

NEW LODGE SIX

REPORT

OF THE

COMMUNITY INQUIRY

INTO

THE KILLINGS

OF

JIM McCANN

JIM SLOAN

TONY CAMPBELL

BRENDAN MAGUIRE

JOHN LOUGHRAN

AMBROSE HARDY

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Terms of Reference

To inquire insofar as is practicable (given the passage of time, and limitation of the scope by reason of the non-availability of evidence that is in the exclusive knowledge and control of the State) into the following matter of urgent public importance:

- To examine and to ascertain, insofar as is possible, the facts and the circumstances surrounding the deaths of Jim McCann and Jim Sloan on the 3rd and 4th days of February 1973, including the identification of those responsible, and, in this connection, to have regard to any allegations of collusion between the British forces and loyalist paramilitary organizations surrounding the said deaths which appear to be relevant or connected therewith;
- To examine and to ascertain, insofar as is possible, the facts and the circumstances surrounding the deaths of Tony ‘TC’ Campbell, John Loughran, Brendan Maguire and Ambrose Hardy on the 3rd and 4th days of February 1973, including the identification of those responsible, and, in this connection, to have regard to all circumstances or events pre-dating the said deaths which appear to be relevant or connected therewith;
- To examine and to ascertain, insofar as is possible, the degree of risk (if any), including in particular the risk to life (if any) to which the member or members of the British forces involved were subjected to immediately prior to and at the time of the said deaths of Tony ‘TC’ Campbell, John Loughran, Brendan Maguire and Ambrose Hardy;
- To examine, insofar as is possible, the official response subsequent to the incident, including the internal investigations by the British Forces as well as the inquests, which were conducted subsequent to each individual’s death;
- To recommend what further actions should be taken by the British Government in order to provide an effective investigation into the killings of Jim McCann, Jim Sloan, Tony ‘TC’ Campbell, Brendan Maguire, John Loughran and Ambrose Hardy in compliance with their obligations under Article 2 of the European Convention of Human Rights.

Preface

On the night and early morning of Saturday and Sunday the 3rd and 4th of February 1973, six men were shot dead in New Lodge area of North Belfast and one man gravely wounded. Two of these men – Jim Sloan and Jim McCann – were killed in a drive-by shooting at the top of the New Lodge Road around 11.00pm. Within minutes of the drive-by shooting, British forces opened fire on the junction of New Lodge Road and Edlingham Street from both the direction of Duncairn Gardens and from the British military observation posts from the top of the flats in the New Lodge Road. Tony ‘TC’ Campbell, Brendan ‘Fat’ Maguire, John Loughran and Ambrose Hardy were killed in these attacks with Charlie Carson severely wounded.

At the time, the British army stated that six gunmen had been killed and one wounded in a gun-battle with their troops in the New Lodge area of North Belfast. Witness statements from the local community and the families of the six men directly contradict this account of events. Eyewitnesses maintain that all of these men were unarmed and were attacked without provocation. Indeed, these eyewitnesses maintain that all of the six men were either out for a Saturday night and killed because they had the misfortune to be on the Road that night, or killed in the process of trying to assist those already shot by the British army.

These events were never properly investigated. There has never been a full accounting of this tragedy. With the thirtieth anniversary approaching, the families of the six men killed, with the support of Charlie Carson and the New Lodge Six Time For Truth Committee, held the New Lodge Six Community Inquiry, open to the public, to establish the full facts and seek justice. Ultimately, the purpose of the Inquiry was to push for the truth as to why six men were killed and one man wounded without warning or provocation. This report, resulting from the Inquiry, will be a written record of the events of that night – a record long deprived of the families. This record will preserve an accurate history of what is locally known as the New Lodge Six Massacre for future generations.

The question often faced by the families of the New Lodge Six and New Lodge 6 Committee is: why now? The families, the Committee, and the larger community feel that within the current political climate there is a commitment to open government that provides an opportunity whereby the families may finally know the truth of the 3rd and 4th of February 1973. After thirty years, these families still have received no justice for the killing of their loved ones. Now, this report builds on the Community Inquiry in the quest for justice for these families.

Foreword

February the 3rd and 4th of 2003 marks the 30th anniversary of the deaths of six men from the New Lodge Road. These men were Jim McCann, Jim Sloan, Tony ‘TC’ Campbell, John Loughran, Brendan ‘Fat’ Maguire, and Ambrose Hardy. Several other people were wounded, including Charlie Carson. These young men were husbands, fathers, sons and brothers. They were loved by their families and friends and were well known and respected within our community. They were hard working, decent men, who happened to live in a small working class republican district of North Belfast. It would appear that this was justification enough for those who decided to end their young lives.

At the time of their deaths, it was claimed by the British army that these six men were armed ‘terrorists’ who had been shot in a gunfight. According to the British political establishment, the six men had basically gotten what they deserved. At that time, the media accepted the official British line without serious question or inquiry.

From the outset the British army’s version of the events of that night has always been emphatically denied by the men’s families and the entire New Lodge community. The clear, unambiguous memories of the families and the local community from that time, tell how all six men had been unarmed and going about their own normal business when the British decided, in cold blood, to teach the people of the New Lodge yet another lesson in terror by murdering anyone who was on the street that night.

Despite the authenticity and veracity of local people’s accounts, they were ignored and treated with the usual contempt by those with influence, power, and authority. Against all of the evidence to the contrary, the British army version of the terrible events of the 3rd and 4th of February 1973 has remained unchanged and, in our view, has never been properly challenged or fully investigated.

