

Ballymurphy Independent Panel
A proposal by the bereaved families

Introduction by Pdraig Ó Muirigh, Solicitor for the families

Over three days in August 1971 ten civilians were shot and killed by The British Army in the Greater Ballymurphy area of West Belfast. The victims, innocent of any crime, were: Fr Hugh Mullan, Francis Quinn, Daniel Teggart, Joan Connolly, Joseph Murphy, Noel Phillips, Edward Doherty, John Laverty, Joseph Corr and John McKerr. An eleventh man, local community worker Paddy McCarthy, died from a heart attack after an Army foot patrol subjected him to a mock execution. Eleven families lost loved ones and fifty seven children were bereaved. The killings and the circumstances in which they happened traumatised the Greater Ballymurphy community.

Over four decades the bereaved families have campaigned relentlessly and with dignity to establish publicly the context and circumstances in which their loved ones were killed and to pursue justice through the courts. They have amassed strong evidence that all who died were killed unlawfully and in breach of Article 2 of the European Convention on Human Rights (ECHR). The case raises serious questions regarding human rights abuses committed by the British Army and of a culture of impunity in the north of Ireland in which members of the security forces routinely were above the law.

The soldiers who killed the civilians were interviewed by the RMP as part of an agreement which was reached between the General Officer Commanding the British Army and the Chief Constable of the RUC. There was no attempt to probe or verify these accounts, nor any appropriate investigation of the inconsistencies between the soldiers' accounts. Further, it is apparent that The Royal Ulster Constabulary (RUC) did not conduct an investigation. Whilst there was civilian evidence to contradict the soldier's accounts, particularly as regards their justification for firing live rounds, these accounts were never put to the soldiers and their accounts were simply accepted without question. Inconsistencies in the soldier's accounts were deliberately withheld from the Coroner at the original inquests in 1972.

The fact that these procedures were hopelessly inadequate to as a method of investigating the conduct of soldiers has been expressly recognised by the High Court In Belfast in the case of *Thompson v Secretary of State*.

In addition, the non compellability of soldier's to give evidence to the Coroner's Court, the lack of pre-inquest disclosure to the families or their legal representatives and the inability of the Coroner's court to reach 'findings' meant that the original inquests into those killed were inadequate. Taken together these issues demonstrate 'insufficiency of inquiry' in the original inquests.

Under section 14 of the Coroner's Act 1959, the bereaved families made an application to the Attorney-General for the north of Ireland in November 2010 to re-

open the inquests. The Attorney-General directed that the Coroner to re-open inquests into the deaths in November 2011.

The families welcome the direction yet remain concerned about the limitations of an inquest to investigate the context, circumstances and aftermath of the deaths of their loved ones. They also have no confidence in the review of the deaths by the Historical Enquiries Team (HET) within the PSNI. They question the independence of the HET and the methodology underpinning its review of RMP cases. These failings have been highlighted by Professor Patricia Lundy in her recent independent report. Her findings were upheld in a recent report by Her Majesty's Inspectorate of Constabulary (HMIC).

Consequently, the Ballymurphy families propose the appointment of an Independent Panel to examine all documents relating to the context, circumstances and aftermath of the deaths of their loved ones. Its focus would include: the investigation of the role of the British Government, British Army, criminal justice agencies such as the RUC, DPP, the Coroner's Office and the significance of the media. Reflecting the terms of reference of the British Government-funded work of the Hillsborough Independent Panel, the proposed project's research and analysis would demonstrate how disclosure of all documents 'add to public understanding' of the circumstances in which the deaths occurred. It would also create a public archive of all documents reviewed by an independent panel. Finally, it would establish an evidence base on which further legal actions and new inquests could be progressed.

1. Remit of the Independent Panel

- To initiate and oversee in-depth, independent documentary research into the causes, context and consequences of the killings of innocent civilians by the British Army in Ballymurphy in August 1971. This includes all documents concerning the role of the British Government, British Army, criminal justice agencies such as the RUC, DPP, the Coroner's Office;
- To publish a detailed, comprehensive report demonstrating how the disclosed documents add to public understanding of these events, their investigation and the consequences;
- To assess from the documents the possible relationship between the events in Ballymurphy and other contemporaneous incidents, in particular, Bloody Sunday;
- To oversee the full public disclosure of relevant British Government documentation within legal constraints set out in the accompanying protocol;
- To manage the process of public disclosure, ensuring that it takes place initially to the bereaved families, in an agreed manner and within a reasonable timescale, prior to release of documents into the public domain;
- To consult with the bereaved families throughout the process of disclosure, research and analysis to ensure their views are taken into account;
- To produce a confidential report to each family setting out the findings of the Panel regarding the circumstances of the death of their loved one;
- To make recommendations for establishing an archive of all disclosed documentation.

2. Key principles

Independence

The Panel must be Independent and not accountable to the British Government or any other state agency. No former members of the British Army or RUC should be involved in the Panel.

