NEW YORK CITY BAR

THE NEW YORK CITY BAR ASSOCIATION URGES RAPID REPEAL OF THE UNITED KINGDOM'S NORTHERN IRELAND TROUBLES (LEGACY AND RECONCILIATION) ACT 2023

On May 1, 2024, the United Kingdom implemented a sweeping new law known as the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 ("Legacy Act') that, *inter alia*, cut off future prosecutions for unsolved murders and other serious crimes that occurred during the period of time commonly referred to as "The Troubles." The Legacy Act was challenged by domestic parties in the United Kingdom's courts and the courts have moved assiduously to decide those cases and have disapplied many of the provisions of the Act. The U.K. government should desist from appealing portions of the most recent Court of Appeal's decision and Parliament should repeal the Legacy Act in its entirety.

The New York City Bar Association (City Bar) has a long and active history with the conflict and subsequent peace process in Northern Ireland since 1987, when it sent the first of four blue-ribbon fact-finding missions to Northern Ireland. *See* Appendix 1. Since then, the City Bar has hosted public fora; issued letters, reports and statements; and met with visitors from Northern Ireland. Informed by this long commitment to the difficult peace process in Northern Ireland, the City Bar commends U.K.'s courts for disapplying many parts of the Legacy Act and urges the courts to do even more to increase transparency and justice for victims. The City Bar also supports Ireland's pending interstate case in the European Court of Human Rights challenging the Legacy Act which should remain pending while the U.K. government works to repeal the Legacy Act and provide suitable mechanisms for resolving outstanding Legacy issues.

The City Bar's most recent fact-finding mission to Northern Ireland was in 2015, which assessed, among other issues, the failure to adequately investigate individual deaths and injuries during the Northern Ireland conflict, including the murders of two solicitors, Patrick Finucane and Rosemary Nelson.[1] Following its 2015 visit, and again in a 2017 letter, the City Bar noted that "while dramatic positive changes have taken place since the Good Friday Agreement, giving rise

[1] *See, e.g.*, NEW YORK CITY BAR ASS'N, INT'L HUMAN RIGHTS COMM., IN NORTHERN IRELAND, THE PAST IS STILL PRESENT (2016), http://www2.nycbar.org/pdf/report/uploads/20072018-NORTHERNIRELANDREPORTINTHUM1212016.pdf (hereinafter NEW YORK CITY BAR ASS'N, IN NORTHERN IRELAND, THE PAST IS STILL PRESENT); NEW YORK CITY BAR ASS'N, INT'L HUMAN RIGHTS COMM., HUMAN RIGHTS IN ACTION: A BRIEF HISTORY OF THE NEW YORK CITY BAR'S WORK TO PROMOTE PEACE AND RESPECT FOR HUMAN RIGHTS IN NORTHERN IRELAND (2009), http://www.nycbar.org/pdf/report/uploads/20071765-BriefHistoryofNYCBarWorkonNorthernIreland.pdf; New York City Bar Ass'n, Int'l Human Rights Comm., *Criminal Justice and Human Rights in Northern Ireland*, 43 REC. ASS'N B. CITY N.Y. 110 (1988), http://www.nycbar.org/pdf/report/88083%20-%20Criminal%20Justice%20and%20Human%20Rights%20in%20Ireland.pdf.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

to a 'growing sense of hope,' substantial challenges remained, particularly with respect to implementing transitional justice mechanisms that are important elements of the reconciliation framework."[2]

Now, the United Kingdom's Legacy Act jeopardizes this "sense of hope" by violating the European Convention on Human Rights (which was codified in the U.K.'s domestic law as part of the Human Rights Act of 1998),[3] transitional justice norms, the Good Friday Agreement, and subsequent agreements.

The New York City Bar Association strongly opposes the Legacy Act and we ask members of Congress and the State Department to urge Parliament to rapidly repeal this legislation in its entirety.

