders in the British, Irish, and American governments and leaders of paramilitary and political groups in Northern Ireland sought to end the conflict. U.S. Senator George Mitchell, the U.S. special envoy to Northern Ireland from 1995 to 2001, played a crucial role, chairing the all-party negotiations that led to the Good Friday Agreement (also known as the Belfast Agreement). Paramilitary groups were represented at the talks by affiliated political parties—Sinn Féin in the case of the IRA. Under the agreement, Northern Ireland remained part of the United Kingdom, but its Catholic population gained substantially more political representation, and—crucially—all parties agreed to embed human rights in the country’s new politics.

Achieving a consensus around the Good Friday Agreement was a difficult and, for some, dangerous process. Although Northern Ireland’s politics have remained vulnerable to sectarianism and conflict, the consensus forged in 1998 has broadly held.

Today, some in the British government and media oppose the investigations into killings committed by British security forces during the Troubles. To quash or at least discredit the quest for justice, these actors are smearing the lawyers representing the families of victims. Only a few British soldiers have been charged, but many more charges are expected in the near future, as investigations uncover new information. This is likely to lead to an increase in rhetorical attacks on lawyers, which could lead to violence.

Threats and Attacks

Since the murder of Rosemary Nelson in 1999, human rights lawyers in Northern Ireland have been haunted by the prospect of deadly attacks. Despite the end of large-scale violence, the threats to lawyers doing human rights work never really went away.

According to local solicitors, in 2001, police in Northern Ireland found a hit list belonging to Loyalist paramilitaries with the names of 18 lawyers. In 2004, local police notified the legal firm Kevin Winters & Co that they had received information that a Loyalist group called the Red Hand Defenders was planning to attack “two groups of solicitors,” including Kevin Winters & Co, “within the next few days.”⁷

Although worrying, such incidents were isolated. In recent months, however, an atmosphere similar to that which preceded the killings of Finucane and Nelson has returned.

Delivering the Pat Finucane Memorial Lecture on February 23, 2017, Irish Minister for Foreign Affairs Charlie Flanagan T.D. said:

As a solicitor myself, I remember the shock which the murder of Pat Finucane, and later of Rosemary Nelson, caused amongst the entire legal profession on this island. As with any murder, these killings visited tragedy upon families and violence upon society; but this was further amplified by the chilling sense of an attack on the law itself. Those officers of the law who must work in the full glare of the public and political gaze must be allowed to do their duty without attacks on their personal or professional integrity—much less their lives. It is our duty to create the conditions under which the law can operate without fear or favour.... the past is far too near and its echoes should be far too loud for this lesson to be forgotten anywhere on these islands.

Prime Minister May’s October 2016 speech—in which she pledged not to allow “left-wing human rights lawyers” to “harangue and harass the bravest of the brave”—set the tone.⁸ In December 2016, several articles in *The Sun* and *The Daily Mail* used similar language to attack solicitors working on legacy cases. *The Sun* has the largest circulation of any U.K. daily newspaper, and *The Daily Mail* has the second-largest.

“WHY ARE OUR SOLDIERS FACING A NEW WITCH-HUNT?” asked *The Daily Mail*’s front-page headline on December 9. “Up to 1,000 retired soldiers in their 60s and 70s face a police witch-hunt some 40 years after they battled terrorism in Northern Ireland,” the piece opened. “The news comes only two months after Theresa May pledged that Britain’s forces would be protected from such witch-hunts. The veterans could face new charges, trials and even jail.”

The Sun newspaper ran similar articles on December 8 and 10. Headlines included, “TANK-CHASE LAWYERS AGONY FOR 1,000 SQUADDIES; FIRMS’ PROFIT FROM HEROES, and “LAWYERS SCORED £12M IN LEGAL AID.” Several law firms were singled out, including KRW Solicitors, founded by Kevin Winters, and O Muirigh Solicitors, run by Pdraig O Muirigh. The paper published photos of solicitors, including Kevin Winters, and featured details about his home.