It is in this context that the ‘New Lodge Six Time For Truth Campaign’ was initiated with the full support of the families of the six men on the 10th of June 2002. After months of exhaustive work, and after almost thirty years of pain and anguish for the families of the six men, the New Lodge Six Committee finally reached the point where we could at last begin the process of trying to expose the truth of what happened on that tragic night. That process was brought to the public by the holding of a Community Inquiry on the 22nd and 23rd of November 2002 in St Kevin’s Parish Hall, North Queen Street, Belfast.

In launching this campaign, our Committee and the relatives of the six men were not motivated by any thirst for revenge. There is no sense of bitterness or hatred involved in this process. On the contrary, our goal is to achieve justice and to try to help heal the wounds of those who have suffered so grievously. Indeed, it would be our hope that through our efforts we can make a positive contribution to the search for a lasting peace.

By seeking out the truth, we feel we are making a very important contribution to the conflict resolution process and to the establishment of a socially just and more stable society in our country. For there can be no doubt: if we are ever to create a new dispensation built upon the principles of justice and equality, then there can be no hierarchy of victims. Therefore, the harm that has been inflicted on the New Lodge community, and for that matter on other similar communities, must be recognised and afforded the same respect granted to other victims of the British–Irish war.

While it has always been the case that those involved in anti-state guerrilla activities were always rigorously investigated and ruthlessly pursued by the state, conversely a different set of rules applied to those who worked on behalf of the state. Even a cursory look at the history of a small

area like the New Lodge reinforces the view that agents of the state could murder with impunity. From the extermination of the McMahan family in the 1920s, to the more recent killings of other unarmed people such as Danny O'Hagan, Christy Quinn, Seamus Cassidy, Louis Scullion, Michael Hayes, Joseph Ward, Seamus Duffy, and Peter Mc Bride, there has been a legacy of state violence against this community that has been covered up and largely ignored by the outside world.

The level of contempt shown to this community by the State and its allies in the British media is no more aptly illustrated than in the case of McGurk's Bar. On the 5th of December 1971, fifteen local people lost their lives in a bomb explosion at McGurk's Bar in North Queen Street.

This writer was among those who, with bare hands, tried to pull survivors from the rubble. Before the dead had even been buried, the British pedalled the lie that the bomb had been an IRA 'own goal'. The implication was that McGurk's was an 'IRA pub' and a place where bombs were made. Therefore, those who had died inside this 'IRA bar' somehow deserved all they had got.

When some years later a member of the loyalist Ulster Volunteer Force, Robert Campbell, admitted his part in the bombing and was convicted by a British court, this confirmed what the people of the New Lodge had already known all along. Nevertheless, there was never any apology from the British to the relatives and loved ones of those who lost their lives and who had been injured. It would appear even now that they do not have the capacity or the inclination to apologise for the lies they have told and anguish that they have caused. It would appear that even in death our people are viewed as inferiors.

The case of the New Lodge Six is obviously not the only instance of state murder against the people of the New Lodge. Because of the scale and ferocity of the atrocity, however, it is symbolic of the huge level of suffering and oppression that the British state has inflicted on this small community.

Now that we have moved into an era of unprecedented potential for political transformation, and given the British Government's stated commitment to open and accountable government, there is an opportunity and a particular onus on the state to assist us in our endeavour to arrive at the truth. Such assistance has not been forthcoming thus far.

While this is unfortunate and disappointing, it would be our hope that ultimately the New Lodge Six Community Inquiry and Report will play its part in moving us closer to the day when the British state will in fact acknowledge its pivotal role in the conflict that destroyed the lives, the hopes and the dreams of so many.

I would like to take this opportunity to thank everyone who has assisted us in any way over the past year. In particular I would like to commend the families of the six men for their patience and tolerance. In recent times, each family has had to endure the trauma of reliving, in the most graphic of terms, the awful events of that night.

I would also like to commend the people of the New Lodge and indeed the wider community within North Belfast and beyond for their wonderful spirit of generosity and support.

While the list of people that have helped us in bringing this Inquiry about are too numerous to mention in detail, I cannot conclude without offering our special thanks to Madden & Finucane, Solicitors, for their tremendous back up and expertise.

A special word of thanks also to our panel of jurists, who gave us their time and travelled long distances to preside over the Inquiry and arrive at and deliver their findings, we are indebted to you.

Another word of thanks is due to the countless number of independent observers from human rights, community, trade union organisations and representatives of the Irish government who attended over the two days of the Inquiry. Finally, to the many, many people who for practical reasons I cannot mention, on behalf of the New Lodge Six committee I offer our heartfelt thanks.

Paul O'Neill

Chairperson
New Lodge Six Time For Truth Committee
December 2002

New Lodge Six Community Inquiry Panel

Chair

Don Mullan Author of *'Eyewitness Bloody Sunday'* and human rights activist in Ireland, Africa, Asia, and elsewhere

Jurists

Kate Akester Solicitor known for her work in criminal and civil liberties law; previously with the legal and human rights organisation *Justice*, currently Chair of Mental Health Tribunals, London, England

Colin Harvey Professor of Constitutional and Human Rights Law known for his work on human rights issues in the North of Ireland as well as on UK refugee and asylum law; Convener of the *Human Rights Research Unit* at Leeds University

Ed Lynch American civil litigator; currently National Coordinator for the *Lawyer's Alliance for Justice in Ireland*; Mr. Lynch lives in New Jersey, USA

Eamann McMenamin Belfast area human rights solicitor, formerly partner at Madden & Finucane, Solicitors

Gareth Peirce Solicitor renowned for her work in human rights law and with Irish prisoners serving time in England; currently with *Birnberg Peirce & Co.*, London, England

Introduction

Don Mullan

The health of every democracy can be measured by its openness, transparency, and accountability. This is particularly so with regard to all the interlinking branches of a democratic state, from the executive level to the functioning of its various departments and agencies.