As an essential part of the resolution of legacy cases, the City Bar also reiterates its prior calls for a full and fair inquiry into the death of solicitor Patrick Finucane. The City Bar welcomes the U.K's decision to comply with the Court of Appeal's July 2024 ruling in the Finucane family's case and expressed willingness to conduct a full and fair investigation into the Finucane murder that will comply with European Human Rights Article 2 requirements. A fair and independent panel will be crucial to the process as will not invoking national security vetoes which have been used to withhold crucial information decades after the events in question.

I. THE LEGACY ACT HAMPERS TRANSITIONAL JUSTICE

The Legacy Act, which is not supported by any of the political parties[4] in Northern Ireland nor victims' families, diverts cases from long established mechanisms such as inquests, criminal prosecution, and civil processes, even in the event new evidence is discovered, by creating cut-off dates that foreclose future cases arising from Conflict-related incidents. Instead, the Legacy Act has created various non-judicial reconciliation efforts such as the Independent Commission for Reconciliation and Information Retrieval (ICRIR) under which perpetrators could receive conditional immunity in exchange for providing information to the ICRIR.

In March 2024, the United Nations Human Rights Committee ("UNHRC") issued its 8th Report on the United Kingdom and Northern Ireland. With respect to the Legacy Act, specifically, the UNHRC concluded:

> The Committee calls on the State party to repeal or reform the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 and to adopt proper mechanisms with guarantees of independence, transparency, and genuine investigation power that discharge the State party's human rights obligations and deliver truth, justice and effective remedies, including reparations to victims of the Northern Ireland conflict.

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[2] NEW YORK CITY BAR ASS'N, IN NORTHERN IRELAND, THE PAST IS STILL PRESENT, *supra* note 1, at 2–3, 7–23; *see* Agreement Between the Parties at Stormont, ¶¶ 30–40, Dec. 23, 2014, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/390672/Stormont_House_Agreement.pdf.

[3] HUMAN RIGHTS ACT OF 1998. https://www.legislation.gov.uk/ukpga/1998/42/contents

[4] https://www.bbc.com/news/uk-northern-ireland-68419238.amp

> The Committee is concerned by the adoption of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023, which occurred despite the warnings expressed by domestic and international actors that it would be in breach of the Belfast Good Friday Agreement and would violate the State party's international human rights obligations, including under the [International Covenant on Civil and Political Rights]. In particular, the Committee is concerned about the conditional immunity scheme for persons who have committed serious human rights violations, the weakness of the "review" function of the Independent Commission for Reconciliation and Information Recovery, the allegations on its lack of independence, the absence of the power of investigation to guarantee the right to truth for victims, and the procedural barriers and obstacles to criminal investigations, civil suits, and other remedies, effectively stifling any criminal or civil proceedings connected to the troubles. The Committee is also concerned about the increased use of closed material proceedings for legacy cases.

II. THE LEGACY ACT VIOLATES THE EUROPEAN CONVENTION

On January 17, 2024, Ireland sued the U.K. in the European Court of Human Rights arguing that the Legacy Act violates the European Convention on Human Rights. The Republic of Ireland's ("Republic") petition to the Court argues that certain provisions of the Act violate the European Convention. Ireland relies on Articles 2 (right to life), 3 (prohibition of torture and inhuman or degrading treatment), 6 (right to a fair trial), 13 (right to an effective remedy), and 14 (prohibition of discrimination).

The Republic alleges that sections 19, 39, 40 and 41 of the Act provided immunity, under certain conditions, from prosecution for Troubles-related offenses, contrary to Articles 2 (right to life) and 3 (prohibition of torture and inhuman or degrading treatment) of the Convention; that Parts 2 and 3 of the Act replaced the current police investigations and coronial inquests on Troubles-related cases with a review by the new ICRIR, contrary to Articles 2 (right to life), Article 3 (prohibition of torture and inhuman or degrading treatment), and Article 13 (right to an effective remedy). In a sweeping amnesty, section 43 of the Act prevented both the initiation of new Troubles-related civil actions before the courts and the continuation of civil actions not commenced before May 17, 2022, contrary to Article 6 (right to a fair trial) read alone and in conjunction with Article 14 of the Convention (prohibition of discrimination).