In the comments section under the online version of the December 10 article one contributor wrote “Soldiers should have immunity from this kind of thing. These parasite lawyers need shooting along with the scum they’re representing.”

Winters was an apprentice solicitor working for Pat Finucane when Finucane was assassinated in 1989. “The trauma of this murder has understandably never healed,” Winters says. “I have personally been the victim of death threats, intimidation, harassment, and threatening behavior as a direct result of a misinformed perception that legal professionals representing

criminals are indistinguishable to the crimes and beliefs of their clients.”⁹

The articles, he says, “have brought back painful personal memories of the death of Pat Finucane.” Winters says the new climate is “in some ways more oppressive than police officers badmouthing us; the state attacks and the use of the media are more insidious.”¹⁰

Niall Murphy is a solicitor at KRW, one of the firms identified by *The Sun*. Because of the article, he has been “extremely distressed and concerned for my safety and the safety of my colleagues and employees. The articles have caused great distress within my immediate family....” Winters’ firm represents families of people killed by the security forces, but also former members of the security forces, and they have many clients from the Loyalist community. “People come to us to take their cases no matter what, and that hurts those trying to pigeonhole us as only being there for one part of the community.”¹¹

Of the attacks, Winters says, “I don’t like to think I do much in the way of paranoia but when they come after you, you know you’re in the zone. It’s a head-melter for whoever’s at the apex of these attacks when families and victims are finding a voice. They thought this would all be forgotten.”¹²

Murphy predicts the atmosphere is likely to get worse as the legacy cases progress. “The prosecution of some former military is what’s triggered these latest attacks and coming down the road are potentially hundreds of civil litigation cases, and cases involving British security informers, guys who were British agents. This will anger a lot of people in the establishment and there are more ugly media days coming for us. What’s happened so far is nothing to what’s ahead, when there will be reports of verdicts and settlements. These days of reckoning will be painful for the state, and they’re trying to take our lights out to stop this juggernaut.”¹³

Solicitor Pdraig O Muirigh, 40, was also named in the December 10 article in *The Sun*.

“Given the history of Rosemary and Pat, you have to nip this in the bud,” he said. Rosemary Nelson was O Muirigh’s lawyer when, as a student, he was arrested at a protest. “She helped me, won my case for compensation, and encouraged me to study law.” For O Muirigh and many others, the murdered lawyers are inspirational figures. O Muirigh’s father is a high-profile Republican who knew Pat Finucane and chatted with him regularly. “I recall one of those occasions when I was present. It wasn’t long before Pat was killed. I would have been 12 years old. My grandmother admired Pat—he had represented an uncle of mine. She had encouraged me to study law and to use the law as a ‘tool’ to help my community, just as Pat had done.”¹⁴

O Muirigh met Rosemary Nelson only a few weeks before she died, around the time she testified to the U.S. House of Representatives Congressional Subcommittee on International Operations and Human Rights. In her testimony, Nelson described her “difficulties” with Northern Ireland police, which included their “making allegations that I am a member of a paramilitary group and, at their most serious, making threats against my personal safety, including death threats.”¹⁵

O Muirigh, too, predicts the atmosphere will worsen. “[I]t is likely that we will be targeted by the right-wing media for the next five to ten years, as many of legacy cases progress through the current legal mechanisms or any new institutions agreed by politicians to resolve legacy issues in the north of Ireland,” he said. “If the right-wing media and politicians attack the work of human rights lawyers you make us easier targets for loyalist paramilitaries as we have seen in the past.”¹⁶

O Muirigh also represents a range of clients, including some from Loyalist communities. He told Human Rights First that in October 2014, police notified him that Loyalist paramilitaries had gathered information on his movements, and warned him to review his personal security. One newspaper reported that the same paramilitary

gang that had murdered Pat Finucane was behind the threats. Another featured O Muirigh's photo with cross hairs superimposed over his face.

Attacks in the media have also focused on the money critics claim lawyers stand to make from the legacy cases. *The Sun's* December 10 article attacking the lawyers featured headlines including "FIRMS PROFIT FROM HEROES and LAWYERS SCORED £12M IN LEGAL AID." The story's opening sentence blared: "A handful of law firms are set to make millions in a 'witch-hunt' probe into killings by British troops in Northern Ireland."

