



1. British Irish RIGHTS WATCH is an independent non-governmental organisation that monitors the human rights dimension of the conflict and the peace process in Northern Ireland. Our services are available free of charge to anyone whose human rights have been affected by the conflict, regardless of religious, political or community affiliations, and we take no position on the eventual constitutional outcome of the peace process.

2. This report concerns the failure of the United Kingdom government to provide an effective investigation into the murder of a lawyer, Patrick Finucane. Such an investigation must be compliant with Article 2 of the European Convention on Human Rights, which protects the right to life. Patrick Finucane was a solicitor in practice in Belfast in his firm, Madden & Finucane. On 12th February 1989 he was murdered in front of his wife and three children by the Ulster Freedom Fighters, the nom de guerre of the loyalist paramilitary organisation, the Ulster Defence Association. Since his murder, credible allegations have arisen that the police, the army, and MI5 may all have colluded in and/or incited his murder.

3. On 17th April 2003, Sir John Stevens, then the Commissioner of the Metropolitan Police, published a summary of his third investigation into collusion in Northern Ireland. His report [please see Annex A] included the following statements:

“1.3 My Enquiries have highlighted collusion, the wilful failure to keep records, the absence of accountability, the withholding of intelligence and evidence, and the extreme of agents being involved in murder. These serious acts and omissions have meant that people have been killed or seriously injured.

4.6 I have uncovered enough evidence to lead me to believe that the murders of Patrick Finucane and Brian Adam Lambert could have been prevented. I also believe that the RUC investigation of Patrick Finucane's murder should have resulted in the early arrest and detection of his killers.

4.7 I conclude there was collusion in both murders and the circumstances surrounding them. Collusion is evidenced in many ways. This ranges from the wilful failure to keep records, the absence of accountability, the withholding of intelligence and evidence, through to the extreme of agents being involved in murder.”

Thus the most senior police officer in the United Kingdom has concluded that there was collusion in the murder of Patrick Finucane.

4. As these allegations of collusion emerged, Patrick Finucane's family have campaigned for a public inquiry into his murder. British Irish RIGHTS WATCH (BIRW) have supported their campaign and conducted independent research into his murder, as have other NGOs including Amnesty International, Human Rights First, Human Rights Watch, and the Committee on the Administration of Justice. On 29th October 1999 Robert Owen QC, Ben Emmerson and Tim Otty provided a joint Opinion for Amnesty International [please see Annex B] concerning the need for a public inquiry into Patrick Finucane's murder and the compatibility of such an inquiry with an on-going police investigation. Neither the NGOs nor the Finucane family

sought or desired the mechanism agreed to at Weston Park which is described below.

5. This work ultimately led on 1st August 2001 to the inclusion in the Weston Park Agreement [please see Annex C] (a package devised by the British and Irish governments to revitalise the Northern Ireland peace process) of the following passage:

“18. Both Governments want the new policing arrangements now being established to focus on the future. But they also accept that certain cases from the past remain a source of grave public concern, particularly those giving rise to serious allegations of collusion by the security forces in each of our jurisdictions. Both Governments will therefore appoint a judge of international standing from outside both jurisdictions to undertake a thorough investigation of allegations of collusion in the cases, of the murders of Chief Superintendent Harry Breen and Superintendent Bob Buchanan, Pat Finucane, Lord Justice and Lady Gibson, Robert Hamill, Rosemary Nelson and Billy Wright.

19. The investigation of each individual case will begin no later than April 2002 unless this is clearly prejudicial to a forthcoming prosecution at that time.

Detailed terms of reference will be published but the appointed judge will be asked to review all the papers, interview anyone who can help, establish the facts and report with recommendations for any further action. Arrangements will be made to hear the views of the victims' families and keep them informed of progress.

If the appointed judge considers that in any case this has not provided a sufficient basis on which to establish the facts, he or she can report to this effect with recommendations as to what further action should be taken. In the event that a Public Inquiry is recommended in any case, the relevant Government will implement that recommendation.”

6. In May 2002 Peter Cory, a retired judge of the Canadian Supreme Court, was appointed to conduct the six investigations identified in the Weston Park Agreement. He styled his investigations “The Collusion Inquiry”. He began work in earnest in September 2002 and on 7th October 2003 he delivered all six reports. The Finucane, Hamill, Nelson and Wright reports were delivered to the British government and the Buchanan and Breen and Gibson reports to the Irish government.
7. On 18th December 2003, the Irish government published the two reports addressed to them. Judge Cory had recommended a public inquiry in the case of Buchanan and Breen, and the Irish government announced that it would immediately establish such an inquiry under the Tribunals of Inquiry (Evidence) Acts 1921 to 2002, which is legislation equivalent to the UK's Tribunals of Inquiry (Evidence) Act 1921, now repealed by the Inquiries Act 2005. The Irish government asked Judge Cory to make some minor changes to his report before publication, which the judge agreed to make.
8. The UK did not publish its reports until 1st April 2004, when it transpired that they had substituted many names with letters of the alphabet and

redacted some passages, including even some of Judge Cory's recommendations in the Finucane report.