The fact that almost thirty years later the community of the New Lodge found it necessary to establish a Community Inquiry into the shooting dead by British security forces (with possible loyalist paramilitary collusion) of James McCann, James Joseph Sloan, Anthony Campbell, Brendan Maguire, Ambrose Hardy and John Loughran, on the night and early hours of the 3rd and 4th of February 1973, is a shameful indictment of the democratic state – a state that has demanded, and demands, high standards from its citizens, but which has failed to uphold and protect basic civil and human rights of some of those citizens.

This is certainly the case concerning the families of the deceased on the night and early morning in question and which this report deals with in considerable detail. The fact that a rigorous system of accountability by the police, the military, the Department of Public Prosecutions (DPP), and the Judiciary failed to materialise has left, specifically in this case, and generally in too many more, a compelling suspicion of cover-up, with a determination by various branches of the state to protect its own.

If this is so, and experience has taught us it is, then we have been witnesses over thirty years to the very subversion of democracy. This is a process that has contributed to the inevitable, dangerous and frightening erosion of faith in the very foundations of democratic government, a government that can in fact only survive on the faith and goodwill of *all* its citizens.

At the heart of this citizens' inquiry is a determination to force, even after thirty years, a government and its agents to offer widows, children (who are now adults), siblings, relatives, neighbours and friends a truthful and sustainable version of events that offers a compelling alternative to the one offered by numerous civilian eyewitness to the events of that terrifying night. At the very least, the community of New Lodge has the right to be heard and officially acknowledged.

The fact that no official inquiry or impartial and rigorous investigation has been held into the violent deaths of these six men by British security forces and the fact that legal requests to provide documentation to this citizens' inquiry were ignored, leaves little room to conclude anything other than a concerted effort by the state to conceal the truth about the night in question. It is, in the circumstances, reasonable to conclude that the inaccurate and contradictory statements issued by the military, in the immediate aftermath of the killings, were part of a pattern of misinformation and a concerted arrogance that resulted in the forces of law and order considering themselves to be above the law itself. In a word, untouchable.

Regrettably, if the article published in the North Belfast News prior to the New Lodge Community Inquiry is accurate, then it appears little has changed. According to a Press Release issued by the New Lodge Six Committee on the 29th of October 2002, through Madden & Finucane Solicitors, a British army press officer, when approached by the newspaper for a statement concerning this citizens inquiry stated: "There's no f***ing way we work to your rules, you know the score – F*** Off!"

The fact that the New Lodge community rallied to support this Community Inquiry; the fact that even after thirty years families, neighbours and friends, joined by members of the International Community, assembled to tell and to listen to their stories, was an eloquent response to the British army press officer. An officer, who, ironically, succeeded in illuminating the fault lines in the flawed democracy of Northern Ireland and who, through his verbal abuse, accentuated the ongoing experience of the families of the deceased.

Paul O'Neill, chairperson of the organising committee of the Inquiry, stated that the relatives were not motivated by vindictiveness, revenge or a desire for the British soldiers to be charged or jailed. "They just want the truth," and, he says, "From our point of view, the truth is revealing the hand-in-glove nature of the relationship between loyalist paramilitaries and the British army."

He echoes the cry for truth and justice by many across this island, including citizens of the lower twenty-six counties, such as the family of Seamus Ludlow in Dundalk and the families of the 1974 Dublin and Monaghan Bombings, which to this day remain the biggest unsolved mass murder case in the history of the modern 'Troubles'.

Perhaps Paul O'Neill and all who supported the New Lodge Six Community Inquiry are naïve, but surely accountability on the part of the state, especially where its agents have been involved in the controversial killing of six unarmed citizens, should be a prerequisite – not something that demands inordinate efforts on the part of victims to achieve.

Earlier I referred to the high standards demanded of citizens by the British state. This can be gauged by the length of prison sentences handed down by its courts to those whom the state has found guilty of serious crimes.

A few years ago, in the context of the new Bloody Sunday Inquiry, I found myself being continually asked to justify its establishment against the backdrop of prisoner releases under the Good Friday Agreement. I couldn't quite see the logic but decided to contact Mike Ritchie of *Coiste na n-larchimí*, to see if we could establish a cumulative figure for the actual years spend behind bars for 'Troubles' related sentences.

To our amazement, Mike discovered that in the last thirty years, members of the Nationalist/Republican community have served in excess of one hundred thousand actual years in prison. Members of the Unionist/Loyalist community have served in excess of sixty thousand years. By contrast, only four members of the British army have been sentenced and have served, in total, seventeen years between them. This was due to early releases following sustained campaigns by elements of the British media, politicians (including former British secretaries of state for Northern Ireland) and high profile personalities. Following their release, the British soldiers were readmitted to their regiments and promoted. The comparisons speak for themselves.

On behalf of the six jurists from Ireland, the United Kingdom and the United States, who gathered in St. Kevin's Hall, North Queen Street, Belfast, on the 22nd and 23rd of November 2002, I wish to thank the New Lodge Six Committee for the extraordinary work they did in organising this landmark Community Inquiry.