On February 28, 2024, the Belfast High Court issued a decision invalidating the Legacy Act's amnesty scheme as violating European Convention on Human Rights Articles 2 and 3 in a case brought by families whose rights were affected.[5] The decision was appealed despite sentiment that "This morning's High Court ruling confirms what every fair observer knows, that the government's legacy legislation is not compatible with human rights," said Claire Hanna, a member of Parliament representing South Belfast. "It puts the needs of perpetrators ahead of the needs of victims, and it is not supported by any party in Northern Ireland or across the island of Ireland."[6] The Court of Appeal issued its decision on September 20, 2024 on the appeal and cross appeal of the February 28, 2024 decision. Significant parts of the Legacy Act have been found

[5] https://www.judiciaryni.uk/judicial-decisions/summary-judgment-re-dillon-and-others-ni-troubles-legacy-and-reconciliation-act.

[6] https://www.nytimes.com/2024/02/28/world/europe/northern-ireland-troubles-immunity.html.

incompatible with the ECHR including the conditional amnesty, the bar on civil litigation and the criminal inquest bar. The City Bar commends the work of the domestic courts and urges further reform of the non-human rights compliant Legacy Act including over use of the national security veto.

CONCLUSION

In light of the long involvement of the City Bar in observing the development of peace and reporting on the decline in political violence and the development of the rule of law in Northern Ireland, we ask the U.S. Congress and the State Department to urge the government of the United Kingdom to expeditiously and fully repeal the Legacy Act, and we urge the European Court of Human Rights to address Ireland's petition when domestic appeals are exhausted should reforms not be implemented. The increased prosperity that has emerged in Northern Ireland, the "peace dividend," is a credit to the peace process; the support and encouragement of the United States for peace; and the hopes and aspirations of all of Northern Ireland's population. The City Bar encourages the U.S. Congress and the State Department to apply all possible pressure on the U.K. and Northern Ireland to repeal or further reform the Legacy Act to address all remaining human rights concerns.

International Human Rights Committee
Suchitra Vijayan, Chair

March 2025

Appendix 1

THE RECORD OF THE CITY BAR'S INVOLVEMENT IN HUMAN RIGHTS IN NORTHERN IRELAND AND WRITTEN REPORTS RECORDING WHAT MEMBERS OF ITS MISSION WITNESSED

The City Bar's long involvement in the peace process in Northern Ireland is well documented in the reports filed by each of the four visiting blue-ribbon delegations. Lawyers, judges and law professors all of whom were active City Bar members, applied their considerable professional skills to help further peace in this longstanding conflict. Together their reports form a record of the commitment of the members of the City Bar who went on these fact-finding missions and also provide a first-hand witness report of the violent conditions in Northern Ireland. This Appendix summarizes some of the key findings from the reports which are preserved on the City Bar's website.

In its May 1987 mission to Northern Ireland, the City Bar's first mission to Northern Ireland occurred within a backdrop of open conflict, and the City Bar representatives observed open hostilities. The subsequent report noted that:

> [P]arts of the city, the Falls Road and Shankill Districts in West Belfast, exist as armed camps with homes and shopping areas bombed out or blackened by recurrent fires. Meanwhile, in the hate ridden areas of the city, and in the central shopping district (where permits are needed for automobiles to cross military check points), local authorities and the … Army patrol the streets in armored vehicles, make use of broad emergency powers of arrest and detention, and on occasion resort to the firing of plastic bullets into crowds of protestors deemed unruly.[7]

On June 4, 1999, the year following the Good Friday Agreement, the City Bar issued a report on its second mission to Northern Ireland, noting a drastically altered landscape, and commenting that:

> In contrast to the conditions described in the 1987 Report, the 1998 mission encountered a growing sense of optimism among the people we formally interviewed, as well as the "people in the street." Those we met – Catholic and Protestant, Unionist and Nationalist – were scarred and weary, but hopeful about the future. The mission returned to New York with an abiding respect for the people of Northern Ireland and their leaders, who were able to reach a peace accord after centuries of strife.[8]