9. In a Ministerial Statement made to the House of Commons on 1st April 2004 [please see Annex D], the Secretary of State for Northern Ireland, Paul Murphy MP, announced that the government would establish public inquiries in the Wright, Hamill and Nelson cases. The Wright inquiry would be established under the Prison Act (Northern Ireland) 1953, while the Hamill and Nelson inquiries would be conducted under the Police (Northern Ireland) Act 1998. In relation to these cases he said, at paragraph 18:

“The inquiries which I am announcing will have the full powers of the High Court to compel witnesses and papers. These are the same powers as inquiries set up under the Tribunals of Inquiry (Evidence) Act 1921, under which the Bloody Sunday Inquiry is operating.”

(On 14th July 2004, the Secretary of State for Northern Ireland published a set of Governing Principles [please see Annex E] for the conduct of the inquiries into the Nelson, Wright and Hamill cases.)
10. However, in relation to the Finucane case, he said, at paragraph 14:

“In the Finucane case, an individual is currently being prosecuted for the murder. The police investigation by Sir John Stevens and his team continues. It is not possible to say whether further prosecutions may follow. The conclusion of the criminal justice process in this case is thus some way in the future. For that reason, we will set out the way ahead at the conclusion of prosecutions.”
11. The prosecution to which the Secretary of State was referring was that of Kenneth Barrett, who had been charged with the murder of Patrick Finucane and possession of weapons. After entering a guilty plea, he was convicted on 16th September 2004 and later sentenced to life imprisonment with a tariff of 22 years. However, under the terms of the 1998 Good Friday peace Agreement, which allows for early release of paramilitary prisoners, Barrett was released from prison on 23rd May 2006. Owing to his guilty plea, no further information concerning the murder came into the public domain as a result of this prosecution, which did nothing to further the Finucane family's A.2 rights.
12. On 23rd September 2004 [please see Annex F], the Secretary of State issued the following statement:

“As I said when publishing Justice Cory's reports, the Government is determined that where there are allegations of collusion the truth should emerge. The Government has consistently made clear that in the case of the murder of Patrick Finucane, as well as in the other cases investigated by Justice Cory.

However, in the Finucane case, an individual was being prosecuted for the murder. The police investigation by Sir John Stevens and his team continued; and it was not possible to say whether further prosecutions might follow. For that reason, the Government committed to set out the way ahead at the conclusion of prosecutions.

The prosecution of Ken Barrett has now been completed, with Barrett sentenced to life imprisonment for the murder of Patrick Finucane. It is still

possible that further prosecutions might result from the Stevens investigation into the murder of Patrick Finucane. Nevertheless, with the Barrett trial now concluded, and following consultation with the Attorney General, who is responsible for the prosecutorial process, the Government has considered carefully the case for proceeding to an inquiry. In doing so, the Government has taken into account the exceptional concern about this case. Against that background, the Government has concluded that steps should now be taken to enable the establishment of an inquiry into the death of Patrick Finucane.

As in any inquiry, the tribunal will be tasked with uncovering the full facts of what happened, and will be given all of the powers and resources necessary to fulfil that task. In order that the inquiry can take place speedily and effectively and in a way that takes into account the public interest, including the requirements of national security, it will be necessary to hold the inquiry on the basis of new legislation which will be introduced shortly."

13. On 25th November 2004, the government introduced the Inquiries Bill. It was passed on 7th April 2005 [please see Annex G]. The Inquiries Act 2005 has repealed the Tribunals of Inquiries (Evidence) Act 1921 and all other statutes that contain powers to establish inquiries [Inquiries Act 2005, Schedule 2]. In repealing the 1921 Act, the Inquiries Act has not only abolished the public inquiry as it was previously defined, but has also deprived Parliament of any substantive role in the setting up of inquiries. It has also taken control of inquiries away from independent chairs and given government Ministers control over a number of key aspects of inquiries, including:

- whether there should be an inquiry (s. 1);
- what its terms of reference should be (s. 5);
- the membership of the inquiry panel (s. 4)
- whether the inquiry will be held in public (s. 19);
- whether evidence put before the inquiry will be made public (s. 19); and
- whether the final inquiry report will be made public (s. 25).

The Act also gives the Minister the power to suspend an inquiry (s.13), to terminate it (s. 14), and to alter its terms of reference (s. 5(3)). The Minister may also, with certain somewhat weak limitations, replace the chair and/or the panel members (s. 12), one of the grounds being that a member of the inquiry has failed to comply with a duty imposed by the Act (s. 12 (3) (b)). If a Minister believes the inquiry has acted outside its terms of reference, s/he can withhold funding for that aspect of the inquiry's work (s. 39).

14. In relation to the Finucane case, the net effect of the Act is as follows. In the first place, the Secretary of State for Northern Ireland will be the only person who can decide whether there should be an inquiry into the Finucane case at all (s. 1). He could, if he chooses, simply refuse to hold an inquiry. On the assumption that there is an inquiry, the Secretary of State will decide its terms of reference (s. 5). The only person he needs to consult about the terms of reference is the chair of the inquiry (s. 5 (4)), whom he appoints (s. 4). He need not consult the Finucane family, or Sir John Stevens, who conducted the police investigation, nor Judge Cory, who enquired into the case at the joint request of the British and Irish governments. The Secretary of State will appoint the inquiry's panel

members (s.4). He must ensure that the panel has the necessary expertise (s. 8), but persons with a direct interest in the matter under inquiry, or a close association with an interested party, can be appointed so long as doing so could not "reasonably be regarded as affecting the impartiality of the inquiry panel" (s. 9). Once again, the Minister need not consult anyone about who to appoint to chair the inquiry, and need only consult the chair about the appointment of other panel members (s. 5 (4)). One of the minister's strongest powers is his ability to issue a restriction notice (s.19). Such a notice can determine whether all or part of the inquiry should be held in public. In theory, an inquiry could be held entirely behind closed doors. The Secretary of State has already said that much of any Finucane inquiry would have to be held in private (please see paragraph 15 below). It is possible that the Finucane family themselves, and even their lawyers, would not be allowed to be present during some of the hearings. Nor would it be possible for independent human rights groups to send observers to closed sessions in order to place any inquiry under independent scrutiny. A restriction notice can also determine whether evidence placed before an inquiry can be disclosed or published. The three NGOs anticipate that many crucial documents relating to the Finucane case will not be made public on the grounds that they deal with sensitive intelligence matters. Finally, the Secretary of State will decide how much, if any, of the inquiry's final report will be made public (s. 25).