For two days the families of the deceased, the wounded, friends and witnesses, recounted the harrowing circumstances that lead to the deaths of the six young men. They were able to fulfil this difficult task by an extraordinary outpouring of community support and solidarity over two very distressing days. All were determined to begin a process of accountability, which the state has to this day, singularly failed to provide.

By way of concluding, I am reminded of a meeting I attended in Derry with the Bloody Sunday families and the Irish Taoiseach, Bertie Ahern, TD, in January 1998. Mr. Ahern recounted a telephone conversation with British prime minister, Tony Blair, MP, concerning the still to be established new Bloody Sunday Inquiry under Lord Saville. Mr. Blair asked the Taoiseach: "If we establish another inquiry, are we not opening up old wounds?"

Mr. Ahern responded: "No Tony, because these are wounds that have never closed!"

The same is true in the case of the New Lodge Six.

All victims of violence, irrespective of its perpetrators, are entitled to a full, fair, transparent and just process of accountability. This is particularly so when the states' own agents are in question.

In the case of the shooting dead of James McCann, James Sloan, Tony Campbell, Brendan Maguire, Ambrose Hardy and John Loughran, accountability on the part of the British state and its agents is long overdue.

Don Mullan
Chairperson of the Inquiry
9 January 2003

Profile of the New Lodge Area

The New Lodge Road district of North Belfast has a population of approximately six thousand five hundred. It is an area that has suffered severely from government deficits and economic neglect as well as from the conflict and its legacies. Within one square mile of the New Lodge Road over six hundred and thirty five civilians were killed and over two thousand five hundred injured during thirty years of political conflict.

The social and economic effects of the conflict and accompanying governmental hostility and indifference have resulted in chronic long-term unemployment, low inward investment, high poverty levels, poor educational attainment, physical dereliction and serious levels of associated physical and mental ill health. According to the Robson Index, the New Lodge ranked second by degree of deprivation of five hundred and sixty six wards in Northern Ireland. The Noble Index (2001), which is an up to date multivariate measure of socio-economic deprivation at ward and enumeration level, ranks it eighth in multiple deprivation terms.

The Greater New Lodge is categorised by the British government as a New Targeting Social Needs area. It has also been identified as a Health Action Zone. The area is characterised by very low levels of academic achievement: the most recent doorstep survey suggested that 87% of school leavers do not have any formal qualifications. A proportionately higher percentage of the local population suffer from basic literacy and numeracy problems, thereby effectively blocking routes into vocational training and employment, as indicated by demand at the local Ashton Community Centre for adult basic skills education.

The proportion of females in the New Lodge ward qualified to GCSE/O level was half those of the Belfast urban area level, and the proportion of females engaged in full-time education was below the Belfast average (1991 Census, in the absence of 2001 figures). 35.8% of the economically active female population in the New Lodge ward was out of employment compared with 11.7% for Belfast as a whole (1991 Census). On the Educational Attainment Scale the New Lodge ward is ranked twenty-third lowest of the five hundred and sixty six wards in Northern Ireland.

The area is surrounded by nine peace/interface lines. To this day, serious street disturbances and sectarian attacks on local residents continue as a regular feature of every day life. The New Lodge has a high number of displaced persons who took refuge in the area after having been intimidated from their homes during different periods of the conflict. Moreover, almost six hundred people originating from the district were imprisoned as a result of British 'emergency' legislation. This includes those held by internment without trial.

It is estimated that thirteen hundred children were affected by their parent(s) imprisonment. The '*Cost of the Troubles Study*' identifies the New Lodge as being one of ten 'high intensity areas'. That is an area with a death rate of more than seven per one thousand of population, with, 'lower incomes, higher occupancy of public sector housing, higher unemployment, and more benefit dependency', than other locations. Furthermore three out of ten of these high intensity areas fall within North Belfast. Despite the peace process, North Belfast communities including the New Lodge continue to suffer from a high, and increasing, level of conflict.

The North Belfast Community Action Project issued a recent report indicating that: -

- Of all violent deaths in the North Belfast area in 2000/01, 44% were as a result of the security situation (a marked increase on previous years where no deaths were recorded in 1999/2000, and 7% in 1998/99);
- Over a quarter (27%) of all shooting incidents in Northern Ireland in 2000/01 occurred in the area (a quadrupling of incidents since 1998/99 growing from twenty three to eighty eight);
- Bombing incidents quadrupled, growing from seven in 1998/99 to twenty seven in 2000/01 (excluding incendiaries and petrol bombs).

Despite all of the problems, the people of the New Lodge retain a strong sense of community pride and spirit. This is reflected through the local community forum. This consists of about forty separate groups ranging from youth, women and ex-prisoner organisations to tenants associations and local festival committees. There are eight centres in the area that provide services for the community. Most of those are small and totally dependent on outside funding. The Ashton Centre, however, is community owned and employs over thirty people. It generates income through rental outlets, training and facilitation services.

Community development work can have an immediate and positive effect on the lives of people who have suffered and been greatly disadvantaged by the political conflict. By building collective social capital, we can raise the morale and capacity of the community. By developing individuals through the obtaining of valuable training and education skills, this will allow the same people to break out of the cycle of long-term unemployment and apathy that pervade the area. This will permit them and the area itself to become part of the economic life of wider society.

Another equally important aspect in the process of promoting equality and social inclusion is recognition and respect for the human rights of all. While the sense of alienation felt by communities such as the New Lodge has been sustained by social and economic deprivation, it has also been compounded by their profound and unresolved experience of injustice at the hands of the state and its allies. This is an unpopular theme for those in authority to deal with. It is also something that has been relegated in terms of its importance by the mainstream media.