The article named firms Madden, Finucane and KRW Law solicitors as "trousering £12million between them in three years." It also published valuations of select solicitors' homes. O Muirigh, also mentioned in the article, told Human Rights First that "walking into city center I get comments... 'You must be the richest fucking lawyer in the world,' one woman walking past me said recently."¹⁷

A Context of Impunity

The controversy over the legacy cases comes amid a broader debate about accountability for British military personnel. Conservative Party MPs and veterans groups are pushing back against investigations into killings by former British soldiers not only in Northern Ireland, but also in Iraq and Afghanistan. On April 14, 2017, thousands of soldiers rallied in British cities to call for an end to all such prosecutions. Addressing veterans at one recent protest, Conservative M.P. and Chair of the Defence Committee Dr. Julian Lewis said that "common sense and natural justice" demanded an end to the prosecutions and called for a statute of limitations for crimes committed during the Troubles.¹⁸

A recent quashing of a murder conviction for a 2011 killing in Afghanistan has buoyed the anti-accountability effort. Former Royal Marine Alexander Blackman (known as "Marine A" for much of the court proceedings) was depicted on video killing an injured Taliban insurgent.

Blackman shot him in the chest, saying, "There you are, shuffle off this mortal coil, you cunt. It's nothing you wouldn't do to us." He then turned to his colleagues and said, "Obviously this doesn't go anywhere fellas. I've just broken the Geneva Convention."¹⁹ Nonetheless, at his March 2017 court marital appeal hearing, judges reduced the conviction from murder to manslaughter after they heard that he allegedly suffers from adjustment disorder, which allegedly impairs his ability to make rational judgments.²⁰

Those opposed to accountability have also taken encouragement from the difficulties of Phil Shiner, who handled many of the cases brought against former British military service members after the Iraq War. Shiner's firm initiated two-thirds of the 3,392 allegations received by the United Kingdom's Iraq Historic Allegations Team (IHAT). In February, 2017, however, Shiner (also described by *The Sun* as a "tank chase lawyer") lost his license as a solicitor after a tribunal found him guilty of various improprieties—including paying an Iraqi middleman to find claimants—and in March, it was reported that he was facing a criminal investigation. "Phil Shiner made soldiers' lives a misery by pursuing false claims of torture and murder—now he should apologize," said Defense Secretary Michael Fallon. "We will study any implications for outstanding legal claims closely."²¹

Those campaigning against the prosecution of British soldiers claim that lawyers are rewriting history and exploiting the legacy cases for political or financial gain. They charge that some lawyers, including Northern Ireland's chief prosecutor, are too sympathetic to political elements hoping to damage the British military.

On April 26, 2017 the U.K. Defence Committee issued a report on "Investigations into fatalities in Northern Ireland involving British military personnel," which recommended "the enactment of a statute of limitations, covering all Troubles-related incidents, up to the signing of the 1998 Belfast Agreement, which involved former members of the Armed Forces. This should be

coupled with the continuation and development of a truth recovery mechanism which would provide the best possible prospect of bereaved families finding out the facts, once no-one needed to fear being prosecuted.”²² The report also said, “It is morally indefensible for former service personnel to be caught in limbo, with the threat of investigation hanging over them.”

In January 2107, U.K. Northern Ireland Secretary James Brokenshire M.P. said, “I am clear the current system is not working and we are in danger of seeing the past rewritten...It is also clear the current focus is disproportionately on those who worked for the state—former members of the Armed Forces...”²³ In a February 2016 speech, Brokenshire’s predecessor as secretary of state, Theresa Villiers M.P. likewise criticized this “counter-narrative,” claiming there was an effort “to displace responsibility from the people who perpetrated acts of terrorism and place the State at the heart of nearly every atrocity and murder that took place.”²⁴