15. In a number of media interviews following his statement on 1st April 2004, the Secretary of State said that hearings in the Finucane case would have to be held mostly in private. On 1st April 2005, speaking at the United Nations Commission on Human Rights, the Irish Ambassador to the UN, HE Maire Whelan, was reported as having made the following statement [please see Annex H]:

"MARY WHELAN ([Ireland](#)) said the case of Pat Finucane, along with Rosemary Nelson's, had been addressed by the appropriate special procedure of the Commission. The Government had welcomed the publication of reports on the murders, and the announcement that public inquiries would be set up into the circumstances surrounding the murders, and these inquiries had now been established and had begun their initial investigations. The British Government had announced that an inquiry would be established on the basis of new legislation. While welcoming this, there was concern for the provisions of the legislation proposed.

Any inquiry into this case should be public to the degree possible, and any disputes about this should be independently arbitrated by the courts. Any such inquiry should also be independent of the Government. The Inquiries Bill would not allow for the required independence. The family of Pat Finucane and the community at large wanted the issue of collusion publicly and independently examined to establish the facts. However, the family, after battling for almost fifteen years, were now being asked to accept something that failed to fulfil the required criteria. They had made it clear they would not cooperate with an enquiry established under the Inquiries Bill. The Government of Ireland with regret asked again that the appropriate special procedure of the Commission continue to give attention to the case of Mr. Finucane."

The United Kingdom exercised its right of reply:

"NICK THORNE (United Kingdom), speaking in a right of reply in response to the statement made by Ireland on the issue of the inquiry into the death of Pat Finucane, said the United Kingdom continued to believe that an inquiry held under the aegis of the new Inquiry Bill was the best way forward. The independent Canadian Judge who had overseen the investigation into allegations of collusion in the death of Pat Finucane said that the subsequent Inquiry should be held to the greatest extent possible in public, and this was what would happen. The new Bill did not allow anyone to withhold information from the Chair of the Inquiry. The Inquiry would have to be balanced with national security, and thus a large proportion of the Inquiry would probably have to be held in private."

Both the Finucane family and BIRW accept that it may be necessary for some sessions of any inquiry into Patrick Finucane's murder, howsoever constituted, to be held in private. The NGOs' objections to the government's approach are, first, that it should be the inquiry chair and not the Minister who decides on the issue of privacy, and, secondly, closed sessions should be the exception and not the rule.

16. Judge Cory's recommendations [please see Annex I] in relation to the Finucane case were couched in the following terms:

"The basic requirements for a public inquiry

1.294 When I speak of a public inquiry, I take that term to encompass certain essential characteristics. They would include the following:-

An independent commissioner or panel of commissioners.

The tribunal should have full power to subpoena witnesses and documents together with all the powers usually exercised by a commissioner in a public inquiry.

The tribunal should select its own counsel who should have all the powers usually associated with counsel appointed to act for a commission or tribunal of public inquiry.

The tribunal should also be empowered to engage investigators who might be police officers or retired police officers to carry out such investigative or other tasks as may be deemed essential to the work of the tribunal.

The hearings, to the extent possible, should be held in public.

The findings and recommendations of the Commissioners should be in writing and made public.

The importance and necessity of holding a public inquiry in this case

1.295 During the Weston Park negotiations, which were an integral part of the implementation of the Good Friday Accord, six cases were selected to be reviewed to determine whether a public inquiry should be held with regard to any of them.

1.296 The Finucane case was specifically chosen as one of the six cases to be reviewed to determine if there was sufficient evidence of collusion to warrant the directing of a public inquiry. In light of this provision in the original agreement, the failure to hold a public inquiry as quickly as it is reasonably possible to do so could be seen as a denial of that agreement, which appears to have been an important and integral part of the peace process. The failure to do so could be seen as a cynical breach of faith which could have unfortunate consequences for the peace accord.

1.297 Further, if as I have found, there is evidence which could be found to constitute collusion then the community at large would, undoubtedly, like to see the issue resolved quickly. This is essential if the public confidence in the police, the army and the administration of justice is to be restored. In this case only a public inquiry will suffice. [emphasis added] Without public scrutiny doubts based solely on myth and suspicion will linger long, fester and spread their malignant infection throughout the Northern Ireland community.

1.298 The Attorney General has the difficult and onerous official duty to consider and decide whether prosecutions will have to be brought in light of the further evidence which has been brought to light. If it is determined that prosecutions are to proceed then the public inquiry would in all probability have to be postponed, since it is extremely difficult to hold a public inquiry at the same time as a prosecution. This would be a bitter disappointment to the Finucane family and a large segment of the community. It is a difficult decision that only the Attorney General can make. If the evidence makes it apparent that an individual has committed an offence then as a rule there should be a prosecution. Society must be assured that those who commit a crime will be prosecuted and if found guilty punished.