Nevertheless, it is crucial that the issue of state violence and associated matters such as collusion, torture, espionage, and harassment are addressed within the context of conflict resolution and societal transformation in the North of Ireland. In our own unique way the New Lodge Six Committee hope by our endeavours to contribute positively to this process. It is with a deep sense of commitment and determination that we will continue on with the arduous task of seeking truth and justice. In so doing, we intend to advance the delicate process of healing the raw, open wounds of the community that we love.

Jim McCann



Jim's father, James McCann, Sr., had a distinguished record in the European battlefield. He was captured by the Germans and imprisoned in a German POW camp. While imprisoned, he cut his way through barbed wire and escaped, walking to freedom in Switzerland. Soon after that the war ended at which point he made his way home to the New Lodge Road.

It wasn't long until Jim, Sr., met Mary McAuley from the Falls Road and settled in and around Hartwell Street in the New Lodge. Jim and Mary had eight children. Many of their children emigrated to England and America and some have since died – one of these was James McCann, Jr. The youngest child, named after his father, was born in 1954. Jim was said to be the quiet one of the family.

Like many boys in the New Lodge, Jim went to the Star of the Sea primary school on Halliday's Road. He then went onto St. Patrick's 'Bearnageeha' Secondary School on the Antrim Road. There he would have shared the schoolyard with both TC Campbell and Jim Sloan. When he left school, Jim went into the family trade and became an upholsterer.

The Troubles hit Jim harder than most. A few months previous to that fateful February evening, a British army sniper seriously wounded Jim by shooting him the back as he stood in front of his best friend Jim Sloan's house. That time there was no RUC investigation or report even though Jim spent several weeks in intensive care. Why Jim was shot in such a fashion is still unknown and highly suspect. This, however, was one of the realities of life for Catholics on the New Lodge Road.

On the 3rd of February 1973, Jim told his girlfriend Anne O'Neill, who was babysitting for his sister, that he would be back later. He was going to meet up with his best friend Jim Sloan and Jim's new wife Winnie at Lynch's for a night out. In the end, Winnie decided not to go, as she was ill, so just Jim and Jim had a few drinks at Lynch's Bar. Just prior to last orders, around 11.00pm, the two young men were standing outside the bar, having just had a conversation with some on the Road, when they were gunned down by a passing car.

Jim Sloan



Jim Sloan's daddy, Danny Sloan, was born in the old Pound Loney in West Belfast but was raised in Lepper Street. Danny's father died young at the age of thirty-seven. Danny's mother, Kate Brown, was from County Sligo. Danny had four sisters and two brothers. Jim's mummy was one of nine children, five sisters and three brothers. Kate's father, James Joseph Brown also came from West Belfast, but Kate's mother Margaret was an O'Neill from the bottom of the New Lodge.

Danny and Kate married in 1950s. James Joseph Sloan, their second oldest, was born on the 19th of June 1953 and named after Kate's father. Jim was raised partly in Ballymurphy and then in the New Lodge. Although the Sloan's had moved to the New Lodge by the time Jim was of school-age, he continued to go to St. Aidan's and St. Thomas' schools in West Belfast.

Jim finished school when fifteen and entered into a cooking apprenticeship. Kate said that her son Jim lived for his job and would often make fantastic meals at home. Working out of a Belfast agency, he would be on call to work anywhere. One time, a period of employment at the Belfast airport ended when Jim was stopped at a Loyalist checkpoint, taken away, and hooded but later released. Another time, when his car broke down in the wrong part of town for a Catholic, he was beaten badly by a Loyalist gang. Before he was murdered, Jim was working in the kitchens at Stormont.

Jim met Winifred McNally from Ballymurphy in 1972. They married on Boxing Day the same year and moved into a house on Lepper Street. Five weeks later Jim was murdered, leaving Winnie as a young widow. That Saturday night, the 3rd of February 1973, Jim and his close friend Jim McCann were out for the night at Lynch's Bar at the top of the New Lodge. The two men were killed just outside the bar in a drive-by shooting around 11.00pm that night. Having just left McLaughlin's, Jim's mummy Kate heard the shooting as she walked down the New Lodge Road. She immediately ran to the top of the New Lodge. There, she saw young Jim McCann lying on the ground. Too busy helping young McCann she didn't notice that her son had also been shot until he too was carried into the ambulance.

Two months after he was killed, Winnie learned she was pregnant. Jim never knew Winnie was expecting. Jim's parents, Danny and Kate, raised Jim and Winnie's young son Jim as their own.

Tony 'TC' Campbell



Tony 'TC' Campbell was born in the Little Italy area of North Belfast on the 3rd of February 1954. TC's grandfather, Billy Campbell, a Scots Protestant by birth, married Maria Sintina some time in the 1930s. Their son Billy married Rosena Casey from Dundalk. Billy and Rosena had four sons, Billy, Gerard, Tony and Joe, and one daughter, Roisin. There were two other boys who died as infants.

Young TC went to St. Patrick's primary school on North Queen Street. Finlay McAuley, one of TC's best friends, remembers TC having good football skills. Both attended the old Newsboys Youth Club where they played football in the evenings. Leaving St. Pat's, TC headed, as most did around the New Lodge, to St. Patrick's Bearnageha Secondary School on the Antrim Road.

In 1973, the Campbell's lived in Artillery Flats (now Grainne House) at the bottom of the New Lodge Road. 3rd February 1973 was TC's 19th birthday. He spent the day celebrating with his brother Billy and many friends. All remember TC as a popular, good-looking boy. That evening they all went to the Newington Parish disco. When the disco finished, TC walked with a group down the New Lode Road.