Speaking in parliament in December, Conservative M.P. Sir Henry Bellingham objected to the treatment of former British soldier Dennis Hutchings, charged with the 1974 killing of 27-year-old John Pat Cunningham, who had the mental age of a child and was apparently running away when he was shot. “There is no conceivable way he [Hutchings] could ever receive a fair trial without proper evidence,” said Bellingham. “These charges fly in the face of all the basic rules of criminal justice. We are seeing an outbreak of revisionism. We cannot simply revisit cases from 42 years ago and try to reinterpret them through the prism of the 21st century, with its emphasis on human rights.”²⁵

In preparing this report, Human Rights First reviewed correspondence between The Pat Finucane Centre (PFC) in Northern Ireland and the Speaker of the House of Commons John Bercow. The PFC complained to Bercow about M.P.s being permitted to discuss ongoing cases during parliamentary debates. “I am not asking you to adjudicate on the facts of this tragic case

[of JP Cunningham],” PFC’s Director Paul O’Connor wrote. “It would be our view that the facts should be established, where a prosecution has been initiated, in a court of law.” O’Connor warned of “pernicious attempts to undermine the rule of law and the independence of the prosecution service using the cover of parliamentary privilege.”

Bercow’s response acknowledged that the House of Commons “has a long-standing resolution that references should not be made in debates to cases which are active in the courts in any part of the United Kingdom...The responsibility lies principally with individual Members of Parliament to observe the resolution and to ensure the accuracy of what they say.”

Bellingham has also questioned the integrity of Northern Ireland’s Director of Public Prosecutions (DPP), a former solicitor. “What has changed?” Bellingham asked. “There is no new evidence, but what has changed is that the DPP in Northern Ireland is now Barra McGrory, Q.C.—the same person who represented [former IRA leader] Martin McGuinness in the Saville Inquiry [into the 1972 Bloody Sunday killings]. This is the person who is prepared to move away from credible evidence to political decision making, which I find very worrying. There are potentially 278 more cases involving the security forces.”²⁶

In a January 2017 parliamentary debate, Conservative M.P. Sir Gerald Howarth also questioned McGrory’s independence. “To the extent that the Secretary of State has a locus in this matter, may I make a fervent plea that he should protect the interests of former British soldiers currently being charged by the Sinn Féin-supporting Director of Public Prosecutions for Northern Ireland with murder for events that took place more than 40 years ago?”²⁷

The attempt to link solicitors and the DPP to the IRA is dangerous. For some, this effort has disturbing echoes of January 1989, when Home Office Minister Douglas Hogg M.P. said in the House of Commons that some of Northern Ireland

solicitors were “unduly sympathetic to the cause of the IRA.”²⁸ A few weeks later Pat Finucane was murdered.

Finucane’s son John said, “If people are being fed a narrative that history is being rewritten by greedy lawyers, and when you’re being identified with your clients, you feel vulnerable.”²⁹

Winters said he received an email at work on December 16 with the subject header: “IRA scum protector...you lost accept it.” He told Human Rights First, “Part of my office now is dedicated to dealing with libel action against us—we didn’t used to need that. It’s more of a fear now of opening the paper and seeing if there will be reputational damage. The battle lines have shifted, you have to spend a lot of time defending yourself because you can’t let these things go or it’s a license to demonize you.”³⁰

The Cases and Investigations

One of the investigative bodies set up by the U.K. government, The Historical Enquiries Team (HET), put the number of conflict-related deaths at 3,268, related to 2,516 individual incidents. The cases that have sparked the media attacks on solicitors are those involving the British military, believed to be responsible for 297 of the deaths. These cases are known in legal (and now increasingly common) parlance as “Article Two” cases, referring to the European Convention on Human Rights Article 2: Right to life, which states:

1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
 - a. in defense of any person from unlawful violence;

- b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- c. in action lawfully taken for the purpose of quelling a riot or insurrection.

NGOs and solicitors say the 297 cases are generally more likely to end in prosecutions than those where police officers are believed responsible, partly because the British military records are better than those of the police. Researchers looking into now-public British military files have unearthed valuable evidence and are confident of finding more.