1.299 If criminal prosecutions are to proceed the practical effect might be to delay the public inquiry for at least two years. The Finucane family will be devastated. A large part of the Northern Ireland community will be frustrated. Myths and misconceptions will proliferate and hopes of peace and understanding will be eroded. This may be one of the rare situations where a public inquiry will be of greater benefit to a community than prosecutions. If, for example, the person to be prosecuted is a member of the military then military discipline resulting in loss of rank and benefits may be a far greater punishment and have a far greater deterrent effect than a prosecution.

1.300 If this public inquiry is to proceed and if it is to achieve the benefits of determining the flaws in the system and suggesting the required remedy, and if it is to restore public confidence in the army, the police and the judicial system, it should be held as quickly as possible.

1.301 There are other factors that will have to be considered. For example it cannot be forgotten that Patrick Finucane was murdered over 14 years ago. Important potential witnesses such as Brian Nelson and William Stobie have died or been murdered. Memories are fading fast. In light of my finding that there is sufficient evidence of collusion to warrant a public inquiry the community might prefer a public inquiry over a prosecution even if it means that some witnesses must receive exemption from prosecution. The difficult decision to be made by the Attorney General will require a careful and sensitive balancing of all the relevant factors.

1.302 Concerns may be raised regarding the costs and time involved in holding public inquiries. My response to that is threefold:

1. If public confidence is to be restored in public institutions then in some circumstances such as those presented in this case a public inquiry is the only means of achieving that goal.
2. The original agreement contemplated that a public inquiry would be held if the requisite conditions had been met. That there is evidence which could constitute collusion has been established in this inquiry. Thus, in this case, the requisite condition has been met.

3. Time and costs can be reasonably controlled. For example, a maximum allowance could be set for counsel appearing for every party granted standing. That maximum amount should only be varied in extraordinary circumstances duly approved by a court on special application. Counsel and the Commissioner or Commissioners could undertake to devote their full time to the inquiry until it is completed. If the Commissioner found that the actions of a counsel were unnecessarily and improperly delaying the proceedings the costs of that delay could be assessed against that counsel or his or her client.

1.303 These are simply suggestions for controlling the unnecessary expenditure of public funds. Obviously there are many variations that could be played upon the important theme of cost reduction of public inquiries. If implemented, they could reduce the burden on the public purse and lead to greater harmony and fewer discordant notes in the inquiry process.

1.304 The Good Friday Accord and the Weston Park Agreement, which set out the selected cases as an integral part of the Accord, must have been taken by both Governments to be a significant step in the peace process. Six cases were chosen and the Agreement was negotiated and entered into on the basis that, if evidence which could constitute collusion was found, a public inquiry would be held. In those cases where such evidence has been found, the holding of a public inquiry as quickly as is reasonably possible is a small price to pay for a lasting peace.

1.305 At the time of the Agreement, the parties would have had in mind a public inquiry as that term was known in 2001. Yet all reasonable people would agree that an inquiry should proceed as expeditiously and economically as possible. They are not designed, and should not be considered, as a means of enriching the legal profession. No reasonable person could object to strictures being placed on the inquiry to ensure these goals. These strictures would benefit all."

17. It will be noted that the government has ignored two further aspects of Judge Cory's recommendations, apart from the failure to establish a public inquiry. First, in their statement of 1st April 2004, they expressly used the prosecution of Kenneth Barrett, and by implication other potential prosecutions, as an excuse for not committing themselves to holding a public inquiry, despite Judge Cory's proposition that, "This may be one of the rare situations where a public inquiry will be of greater benefit to a community than prosecutions." Secondly, Judge Cory's exhortation that the Finucane case should be settled promptly has fallen on deaf ears. Over two years after he delivered his report there is still no sign of a proper public inquiry.
18. On 16th March 2005, a hearing was held by the Africa, Global Human Rights and International Relations Subcommittee of the US Congress into the progress made in the five public inquiries recommended by Judge Cory. Judge Cory was unable to attend the hearing, but on 15th March 2005 sent a letter [please see Annex J] instead, which read:
"The proposed legislation pertaining to the public inquiries is unfortunate to say the least.

First, it must be remembered that when the Weston Park Accord was signed, the signatories would have had only one concept of a public inquiry. Namely, that it would be conducted pursuant to the *1921 Public Inquiry Act* [by which he means the *Tribunals of Inquiry (Evidence) Act 1921* – his emphasis]. Indeed, as an example, the Bloody Sunday Inquiry would have commenced its work as a public inquiry by that time. The families of the victims and the people of Northern Ireland would have thought that if a public inquiry were to be directed it would be brought into existence pursuant to the *1921 Public Inquiry Act* [his emphasis].

To change the ground rules at this late date seems unfair. It seems as well unnecessary since the security of the realm would be ensured by the courts when the issue arose in a true public inquiry.

My report certainly contemplated a true public inquiry constituted and acting pursuant to the provisions of the 1921 Act.

Further, it seems to me that the proposed new Act would make a meaningful inquiry impossible. The commissions would be working in an impossible situation. For example, the Minister, the actions of whose ministry was to be reviewed by the public inquiry would have the authority to thwart the efforts of the inquiry at every step. It really creates an intolerable Alice in Wonderland situation. There have been references in the press to an international judicial membership in the inquiry. If the new Act were to become law, I would advise all Canadian judges to decline an appointment in light of the impossible situation they would be facing. In fact, I cannot contemplate any self respecting Canadian judge accepting an appointment to an inquiry constituted under the new proposed act."