Disclosure

To enable the Panel to publish a comprehensive report setting out their findings it is essential that all documents available to the British Government and other state agencies, NGOs and private individuals in relation to the deaths, their circumstances and their investigation, are disclosed to the Panel in accordance with the attached Disclosure Protocol (Appendix 1).

Disclosure will be determined by the Panel in consultation with contributing organisations and with bereaved families. Redaction and withholding documents from public release will occur in compliance with legal requirements and only in exceptional circumstances in which confidentiality is appropriate.

3. Composition of the Panel

The Panel's Chair will be an established, independent authority holding the respect of the bereaved families and with a proven track record in investigation.

The Panel will consist of seven members:

- Chair – Nuala O'Loan
- Experienced police investigator – Steve Hobbs
- Head of Research – Professor Phil Scraton
- Medical practitioner
- Advisor on FoI
- Senior Media person with knowledge of the North
- Lawyer – Gareth Pierce

Research Team

The research and analysis underpinning the Panel's report will be led by Head of Research, Professor Phil Scraton, who will be supported by 3 full-time researchers (School of Law, Queens University Belfast).

The Research Team would assist the Panel in;

- establishing an archive of disclosed documents and records;
- documentary research and analysis to inform the substance of the Panel's report;
- evaluating the information disclosed to the Panel and incorporating what is already known and in the public domain

4. Timeframe & cost of the Panel

The frequency of Independent Panel meetings is a matter for the Panel, but is initially expected to meet monthly.

Panel members will receive a daily allowance at rates to be published, and repayment of actual travel and subsistence expenses in accordance with established Government rules for senior civil servants.

The Panel's medical expert will scrutinise evidence relating to the causation of death, the records of post-mortem carried out on the deceased. Where necessary the medical expert on the panel should have access to a highly experienced independent pathologist to provide expert advice on injuries/cause of death.

The panel would complete its work within a reasonable time period (12-18 months).

The cost of the Ballymurphy Independent Panel would be met by the British and Irish Governments.

Appendix 1

Protocol on Disclosure of Information

This protocol sets out the disclosure arrangements for information relating to the death of eleven innocent civilians in between the 9-11 August 1971.

Scope of information

The scope of the disclosure process is intended to cover all documentation held by the following agencies which relate directly to the events at Ballymurphy;

- British Government;
- Irish Government;
- NI Coroner's Office;
- PSNI/HET;
- Ministry of Defence (MoD);
- Public Records Office (PRONI);
- The National Archive (Kew);
- The National Archives of Ireland (Dublin);
- The Catholic Church.

Archiving and Cataloguing

In order to assist the work of the Panel and in view of the volume of documentation, each agency holding relevant documentation will make arrangements for all papers in their possession to be archived and catalogued, prior to disclosure to the panel.

Principle of full disclosure

The fundamental aim is to provide full disclosure of documentation to the Panel and, subsequently, to the bereaved families and then the wider public, taking into account legal and other considerations set out below.

Exceptions to public disclosure

All information held by the parties to the disclosure agreement will be disclosed to the panel except where disclosure is not granted for legitimate legal reasons.

The decision to withhold information will be considered on a case-by-case basis by the holding agency. Wherever possible, information that cannot be disclosed to the public will be disclosed to the Panel on a confidential basis and a description of the information provided for public disclosure.

Redaction of individuals identities

Where it is appropriate and legally advisable, it is expected that the Panel will recommend the identities of certain individuals will be redacted prior to public disclosure.

Where individual identities are redacted, an indication of the individuals position or status will be given to the public. In addition where it is necessary to achieve consistency of identification, it is expected that the Panel will recommend that individuals are given anonymised identifiers (for example, "Soldier A" or "Witness B").

Non-disclosure appeal process

In any cases where the Independent Panel believes there to be a public interest in obtaining access to any withheld or redacted information, and where the holding agency disagrees, the matter will be referred to an independent arbitrator. They will provide independent, impartial advice on the reason given by agencies for retention of information.

Public disclosure process

The Independent Panel should ensure that disclosure takes place initially to the bereaved families and other involved parties, in an agreed manner and within a reasonable timescale, before information is more widely available. No disclosure should take place to any other involved party before disclosure is made to the bereaved families.

To ensure transparency the Panel will prepare a full audit of all documents disclosed to them.

Report of the Independent Panel

The Independent Panel will be responsible for producing a report on its work. The detailed account of the report will be a matter for the panel but it is envisaged that it will cover;

- A description of the terms of reference for the Panel;
- An overview of the information reviewed by the Panel and publicly disclosed;
- An overview of the information provided to the Panel;
- An overview of withheld information.

Ballymurphy archive

The Independent Panel may make recommendations regarding options for establishing a designated Ballymurphy document archive, including such matters as the location, conservation and format of records to be retained in the archive.

Confidentiality of closed information

Information that is provided to the Independent Panel on a closed basis shall remain confidential to members of the Independent Panel. Members of the Independent Panel will be required to sign a confidentiality agreement regarding disclosure of that information.