So far, charges have been brought against former Corporal Major Dennis Hutchings for the killing of J.P. Cunningham and against two former soldiers for the killing of IRA member Joe McCann in 1972. As many as ten former paratroopers are reportedly under investigation for the 1972 Bloody Sunday killings of 14 unarmed marchers in Derry. NGOs estimate that a total of between 150 and 180 British soldiers could face charges.

In some of the legacy cases, previous investigations are now being declared flawed. On November 6, 1971, Kathleen Thompson, 47, a mother of six, was standing in her garden in Derry when a British soldier shot her dead. The army said soldiers were fired on and responded with eight shots, one of which killed Thompson. Neighbors said no shots had been fired at the army. In August 1972, the DPP chose not to pursue a case against the officer who fired the fatal shot (who was known as “Soldier D”). A November 1972 inquest returned an open verdict. Soldier D did not attend the inquest. In March 2017, High Court judge Mr. Justice Adrian Colton, the presiding judge of the Coroners Court, said the case “must be prioritized” and ordered a new inquest in Derry for later this year. Soldier D will now be compelled to attend the inquest to give evidence and be cross-examined.³¹

Also in Derry in 1972, Manus Deery, 15, was with a group of friends when he was shot in the head by a soldier from an observation post. In April

2017, a coroner declared Deery “totally innocent.” According to the coroner’s investigation, Deery died after being struck by fragments of a bullet fired by Private William Glasgow [who has since died]. The coroner’s report went on to state that neither Deery nor anyone close to him was acting in a manner that could have been reasonably perceived as a threat, that Private Glasgow was not justified in opening fire, and that the case’s original investigation was flawed and inadequate.³²

Other legacy cases worry the U.K. government partly because they’re likely to reveal the security force’s collusion in killings, and how the British military and police handled informers. A 2012 review of documents, ordered by the U.K. government into the Finucane murder and conducted by Sir Desmond de Silva, found that “In 1985 the [U.K.] Security Service assessed that 85% of the [the paramilitary Ulster Defense Association] UDA’s ‘intelligence’ originated from sources within the security forces.”³³ During another investigation headed by British Lord Stevens, 210 paramilitary suspects were arrested. Stevens estimated that 207 of them were state informers or agents.³⁴ The U.K. security forces were paying informers who were committing or aiding murders. “The state is scared of what the [Bloody Sunday] Saville inquiry unearthed, and that it can’t legally control the flow of information,” one Belfast solicitor told Human Rights First.³⁵

Meanwhile, justice for victims remains elusive. Attempts to investigate killings—by the Northern Ireland police, the HET, and the Office of the Police Ombudsman of Northern Ireland—have failed to produce significant results (the HET, criticized for inconsistency and a lack of independence, was dissolved in 2014). Only a handful of cases have been referred to the public prosecution service. While some families have been provided with new information and say the investigations have offered a degree of resolution, most feel let down.

“The frustration from some of the families is that there’s no overarching process to look at what

happened in the past, just a piecemeal approach for lawyers and families,” says John Finucane. “And the U.K. government has had a series of excuses for not dealing with the past—it went from denial to saying it’s a few bad apples to saying it’s too expensive to investigate to now saying what we’re saying about the past is a lie.”³⁶

As part of the 2014 Stormont House Agreement, the British and Irish governments and a majority of parties in Northern Ireland agreed to set up an Historical Investigations Unit (HIU) and to resource it with hundreds of staff for several years. Its realization has been slow, however, and a new political impasse in Northern Ireland plus Westminster’s lack of political will make a comprehensive review less than imminent. At the U.K.’s Universal Periodic Review at the United Nations Human Rights Council in May 2017 the U.S. government asked, “What is the status of plans to establish a Historical Investigations Unit, as provided for in the 2014 Stormont House Agreement and the 2015 Fresh Start Agreement?”³⁷

A major barrier is the U.K. government’s insistence on retaining a veto based on national security, which allows it to withhold information from families. In April 2017, academic experts and NGOs made public “Dealing with the Past: A Proposed Model for Information Redaction under the Stormont House Agreement,” which outlines how the U.K. government could end the delays and pursue the agreed upon investigations.³⁸