Thus Judge Cory clarified what he had meant in making his recommendation for a public inquiry, and made it abundantly clear that he did not consider the Inquiries Act to be a suitable vehicle for the type of inquiry he had recommended.

19. Judge Cory's view that no self-respecting Canadian judge would chair an inquiry into the Finucane case (or, conceivably, any other case) has been echoed by Lord Saville of Newdigate, who chaired the Bloody Sunday Inquiry, the longest and most thorough public inquiry in English legal history. In a letter [please see Annex K] dated 26th January 2005 to Baroness Ashton, a junior Minister at the Department of Constitutional Affairs, concerning the Inquiries Bill, Lord Saville said:

"I take the view that this provision [s. 19 on restrictions notices] makes a very serious inroad into the independence of any inquiry; and is likely to damage or destroy public confidence in the inquiry and its findings, especially in any case where the conduct of the authorities may be in question.

As a Judge, I must tell you that I would not be prepared to be appointed as a member of an inquiry that was subject to a provision of this kind. This is because I take the view that it is for the inquiry panel itself to determine these questions, subject of course to the right of those concerned to challenge in court any ruling that it might make or refuse to make. To allow a Minister to impose restrictions on the conduct of an inquiry is to my mind to interfere unjustifiably

with the ability of a judge conducting an inquiry to act impartially and independently of government, as his judicial oath requires him to do.

I have shown the provision in question to my colleagues on the Inquiry, William Hoyt (formerly Chief Justice of the Canadian Province of New Brunswick) and John Toohey (formerly a Justice of the High Court of Australia). Both have told me that they too would not be prepared to accept appointment to an inquiry that was subject to a provision of this kind, for the same reasons as those I have given."

20. Patrick Finucane's widow, Geraldine, took a case to the European Court of Human Rights [Finucane v UK, Application no. 29178/95, 1 July 2003 – please see Annex L] in which she claimed that there had been no proper, effective investigation into his death. Paragraph 84 of the judgment concludes:

"The Court finds that the proceedings following the death of Patrick Finucane failed to provide a prompt and effective investigation into the allegations of collusion by security personnel. There has consequently been a failure to comply with the procedural obligation imposed by Article 2 of the Convention and there has been, in this respect, a violation of that provision."

The Court also found that:

- there was a lack of independence of police investigators investigating the incident from the officers or members of the security forces implicated in the incident;
- there was a lack of public scrutiny and information to the victims' families on the reasons for the decision of the Director of Public Prosecutions not to prosecute any officer in respect of relevant allegations;
- the inquest procedure did not play an effective role in securing a prosecution in respect of any criminal offence which may have been disclosed;
- the scope of examination of the inquest was too restricted; and
- there was no prompt or effective investigation into allegations of collusion.

The prosecution of Kenneth Barrett has done nothing to remedy these defects.

21. The case has been before the Council of Europe's Committee of Ministers ever since. On 23rd February 2005 the Committee adopted Interim Resolution ResDH(2005)20 [please see Annex M]. The Committee noted that the Inquiries Bill, as it then was, was "intended to serve as a basis for a further inquiry" into the Finucane case and called on the UK "rapidly to take all outstanding measures and to continue to provide the Committee with all necessary information and clarifications to allow it to assess the efficacy of the measures taken, including, where appropriate, their impact in practice". It recalled "the respondent State's obligation under the Convention to conduct an investigation that is effective 'in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances and to the identification and punishment of those responsible', and the Committee's consistent position that there is a continuing obligation to conduct such investigations inasmuch as procedural violations of Article 2 were found in these cases".

The Committee decided “to pursue the supervision of the execution of the present judgments [six cases were involved altogether] until all necessary general measures have been adopted and their effectiveness in preventing new, similar violations has been established and the Committee has satisfied itself that all necessary individual measures have been taken to erase the consequences of the violations found for the applicants” and “to resume consideration of these cases, as far as individual measures are concerned, at each of its DH meetings, and, as far as outstanding general measures are concerned, at the latest within nine months from today”.

22. In June 2005, the Council of Europe's Committee on Legal Affairs and Human Rights published an Introductory Memorandum and Working Paper on Implementation of judgments of the European Court of Human Rights [please see Annex N], in which the UK was named as one of 13 Member States of the Council of Europe which had failed to implement decisions of the European Court of Human Rights. The Finucane case was one of those mentioned in the reports. The Committee's Rapporteur, Erik Jurgens, said:
- “While most of the inquiries that will be held under it [the Inquiries Act 2005] are not likely to engage Article 2, the United Kingdom government has indicated that it is satisfied that, in those cases in which Article 2 of the Convention is engaged, the Act is capable of being used to hold an inquiry that will discharge or contribute to the discharge of the state's obligations under that article to provide an effective official investigation. The applicant's representatives have, however, forwarded a number of submissions, including statements by judges having sat on previous inquiries and by NGOs, casting doubt on the capacity of an inquiry set up under the 2005 Act to fulfil the procedural requirements of Article 2.”