Near Edlingham Street, they heard two short bursts of machine gun fire coming from the top of the New Lodge. Within minutes, British soldiers stationed on Duncairn Gardens opened fire indiscriminately on the New Lodge. British soldiers from the Duncairn Gardens shot TC as he ran across Edlingham Street. According to his brother William, who attended the Inquest in 1975, the Coroner stated that TC had been hit seventeen times.

Brendan Maguire



The Belfast dock was the heart of employment for the New Lodge community. Docker's buttons were handed down to sons for many generations. The docker's button signified the union job. The docker's life was indeed a hard one. Work was there only when a boat came in. Dockers would sit around the harbour, patiently looking out at the Belfast Lough for sign of work and a day's wage packet for the family. For Belfast, the dock, as with the coalmines of Scotland and Wales, are now a part of history. The machines took over from the sweat and brow of working men.

Brendan 'Fat' Maguire was part of that history. Brendan's father, Samuel was born in 1896 and arrived in Belfast from Randalstown. Although a country boy, Samuel could not survive on farming so he came to Belfast to find work. There he met up with Mary Keely from County Monaghan and they married. They settled in Burlington Street off the New Lodge Road in North Belfast.

Samuel and Mary had seven children, two of whom died when they were young. The four eldest surviving children were John Joe, Tony, Mona and Katherine or Joan as she was called. Brendan Maguire, the youngest, was born on the 24th of November 1940. From childhood, Brendan was plagued with asthma. It gave him the barrel chest that earned him the nickname of 'Fat', which everyone in the New Lodge knew him by. Brendan's asthma forced him to take it easy on many occasions, but throughout his life he was known for this gentle manner and easy nature.

As a young boy, Brendan went to the Holy Family School. But, like all other young fifteen-year old boys in those days, a wage was needed in the house. Following their father Samuel, John Joe, Tony and young Brendan headed to the dock in search of daily work. If a ship did not come no money was earned: then it was a walk home to wait another day.

Most who knew Brendan said he was typical of the men there. He worked hard and sweated in the hole of the boat, liked to put a pound on a horse, and liked his pint. All in all Brendan was friendly and his eldest brother John Joe said that Brendan had the famous Maguire laugh which so recognisably stood out in a crowded bar. Most people's memories of Brendan are of his laugh and his love of a sing-song.

On Saturday, 3rd February 1974 Brendan was sick with the flu and had been off work. His asthma made him take a cold much harder than the average man. That afternoon, he went to Sheridan's Bar with a book. Brendan was sitting and having a coke, when his good friend Joe Doherty, Sr., came in after working at the docks. They sat for a bit but because he had the flu Brendan was feeling terrible. They left around 7:30pm with Brendan telling Joe that he was going home for a hot drink and his bed.

Sometime after this, Francie McAlorum called round for Brendan and persuaded him to stay out. The two men went to McLaughlin's Bar on the Antrim Road and then onto the Circle Club, also known as the Catholic Ex-Servicemen's Club, at the junction of Edlingham Street and the New Lodge Road.

Some time around 11:30pm, those in the Circle Club heard shooting on the New Lodge Road. The British army was shooting down Edlingham Street onto the New Lodge Road from sandbagged fortifications off Duncairn Gardens. Some of the men and women inside the Club ran out to see what was going on and to see about loved ones. Brendan was one of these men. When he got outside, he saw Tony 'TC' Campbell lying fatally wounded on Edlingham Street.

True to his nature, Brendan, with Malachy Cunningham, Sr., went out to pull TC's body around the corner out of the continuing gunfire. It was at this point that Brendan was also shot dead by the British army.

John Loughran



John Loughran was one of John and Mary ‘Minnie’ Loughran’s seven children. The Loughran family was well known around the New Lodge Road – Mrs. Loughran was the matriarch of a big family. The Loughran boys also were all well known boxers in the area. Minnie proudly displayed their countless trophies and awards.

At the time of his murder John’s wife Ann, from West Belfast, was heavily pregnant with their fourth child.

John worked as an asphalter for a French company. If the job was close enough to Belfast, he would come home at the weekend. The week preceding the 3rd of February 1973, John had been working in Irvinestown, just north of Enniskillen in County Fermanagh. That Friday, the 2nd of February, he had come home to spend the weekend with his family.

On Saturday morning, he told Ann to take the day to herself and she went to see her mother in West Belfast. John spent the day with his children and his family in the New Lodge area. Ann later remembered that he had seen every one of the other men killed that night at some point during the day. That was the nature of the New Lodge Road: you knew everybody and saw one another on a regular basis as you went about your business.

On Saturday night, John and Ann put their children to bed. They were settling in to watch the Elvis movie, ‘The Flaming Star’, on the television late night show. Around 11.00pm they heard shooting on the New Lodge Road. Sometime shortly after, John’s mother, who lived next door to them, came calling for John. She told him that there was someone shot on the New Lodge Road, close to their home, and needed help. John ran out to help, stopping only to pull on his boots.

Ann remembers a terrible commotion. It woke the children up. She was upstairs when she looked down and saw John and another man carrying in Brendan Maguire. John then stopped to put on a sweater and went back out. He came in again with Charlie Carson, who was seriously wounded in the thigh. Then John and Ann heard someone crying for help. Ann tried to stop John from going out, but he felt he must. In the process of trying to rescue this man, John was shot dead by the British army.