U.K. Backsliding on Human Rights Standards

The Good Friday Agreement states that, “The British Government will complete incorporation into Northern Ireland law of the European Convention on Human Rights (ECHR), with direct access to the courts, and remedies for breach of the Convention, including power for the courts to overrule Assembly legislation on grounds of inconsistency.” The preamble notes, “The tragedies of the past have left a deep and

profoundly regrettable legacy of suffering. We must never forget those who have died or been injured, and their families. But we can best honour them through a fresh start, in which we firmly dedicate ourselves to the achievement of reconciliation, tolerance, and mutual trust, and to the protection and vindication of the human rights of all.”

Human rights NGOs regard the ECHR as a cornerstone of the Good Friday Agreement. “Given the history of political discrimination and mistrust in policing in Northern Ireland, binding international human rights obligations have been crucial in building and bolstering public confidence in these key structures post-Troubles,” says Paddy Corrigan, Amnesty International’s program director in Northern Ireland.³⁹

Before she became U.K. Prime Minister, Theresa May, then Home Secretary, said the United Kingdom should leave the ECHR. “If we want to reform human rights laws in this country, it isn’t the E.U. we should leave, but the ECHR and the jurisdiction of its court,” she said.⁴⁰ Now human rights advocates and lawyers say that under May, the U.K. government is violating the spirit of the ECHR.

In 2015, Prime Minister David Cameron amended the Ministerial Code to remove reference to the duty to uphold international law, treaty obligations, and the administration of justice. “The Ministerial Code is a document from the Prime Minister outlining the standard of behavior expected of Ministers,” explains Yasmine Ahmed, director of human rights NGO Rights Watch U.K. “Until 15 October 2015, it read ‘The Ministerial Code should be read alongside...the background of the overarching duty on Ministers to comply with the law including international law and treaty obligations and to uphold the administration of justice and to protect the integrity of public life.’ On 15 October the underlined passage was deleted.”⁴¹

“The U.K. does not regard itself as an international outlaw, and cannot pick and choose

which of its obligations to implement,” said Daniel Holder, deputy director of the Committee on the Administration of Justice (CAJ), a Belfast-based human rights group. “It needs to respect the rule of law in its entirety, including living up to its legal obligations to protect the independence of the judiciary and legal profession.”⁴²

Under the U.N. Basic Principles of the Role of Lawyers, governments must ensure that lawyers “are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference” and “lawyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions.”⁴³

The U.K. government is also failing to protect judges against vilification bordering on incitement by members of the press. In 2016, during the debate over Brexit, Lord Chief Justice of England John Thomas and two other High Court judges ruled that Prime Minister May needed parliamentary consent to trigger the Article 50 process for Britain to leave the European Union. On November 4, *The Daily Mail* front page ran photos of the three judges with the headline “ENEMIES OF THE PEOPLE,” while *The Daily Telegraph* ran photos of the three judges under the headline of, “The judges versus the people.”⁴⁴ Justice Secretary Liz Truss, who initially said that it wasn’t her job to tell the media what to print, belatedly issued a statement defending judges.⁴⁵ Lord Thomas said Truss had been “completely and absolutely wrong” in arguing she should not speak out against the media.⁴⁶ Lord Neuberger, president of the Supreme Court, said the judiciary of England and Wales “felt attacked personally” by the coverage.⁴⁷

Lady Hale, deputy president of the Supreme Court and other senior members of the judiciary, have also voiced concern about the implications of Brexit for human rights law in the United Kingdom. Speaking to the House of Lords Constitution Committee in March, Hale said, “The one major concern we have, and probably throughout the judiciary, is that it should be made

plain in statute what authority or lack of authority or weight or lack of weight is to be given to the decisions of the Court of Justice of European Union after we have left.” While the United Kingdom is still bound by E.U. law and the Supreme Court is still making references to the European Court of Justice, Lady Hale pointed out that, “With anything that starts [after Brexit] we are no longer in a position to refer the question and the issue then would be what weight if any should we give to jurisprudence of the Luxembourg court which is relevant to the issue?”⁴⁸

Conclusion

The Good Friday Agreement, which ended the Troubles and established a peace that has held for nearly twenty years, was a grand achievement primarily for Northern Ireland, but also for the United States. The Clinton Administration made peace in Northern Ireland a top priority, invested in it accordingly, and succeeded in making it a reality.