23. It is now settled law that the United Nations' Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions [please see Annex O] are implied into Article 2 and into domestic law [McCann v United Kingdom [1995] 21 EHRR; Jordan v UK (2001); R v Secretary of State for the Home Department ex parte Amin, HoL, 16 October 2003 etc]. The murder of Patrick Finucane has been taken up by the United Nations' Special Rapporteur on Extrajudicial, Arbitrary or Summary Executions, and is clearly covered by these Principles. The following Principles are particularly relevant when considering the compliance of the Inquiries Bill with Article 2 in the context of the Finucane case:

“9. There shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.

10. The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify. The same shall apply to any witness. To this end, they shall be entitled to issue summonses to witnesses, including the officials allegedly involved and to demand the production of evidence.

11. In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.

16. Families of the deceased and their legal representatives shall be informed of, and have access to any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence. The family of the deceased shall have the right to insist that a medical or other qualified representative be present at the autopsy. When the identity of a deceased person has been determined, a notification of death shall be posted, and the family or relatives of the deceased shall be informed immediately. The body of the deceased shall be returned to them upon completion of the investigation.

17. A written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. The report shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The Government shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it."

24. On 21st April 2005 the United Nations endorsed an Updated Set of Principles for the Promotion and Protection of Human Rights through Action to Combat Impunity [please see Annex P]. The UK was one of the sponsors of Resolution E/CN.4/2005/L.93 [please see Annex Q] which endorsed these Principles. Particularly relevant to the Finucane case are the following Principles:

"PRINCIPLE 2. THE INALIENABLE RIGHT TO THE TRUTH

Every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the

perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations.

PRINCIPLE 4. THE VICTIMS' RIGHT TO KNOW

Irrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims' fate.

PRINCIPLE 5. GUARANTEES TO GIVE EFFECT TO THE RIGHT TO KNOW

States must take appropriate action, including measures necessary to ensure the independent and effective operation of the judiciary, to give effect to the right to know. Appropriate measures to ensure this right may include non-judicial processes that complement the role of the judiciary. Societies that have experienced heinous crimes perpetrated on a massive or systematic basis may benefit in particular from the creation of a truth commission or other commission of inquiry to establish the facts surrounding those violations so that the truth may be ascertained and to prevent the disappearance of evidence. Regardless of whether a State establishes such a body, it must ensure the preservation of, and access to, archives concerning violations of human rights and humanitarian law.

PRINCIPLE 7. GUARANTEES OF INDEPENDENCE, IMPARTIALITY AND COMPETENCE

Commissions of inquiry, including truth commissions, must be established through procedures that ensure their independence, impartiality and competence. To this end, the terms of reference of commissions of inquiry, including commissions that are international in character, should respect the following guidelines:

- (a) They shall be constituted in accordance with criteria making clear to the public the competence and impartiality of their members, including expertise within their membership in the field of human rights and, if relevant, of humanitarian law. They shall also be constituted in accordance with conditions ensuring their independence, in particular by the irremovability of their members during their terms of office except on grounds of incapacity or behaviour rendering them unfit to discharge their duties and pursuant to procedures ensuring fair, impartial and independent determinations;
- (b) Their members shall enjoy whatever privileges and immunities are necessary for their protection, including in the period following their mission, especially in respect of any defamation proceedings or other civil or criminal action brought against them on the basis of facts or opinions contained in the commissions' reports;
- (c) In determining membership, concerted efforts should be made to ensure adequate representation of women as well as of other appropriate groups whose members have been especially vulnerable to human rights violations.

PRINCIPLE 11. ADEQUATE RESOURCES FOR COMMISSIONS

The commission shall be provided with:

- (a) Transparent funding to ensure that its independence is never in doubt;
- (b) Sufficient material and human resources to ensure that its credibility is never in doubt.

PRINCIPLE 13. PUBLICIZING THE COMMISSION'S REPORTS

For security reasons or to avoid pressure on witnesses and commission members, the commission's terms of reference may stipulate that relevant portions of its

inquiry shall be kept confidential. The commission's final report, on the other hand, shall be made public in full and shall be disseminated as widely as possible.

PRINCIPLE 14. MEASURES FOR THE PRESERVATION OF ARCHIVES

The right to know implies that archives must be preserved. Technical measures and penalties should be applied to prevent any removal, destruction, concealment or falsification of archives, especially for the purpose of ensuring the impunity of perpetrators of violations of human rights and/or humanitarian law.

PRINCIPLE 15. MEASURES FOR FACILITATING ACCESS TO ARCHIVES

Access to archives shall be facilitated in order to enable victims and their relatives to claim their rights. Access shall be facilitated, as necessary, for persons implicated, who request it for their defence. Access to archives should also be facilitated in the interest of historical research, subject to reasonable restrictions aimed at safeguarding the privacy and security of victims and other individuals. Formal requirements governing access may not be used for purposes of censorship.

PRINCIPLE 19. DUTIES OF STATES WITH REGARD TO THE ADMINISTRATION OF JUSTICE

States shall undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and take appropriate measures in respect of the perpetrators, particularly in the area of criminal justice, by ensuring that those responsible for serious crimes under international law are prosecuted, tried and duly punished. Although the decision to prosecute lies primarily within the competence of the State, victims, their families and heirs should be able to institute proceedings, on either an individual or a collective basis, particularly as *parties civiles* or as persons conducting private prosecutions in States whose law of criminal procedure recognizes these procedures. States should guarantee broad legal standing in the judicial process to any wronged party and to any person or non-governmental organization having a legitimate interest therein.