On March 1, 2004, following a third mission to Northern Ireland, the City Bar issued another report which examined issues pertaining to:

1. The Justice (Northern Ireland) Act 2002 ("Justice Act 2002");
2. transformation of the public prosecution service;
3. new procedures for judicial appointments;

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[7] William E. Hellerstein, Robert B. McKay and Peter R. Schlam, *Criminal Justice And Human Rights in Northern Ireland: A Report to the Association of the Bar of the City of New York,* 43 REC. ASS'N B. CITY N.Y. 115 (1988)

[8] https://www.nycbar.org/reports/northern-ireland-a-report-to-the-association-of-the-bar-of-the-city-of-new-york-from-a-mission-of-the-committee-on-international-human-rights/?back=1#Ref5.

4. human rights training;
5. compliance with the European Convention on Human Rights;
6. intimidation of defense lawyers; and
7. the status of the investigations into the murders of lawyers Patrick Finucane and Rosemary Nelson

This Report was noteworthy because it found there had been a "transformation of public life in Belfast," since the prior missions.[9]

On July 26, 2005, following a breakdown in the Northern Irish government, the City Bar wrote the United States' Special Envoy for Northern Ireland calling for restoration of Northern Ireland's devolved government.

On August 1, 2009, the New York City Bar issued a short report summarizing its work in Northern Ireland to that point and concluding:

> The Committee's three missions to Northern Ireland have brought about 22 years of continued engagement and dialogue on human rights, including annual visits in New York and dialogue with Northern Ireland officials, political leaders, and NGO advocates. The Committee remains dedicated to promoting human rights and the rule of law in Northern Ireland for as long as it can remain relevant and useful. In particular, the Committee remains steadfast in its support for credible public inquiries into the killings of Pat Finucane and Rosemary Nelson and for fellow human rights lawyers in Northern Ireland generally. At the same time, the Committee is pleased with the transformation in the human rights situation that it has observed and hopes that it will continue with the constructive roles it has played for as long as it can remain relevant and useful.[10]

On January 21, 2016, the City Bar issued a 58-page report following its 2015 fourth mission to Northern Ireland ("2016 Report"). The 2016 Report identified areas of progress and ongoing challenges for the criminal justice system including failed prosecutions and the unresolved murder of solicitor Patrick Finucane. Specifically, the report concluded that:

1. "[S]ubstantial work remains to be done in ensuring that the abuses of human rights and injustices of the past do not destabilize the peace that has already been secured," and noted that "substantial political changes have advanced new political cooperation between parties on either side of the former conflict and implemented local systems of justice in Northern Ireland through devolution."

2. "All parties must prioritize a comprehensive approach toward transitional justice in order to address the past effectively," and "should include adopting an inclusive mechanism that can investigate all allegations of abuses in the past and ensure that they receive impartial and independent examination";

3. The case of Patrick Finucane must receive a full independent and public inquiry, and encouraged the UK Government to promptly commit to such an inquiry;

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[9] https://www.nycbar.org/wp-content/uploads/2023/05/NIreport.FINAL_.3.8.pdf.

[10] https://www.nycbar.org/reports/a-brief-history-of-the-new-york-city-bars-work-in-northern-ireland-july-2009/?back=1.

4. Existing mechanisms consider cases of injury resulting from the trauma of the past, and noted that people affected by violence in the past have not had an adequate means of redress;

5. There should be ongoing dialogue on flags and parades, which disrupt the peace yearly. Any solution must include dialogue and mediation on disputed matters;

6. Government should give consideration to the adoption of non-judicial and non-investigative public healing approaches, such as truth telling mechanisms to supplement other measures being taken;

7. There must be dialogue and coordination between the PSNI and the PPS in order to minimize concerns relating to prosecution failures and decisions not to prosecute. The PPS also needs greater case preparation and management in order to secure public trust, which will require better coordination with the PSNI to ensure improvement in investigation and prosecution.