Now an element of that success is in danger of unraveling. Renewed hostility toward human rights lawyers—those representing the families of people allegedly killed by the British military—recalls the Troubles and augurs new danger. History tells us that rhetorical attacks against lawyers by the press and public officials can lead to violence, which, in turn, inhibits the pursuit of justice and undermines the rule of law.

The hostility toward human rights lawyers strikes at the heart of the Good Friday Agreement, which embedded respect for human rights into the politics of Northern Ireland. It’s especially alarming given the United Kingdom’s broader backsliding on its human rights commitments.

Recommendations

- The U.S. government should immediately use its special relationship with the U.K. government to urge a calming of rhetoric before the vilification of lawyers leads to violence.
- The U.S. Congress should renew its call for a full independent public inquiry into the murder of Pat Finucane, hold hearings into the latest threats against lawyers, and hear directly from solicitors vilified in the U.K. parliament and press. Members of Congress should publicly urge the U.K. government to abide by its international obligations to protect human rights lawyers and uphold the rule of law.
- Former and current U.S. government officials should publicly remind the U.K. government that the peace in Northern Ireland remains fragile, families have a right to know the truth about the past, and lawyers and others facilitating that process should be free from media and political attack.
- U.S. lawyers, academics, and legal organizations should publicly raise their concerns with the U.K. government and with U.K. law organizations about the risks to lawyers and others upholding the rule of law.
- Senior U.K. government officials should publicly reaffirm the U.N. Basic Principles on the Role of Lawyers, and urgently calm the rhetoric around the work of lawyers working on legacy cases in Northern Ireland.
- The U.K. government should also outline how it will otherwise protect the lawyers from vilification and violence.
- Members of Parliament in the United Kingdom should refrain from inflammatory rhetoric against Northern Ireland lawyers and the Director of Public Prosecutions. ■