PRINCIPLE 30. RESTRICTIONS ON THE PRINCIPLE OF THE IRREMOVABILITY OF JUDGES

The principle of irremovability, as the basic guarantee of the independence of judges, must be observed in respect of judges who have been appointed in conformity with the requirements of the rule of law. Conversely, judges unlawfully appointed or who derive their judicial power from an act of allegiance may be relieved of their functions by law in accordance with the principle of parallelism. They must be provided an opportunity to challenge their dismissal in proceedings that meet the criteria of independence and impartiality with a view toward seeking reinstatement.

PRINCIPLE 37. DISBANDMENT OF PARASTATAL ARMED FORCES/DEMobilIZATION AND SOCIAL REINTEGRATION OF CHILDREN

Parastatal or unofficial armed groups shall be demobilized and disbanded. Their position in or links with State institutions, including in particular the army, police, intelligence and security forces, should be thoroughly investigated and the information thus acquired made public. States should draw up a reconversion plan to ensure the social reintegration of the members of such groups. Measures should be taken to secure the cooperation of third countries

that might have contributed to the creation and development of such groups, particularly through financial or logistical support. Children who have been recruited or used in hostilities shall be demobilized or otherwise released from service. States shall, when necessary, accord these children all appropriate assistance for their physical and psychological recovery and their social integration.

PRINCIPLE 38. REFORM OF LAWS AND INSTITUTIONS CONTRIBUTING TO IMPUNITY

Legislation and administrative regulations and institutions that contribute to or legitimize human rights violations must be repealed or abolished. In particular, emergency legislation and courts of any kind must be repealed or abolished insofar as they infringe the fundamental rights and freedoms guaranteed in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Legislative measures necessary to ensure protection of human rights and to safeguard democratic institutions and processes must be enacted. As a basis for such reforms, during periods of restoration of or transition to democracy and/or peace States should undertake a comprehensive review of legislation and administrative regulations."

25. BIRW understands that, following McKerr, the Finucanes probably have no automatic right under domestic law to an Article 2 compliant inquiry because the death occurred before the Human Rights Act 1998 came into force in October 2000. However, recent cases before the Court of Appeal in Northern Ireland have been exploring whether s. 3 of the Human Rights Act 1998, which says that so far as possible legislation must be read and given effect in a way which is compatible with Convention rights, means that, McKerr notwithstanding, inquests held after the Human Rights Act came into force should be conducted in a way that is compatible with Article 2. Specifically, and following the judgement of the House of Lords in Middleton, the Court of Appeal has been grappling with the interpretation of the word "how" in relation to a death. Nicholson LJ, who gave the judgment in the Bradley case that "how" means "in what manner", overturned himself in Jordan [2004] NICA 29 (1) [please see Annex R] and said that he now believes that "how" should be interpreted as meaning "by what means and in what circumstances". This judgment was given on 10th September 2004. On 14th January 2005, a differently constituted Court of Appeal, dealing with the issue of disclosure in McCaughy and Grew [2225] NICA 1 [please see Annex S], held that s. 3 of the Human Rights Act 1998 did not apply to two deaths arising in 1990, and that the applicants were not entitled to an Article 2-compliant inquest. Leave to appeal to the House of Lords is being sought in both cases. In the meantime, a third case, McIlwaine, is part-heard in the High Court in Northern Ireland and may resolve the question of entitlement to an A. 2 compliant inquest, at least in the Northern Ireland jurisdiction. Meanwhile, the English High Court held in July 2005, in a case called Hurst, that the requirement of s. 3 of the Human Rights Act 1998 to read and give effect to all legislation, so far as possible, in a way that is compatible with the Convention rights listed in the Act whenever that legislation may have been enacted, means that public bodies must have regard to Article 2 and other Convention rights even where the death occurred prior to the Human Rights Act's coming into force. The ruling in McKerr in the House of Lords, was concerned only with

the retrospectivity of domestic rights created by the Human Rights Act and cannot exclude international Convention rights. If Hurst survives in the House of Lords, whence it is headed, this means that deaths which took place before October 2000 will after all be entitled to an effective investigation.

26. Whatever the effect of McKerr, the UK government has conceded the need for an inquiry into the Finucane case, and also said in Ministerial statements on 1st April 2004 [please see Annex D, paragraph 12 – “The Government stands by the commitment we made at Weston Park”] and 23rd September 2004 [please see Annex F – “The Government has consistently made clear that in the case of the murder of Patrick Finucane ... it stands by the commitment made at Weston Park”] that it stands by the commitment it made at Weston Park. It could therefore be argued that this inquiry arises from the Weston Park Agreement, which was concluded on 1st August 2001, rather than from the death of Patrick Finucane on 12 February 1989.
27. On 23rd November 2005 the Secretary of State for Northern Ireland, Peter Hain MP, agreed to a request from Lord MacLean, the chair of the Billy Wright Inquiry, to convert that statutory basis of that inquiry from the Prisons Act (Northern Ireland) 1953 to the Inquiries Act 2005. On 29th March 2006, he agreed to a similar request from the chair of the Robert Hamill Inquiry, which was originally established under the Police (Northern Ireland) Act 1998. Both inquiries claimed that their original statutory basis did not give them sufficient powers to compel witness or discovery of documents. Both inquiries are now vulnerable to government interference. David Wright, the father of Billy Wright, has challenged the conversion of his inquiry by way of judicial review, arguing that he had a legitimate expectation to a proper public inquiry and that the Inquiries Act 2005 is not Article 2-compliant. Amnesty International, British Irish RIGHTS WATCH, and the Committee on the Administration of Justice have made a joint third party intervention in the case, as has the Northern Ireland Human Rights Commission. In BIRW's opinion, the government should have followed Ireland's example and established all four of the public inquiries recommended by Judge Cory under the Tribunals of Inquiry (Evidence) Act 1921. By failing to do so, they engineered a situation in which conversion to the Inquiries Act 2005 would be sought, thus undermining the Finucane family's opposition to the use of the Act.
28. On 7th February 2006, the Finucane family met the Secretary of State for Northern Ireland. Jane Winter, Director of BIRW, was also present. During the meeting it became abundantly clear that the Secretary of State was of the view that members of the security forces and intelligence services, the selfsame bodies that stand indicted of collusion in the Finucane murder, would not co-operate with an inquiry unless it was held under the Inquiries Act. He also revealed that civil servants were already drawing up a Restriction Notice for the purposes of the inquiry, despite the fact that no judge had yet been appointed to chair the inquiry. It was thus abundantly