Ambrose Hardy



The Hardy's originated from Rasharkin in County Antrim. George Hardy, Sr., left the small village for work in Belfast in the early part of the 1920's. Belfast was then the hub of the linen mill industry. Work was plentiful, but it was harsh and the wages were only just enough to put basic food on the table. As with the Belfast dock, the mills are now a part of Belfast folklore. The mills have gone and all that is left are the memories from older generations.

It was at the Mills where George met Violet Burns from the Brown Square district of West Belfast. Violet's father had a market stall and sold food products from the farmlands outside Belfast. George and Violet married around 1927 and had twelve children, one of whom died at birth. John was the eldest followed by George, Jr., Sammy and the twins, Joseph and Ambrose. The girls were Mary, Cathleen, Rosaleen, Jean, Phyllis and Linda. George eventually left the Mills and became a fireman for Shorts Industries in East Belfast. He was one of very few Catholics to secure a job there. Life seemed to be manageable and the Hardy family had a happy enough upbringing in and around the 'Long Streets' of the New Lodge.

Ambrose went to St. Malachy's Primary School at the bottom of the New Lodge and then onto St. Patrick's Bearnageeha Secondary School. When Ambrose left school, he went in to semi-skilled work in the asphaltting trade and continued to live with his parents.

In 1963, the first incident of sectarian violence struck the family. The family house in Hillman Street was attacked by a drunken loyalist mob and the Hardy's were forced from their home. Geordie recalls the RUC standing by and rather than forcing the loyalist mob back. The Hardy family, however, steadfastly refused to be forced out and moved back within days.

Then, in 1972 when Geordie and Jim Sloan's brother Danny were milling around outside the Diamonds Bar at the bottom of Harding Street, a loyalist car suddenly drew up and opened fire with a machine gun. All were seriously wounded but survived with their lives.

Saturday, the 3rd of February 1973, was another night of tragedy. Ambrose had been out with a group of friends at the Circle Club. His brother Geordie remembers him with his friends Isaac Kingham, Frankie Lavery and Buster McKenna. Brendan Maguire was also in the Circle that night. Those who were with Ambrose that night testify that he was one of many enjoying a Saturday night's music with Wheel Base.

Around 11.00pm those in the Circle became aware of shooting on the New Lodge Road and on Edlingham Street. Some tried to keep everyone in the Circle to keep them safe from the shooting. Brendan Maguire, however, went out into the street at the beginning and was shot dead trying to assist the others already shot. Ambrose, however, remained inside. Approximately one-hour later,

Ambrose made his way downstairs. The shooting seemed to be lessening. It was coming in spurts. By this time, however, the British army was also firing north up the New Lodge Road from the barracks on the top of the flats, putting the entry to the Circle Club directly in the line of fire.

Ambrose was desperate to get home to his mother. He knew she would have been worried about him and he did not want her out on the street looking for him. In the hall of the Circle, Ambrose said he was going out and asked those around him for a white cloth to give him safe passage. Lily McAuley took off her petticoat and gave it to him. He put his head out the door and waved the white cloth. He was immediately shot dead, his body falling back into the entry of the Circle Club.

In 1976 tragedy again visited the Hardy family. Violet's 19-year-old niece Jeanette was murdered along with her husband Joe Dempsey and their young daughter Bridgeen. Their home, along with three others, was petrol bombed by a loyalist mob in Hillman Street. Witnesses, who stood helplessly by, forced back by the flames, recall cries of help from the top window as Joe and Jeanette held their 18-month old child in their arms.

Finally, in 1979, the Hardy family was struck again when a loyalist death squad murdered their eldest son John as he sat in his Ashton Street home. Apparently the Loyalist hit squad had gone to another house, but finding the person not at home opted for the nearest house, that being John Hardy's.

The death of Ambrose in 1973 had brought a display of sectarian abuse for George Sr. at his Shorts workplace, where newspaper photographs of Ambrose and the others were posted on the work canteen wall with the headlines 'Six Gunmen Killed.'

The Hardy family believes that the killings of Ambrose and the subsequent killing of his brother John in 1979 had a devastating effect on his father.

George Sr. died six months after the death of his second son.

Statement of Father Des Wilson

Director, Springhill Community House Education and Development Project

Director, McBride Centre

Columnist, Andersonstown News

Recipient of the *Pax Christi* Peace Prize, 1975; John F Kennedy Memorial Medal (AOH America), 1992; Sakharov Freedom Prize, Norway, 1992; Doctorate of Philosophy (*honoris causa*) Ferrara University, Italy, 1996

The 1970's were a very dangerous time for us all. The rate of killings became higher than ever before. The British government insisted that this was entirely sectarian, the result of Catholics and Protestants hating each other. But it was clear that this was not true. Killings were described as "random" but in the majority of cases this was not true either. Some of us who had lived in Belfast for many years saw a clear pattern in what was happening.

My own view was that there were some sectarian killings, but these were a minority. Further, while there were some random killings, these also were a minority. Killing a person was not a random act but a carefully planned and crafted political act. The word "indiscriminate", which was often used when people were describing politically motivated killings, was also inaccurate and hid the real meaning of what was happening. The killing of Catholics had a number of purposes.

One was to intimidate the population and make the thought of armed resistance by anybody unpopular. Another was to perpetuate the idea that conflict in Ireland was due not to bad government and people's resistance, but to the inability of Catholics and Protestants to live together in peace. Killings with these purposes in mind could not always be done by military or police acting as such. They had to be done by others who enjoyed either the protection of these forces or their goodwill.