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- ¹ <http://www.telegraph.co.uk/news/2017/04/14/veterans-stage-protest-troubles-witch-hunt/>
 - ² <https://www.thesun.co.uk/news/2368744/northern-irish-law-firms-who-scored-12m-in-legal-aid-will-make-millions-more-in-witch-hunt-probe-into-killings-by-brit-troops-during-the-troubles/>
 - ³ Interview with Human Rights First April 2017
 - ⁴ <http://www.dailymail.co.uk/news/article-3903436/Enemies-people-Fury-touch-judges-defied-17-4m-Brexit-voters-trigger-constitutional-crisis.html>
 - ⁵ <https://www.congress.gov/congressional-record/2006/05/17>
 - ⁶ This report follows a series of related reports produced by Human Rights First when it was the Lawyers Committee for Human Rights, including the Human Rights and Legal Defense in Northern Ireland: The Intimidation of Defense Lawyers, the Murder of Patrick Finucane (1993), At the Crossroads: Human Rights and the Northern Ireland Peace Process (1996), and Beyond Collusion: The UK Security Forces and the Murder of Pat Finucane (2002).
 - ⁷ Interview with Human Rights First April 2017.
 - ⁸ <http://www.independent.co.uk/news/uk/politics/theresa-may-tory-conference-speech-applause-attacks-activist-left-wing-human-rights-lawyers-a7346216.html>
 - ⁹ Interview with Human Rights First April 2017
 - ¹⁰ Interview with Human Rights First April 2017
 - ¹¹ Interview with Human Rights First March 2017
 - ¹² Interview with Human Rights First April 2017
 - ¹³ Interview with Human Rights First March 2017
 - ¹⁴ Interview with Human Rights First March 2017
 - ¹⁵ <http://www.patfinucanecentre.org/node/426>
 - ¹⁶ Interview with Human Rights First March 2017
 - ¹⁷ Interview with Human Rights First March 2017
 - ¹⁸ <http://www.telegraph.co.uk/news/2017/04/14/veterans-stage-protest-troubles-witch-hunt/>
 - ¹⁹ <https://www.theguardian.com/uk-news/2017/feb/02/footage-buildup-marine-shooting-released-media-alexander-blackman>
 - ²⁰ <http://www.bbc.com/news/uk-39417239>
 - ²¹ <https://www.theguardian.com/law/2017/feb/02/iraq-human-rights-lawyer-phil-shiner-disqualified-for-professional-misconduct>
 - ²² <https://www.publications.parliament.uk/pa/cm201617/cmselect/cmdfence/1064/106407.htm>
 - ²³ <https://www.pressreader.com/uk/the-sunday-telegraph/20170129/281943132604783>
 - ²⁴ <http://www.newsletter.co.uk/news/full-text-of-speech-from-secretary-of-state-theresa-villiers-1-7209438>
 - ²⁵ <https://www.theyworkforyou.com/whall/?id=2016-12-13a.294.2>
 - ²⁶ <https://hansard.parliament.uk/commons/2016-12-13/debates/359B1D65-1837-4701-BBE1-78FE2D9A6CE9/LegacyIssuesNorthernIreland>
 - ²⁷ <https://hansard.parliament.uk/commons/2017-01-17/debates/58D7C09F-47A1-49C7-A347-A38703C7C6FF/NorthernIrelandAssemblyElection>
 - ²⁸ http://news.bbc.co.uk/2/hi/uk_news/politics/2956659.stm
 - ²⁹ Interview with Human Rights First April 2017.
 - ³⁰ Interview with Human Rights First April 2017.
 - ³¹ <https://www.derrynow.com/news/new-inquest-held-death-derry-woman-shot-british-soldier/150448>
 - ³² <https://www.theguardian.com/uk-news/2017/apr/10/derry-teenager-manus-deery-killed-by-british-army-in-1972-was-innocent-coroner-rules>
 - ³³ <http://www.irishtimes.com/news/cameron-statement-on-de-silva-report-1.754433>
 - ³⁴ <http://www.bbc.com/news/uk-32887445>
 - ³⁵ Interview with Human Rights First, March 2017.
 - ³⁶ Interview with Human Rights First April 2017.
 - ³⁷ https://www.upr-info.org/sites/default/files/document/session_27_-_may_2017/advance_questions_unitedkingdom.pdf
 - ³⁸ <http://www.patfinucanecentre.org/sites/default/files/2017-04/Independent%20Mechanism%20to%20Oversee%20Redactions%20for%20Dealing%20with%20the%20Past%203rd%20May%20Final.pdf>
 - ³⁹ <https://www.amnesty.org.uk/press-releases/peel-human-rights-act-could-undermine-peace-northern-ireland>
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- ⁴⁰ <https://www.theguardian.com/politics/2016/apr/25/uk-must-leave-european-convention-on-human-rights-theresa-may-eu-referendum>
- ⁴¹ <http://www.rwuk.org/rights-watch-uk-will-begin-legal-proceedings-against-the-government-for-erasing-international-law-from-the-ministerial-code/>
- ⁴² Interview with Human Rights First April 2017.
- ⁴³ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>
- ⁴⁴ <http://www.dailymail.co.uk/news/article-3903436/Enemies-people-Fury-touch-judges-defied-17-4m-Brexit-voters-trigger-constitutional-crisis.html>;
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- ⁴⁵ <https://www.theguardian.com/law/2016/nov/05/barristers-urge-liz-truss-to-condemn-attacks-on-brexit-ruling-judges>
- ⁴⁶ <https://www.ft.com/content/776a547e-0ef9-11e7-b030-768954394623>
- ⁴⁷ <https://www.ft.com/content/209026f8-1497-11e7-80f4-13e067d5072c>
- ⁴⁸ <https://www.ft.com/content/209026f8-1497-11e7-80f4-13e067d5072c>