obvious that the Secretary of State would have control of the inquiry and the judge would merely be a cipher. On 20th February 2006 Peter Hain wrote to the Finucane family confirming that there was no alternative route to an inquiry other than the Inquiries Act. It later emerged that premises had been acquired for the inquiry hearings in London, making it clear that there was no real concern to involve the Finucanes, who all live in Ireland, in the inquiry proceedings. The wishes of the security forces and the intelligence services, who has also insisted on testifying in London rather than in Derry during the Bloody Sunday Inquiry, were to take priority in all matters over those of the Finucanes.

29. The United Kingdom government has become increasingly isolated both domestically and internationally over its failure to hold a proper public inquiry into Patrick Finucane's murder. In early 2005, Geraldine Finucane, wrote to every senior judge in England and Wales and Scotland, asking them not to chair any inquiry into her husband's murder held under the Inquiries Act. So far, no judge has come forward to chair an inquiry under the Inquiries Act into the Finucane murder. During late 2005 and early 2006, the Finucane family met with every major political party on the island of Ireland to explain their case. They met with universal support.

30. On 8th March 2005, the Irish Dáil passed the following unanimous motion:
"That Dáil Éireann,
 - recalling the brutal murder of solicitor, Patrick Finucane, at his home in Belfast on 12 February 1989;
 - noting the on-going allegations of collusion between loyalist paramilitaries and British security forces in the murder of Mr. Finucane;
 - recalling the commitments made at the Weston Park talks in July 2001 by the British Government to hold a public inquiry into the Finucane case, if so recommended by the Honourable Judge Peter Cory, it being clearly understood that such an inquiry would be held under the UK Tribunals of Inquiry (Evidence) Act 1921;
 - noting that Judge Cory found sufficient evidence of collusion to warrant a public inquiry into the case and recommended that such an inquiry take place without delay;
 - recalling that in his conclusions, Judge Cory set out the necessity and importance of a public inquiry into this case and that the failure to hold a public inquiry as quickly as reasonably possible could be seen as a denial of the agreement at Weston Park;
 - noting that the limited form of inquiry under the UK Inquiries Act 2005, proposed by the British Government has been rejected as inadequate by Judge Cory, the Finucane family, the Government and human rights groups;
 - commends the Finucane family for their courageous campaign to seek the truth in this case of collusion;
 - deeply regrets the British Government's failure to honour its commitment to implement Judge Cory's recommendation in full;

- welcomes the sustained support of successive Governments and all parties for the Finucane family over the past decade in their efforts to find the truth behind the murder;
- acknowledges the work of the sub-Committee on Human Rights in highlighting this case;
- welcomes the Taoiseach's commitment and efforts in pursuing the case with the British Prime Minister Tony Blair;
- endorses the Government's international efforts at highlighting the case in at the United Nations and at the Council of Europe in Strasbourg;
- calls on the British Government to reconsider its position on the Finucane case to take full account of the family's objections and amend the UK Inquiries Act 2005; and
- calls for the immediate establishment of a full, independent, public judicial inquiry into the murder of Pat Finucane, as recommended by Judge Cory, which would enjoy the full co-operation of the family and the wider community throughout Ireland and abroad."

31. On 15th March 2006 members of the Finucane family met Ambassador Mitchell Reiss, President Bush's special envoy to Northern Ireland, in Washington, again in the presence of Jane Winter of BIRW. He reiterated his support for a proper inquiry into Patrick Finucane's murder and assured the family that he raised their case with the UK government at every available opportunity. Later that day a hearing was held by the House Subcommittees of the International Relations Committee on Africa, Global Human Rights and International Operations and on Europe and Emerging Threats concerning Northern Ireland. Mitchell Reiss testified before the hearing. Archana Pyati of the American NGO Human Rights First (formerly the Lawyers Committee on Human Rights) also testified, and explained to the Subcommittees the impasses that had been reached in the Finucane case. As a result, the Subcommittees resolved to put down a Resolution mirroring that of the Irish government. On 21st March 2006, Human Rights First sent Prime Minister Tony Blair a petition with 916 signatures calling for an independent public inquiry into the Finucane case.

British Irish RIGHTS WATCH is of the view that the Finucane family are entitled to an immediate, Article 2-compliant, public inquiry and that the United Kingdom government should immediately honour its unambiguous commitment to implement Judge Cory's recommendations.

2006