The 2016 Report also lauded reforms to the justice apparatus in the judiciary, police, public prosecution service, and prison system and noted those areas of positive improvement to human rights.[11]

A year and a half later, however, on July 11, 2017, the City Bar wrote to Prime Minister Theresa May and then Secretary of State for Northern Ireland, James Brokenshire, alarmed by increasing rhetoric which jeopardized the nearly 20 year peace process. Among the statements the City Bar found alarming were reports of British tabloids using statements concerning "activist, left-wing human rights lawyers" purportedly "harangu[ing] and harass[ing]" British military personnel in Northern Ireland. The City Bar further noted that

> More disturbing are the references in these tabloid stories to statements made by members of parliament attacking lawyers' credibility and calling upon the public to do the same. Members of parliament have disparaged the integrity and independence of Northern Ireland's Director of Public Prosecutions explicitly on the basis of his previous representation of a former IRA leader while in practice as a solicitor,[11] called upon the public to pledge support in the face of "witch-hunts" by Prosecutors seeking to "rewrite the past," and even attacked the reconciliation process itself by calling it "an absolute farce . . . only serving [lawyers].[12]

The 2017 Letter also notes the UK Government's ongoing refusal to fully and fairly investigate the murders of lawyers Patrick Finucane and Rosemarie Nelson.[13]

On April 10, 2018, the City Bar wrote to the Prime Minister and Secretary of State for Northern Ireland urging the UK to comply with its commitments to fund the existing Legacy Inquest system and noted a decision by the High Court of Northern Ireland that found the delays

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[11] https://www.nycbar.org/wp-content/uploads/2023/05/20072018-NORTHERNIRELANDREPORTINTHUM1212016.pdf.

[12] https://www.nycbar.org/wp-content/uploads/2023/05/2017172-Northern_Ireland_Letter_INDEPLAW_7.11.17.pdf.

[13] Id.

in legacy cases were "caused or significantly contributed to by a lack of adequate resources," and found that the UK continued to breach its obligations under "Article 2 of the European Convention on Human Rights, Rule 3 of the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963, and the common law, and that the inquest process 'cannot be postponed until an outcome to a political agreement is reached.'"[14]

On December 14, 2020, the City Bar issued a new statement ("2020 Statement") that, again, highlighted the UK Government's decades long failures to fund legacy inquests and, in particular, continued its call for a full and complete inquest into the murder of Patrick Finucane after decades of stonewalling, even after the admission that Finucane's death involved collusion with state actors. The 2020 Statement noted that:

> As the UK Supreme Court made clear, none of the UK government's ostensible investigations over the past 31 years – many in response to the failure, and indeed resistance, of authorities to expose official collusion – have met the standards required for a genuine inquiry aimed at determining the extent of state involvement not just in the Finucane murder, but in others as well. [15]

That 2020 Statement, again, noted continued harassment of lawyers engaged on legacy issues for their representation of clients on legacy issues. The 2020 Statement reported that tabloid stories vilifying lawyers for working on human rights issues had continued since the City Bar's 2017 Letter, evidencing the UK Government's backslide in its commitment to lasting peace.

On June 9, 2022, the City Bar hosted discussions regarding the impact of Brexit and a panel discussion entitled "Retrogression of Human Rights Protections in Northern Ireland" following the UK Government's six year backslide on the progress of human rights in Northern Ireland.

On January 29, 2025, the City Bar co-hosted a presentation by John Finucane, politician and solicitor in Northern Ireland and son of assassinated solicitor Patrick Finucane, on recent progress on his family's case to obtain information on who put the murder in motion. The High Court has ordered a full and fair investigation into the murder which is compliant with Article 2 of the European Human Rights Law.

[14] https://www.nycbar.org/reports/letter-to-uk-leaders-regarding-20th-anniversary-of-the-belfast-agreement/?back=1.

[15] https://www.nycbar.org/wp-content/uploads/2023/05/2017172-Northern_Ireland_Letter_INDEPLAW_7.11.17.pdf.