The book on *Low Intensity Operations* by a British soldier called Frank Kitson showed that the British army strategy was to use civilians and civilian associations to control a population. For example, normal court procedures and normal policing were to be suspended in order to defeat what Kitson looked on as subversion within the state. In other words, the military were to be used not to defeat an external enemy but to control an internal population and thus defeat an enemy within the state. For these purposes, civilians and civilian organisation were to be used – and subverted if necessary – to help them in that work. During the years that followed the massive injection of British troops in 1969, we saw the working out of various patterns of government behaviour that resulted.

The first woman to be swooped on and arrested for internment created a great public outcry and she had to be released. The next one to be arrested created a lesser outcry yet she too was released. However, in time public outcry became less and less and as the conflict went on women could be arrested and eventually were tortured, sexually harassed and stripped by prison officials, male and female. Apart from people who were determined and dedicated, there was no effective public opinion to save these women. In other words, the British government's journey towards the stripping, humiliation and torture of women in the prisons was a carefully graduated and measured affair, not a series of undisciplined actions by police, warders or soldiers.

Therefore, when we find events like the killing of people in groups or in single incidents, as for example in Springhill, Ardoyne and Derry, we do not presume these are single random instances of a lack of discipline by troops or as an example of opposing hatreds in the streets. These explanations are too simple and lead us nowhere. We have to look at the pattern to see how each

event fits into a general picture. We must abandon the idea of "random" killings or "indiscriminate" killings or opposing hatreds. Most of the killings here were probably carefully crafted political acts.

Indeed, this incident in the New Lodge is not isolated. There are others such incidents:

- The July 1975 Miami Showband murders were revealed as an operation by members of the British regiment the UDR;
- In 1972, there was what became known as the pitchfork murders in County Fermanagh. These were shown to have been done by members of a Scottish regiment of the British army only when a man went into a police station in England and said he thought he could give information about what were known as the Yorkshire Ripper murders in England. Two British soldiers were charged with the Fermanagh murders, found guilty, sentenced and soon set free; ('The Dirty War,' Martin Dillon 1990)
- In June 1972, on Glen Road in West Belfast, three men were shot down by gunfire from a passing car. McGregor and Williams, two British soldiers in plain clothes, were arrested and later charged but set free. Their involvement was eventually admitted;
- On July 9, 1972, five people, including a Catholic priest, were shot dead in Springhill. The shots came from British military posts in the nearby JP Corry's wood yard. Another Catholic priest Fr Hugh Mullan was shot in gunfire from British posts in August 1971.

In addition, these measures have also been spoken to and affirmed by numerous persons:

- Kennedy Lindsay, a loyalist, has said publicly that British army personnel were also involved directly in explosions and other incidents; (Burke, 'The Truth about British Repression')
- Some people have made clear they wanted a policy of shooting people. General Creasey, British GOC is quoted as saying that in Oman what he called "terrorists" just "disappeared". It was pointed out to him that this might work in Oman where Creasey had been, but in Belfast it would be more difficult to bury evidence;
- Brian Faulkner said at one time: "At this moment any soldier seeing a person with a weapon or acting suspiciously may fire to warn or with effect.... without waiting for orders from anyone". (1971). The necessary suspicion could be created by a simple word of one soldier to another, as a judgement by Judge Ian Higgins later showed;
- John Taylor, later given a seat in the British House of Lords at one point said: "I would defend without hesitation the action taken by the army authorities in Derry against subversives during the past week or so when it was necessary in the end to actually shoot to kill. I feel it may be necessary to shoot even more in the forthcoming weeks in Northern Ireland" 1971. Business people in Derry seem to have had the same idea.

Looking at the matter from the point of view of the British government's military forces, they had built up a reputation for toughness yet they were being taunted in the streets by men, women and children. They presented themselves to the public as keepers of the peace, yet clergy and others resented them. Further, although Protestant clergy supported the British government and its troops, they still resented black soldiers being sent here to keep us in order. They said, "We civilise them, they do not civilise us." The British soldiers who prided themselves most of all on their toughness were openly taunted by people who had nothing to fight with except their tongues. All this,

combined with the British military's inability to cope with the situation in any way provided for by their normal training, caused a serious lowering of morale among those troops.

In 1972, at a conference near Oxford, I was with a group of individuals who were told by an official of the British Ministry of Defence that the morale of their soldiers was causing them problems. This individual indicated that it was serious enough when ordinary British soldiers were buying themselves out of the army, but now there was low morale among the officers as well. This was a startling admission for a senior member of the Ministry to make – I believe his name was Denning - but he said also that they were anxious to find a way to create a solution.

We got the impression that some sections of the British establishment would contemplate withdrawal from Ireland while others would oppose that. But the significant point conveyed was the attitude that if morale among British troops is low, and if they are feeling humiliated, there is one way of dealing with that situation and that is to let the troops off the leash to act tough against civilians. This ended up being the weekend when British troops were let loose on the people of Derry on Bloody Sunday.

Much later, in the 1980s, a British officer admitted that while his army was telling the British government that they were fighting against a highly trained, motivated and dedicated republican armed force, the British government was telling the people that these were nothing but thugs and criminals. It made sense then, from a number of different points of view, that British officers and troops in a state of demoralisation and with their reputation for toughness being taunted by people in the streets, and being sent to fight an enemy whom they were realising more and more they could not defeat, would be open to using desperate measures.

This was especially true as some of these measures had been advocated "respectably" by Kitson and further been tried out by the French commanders in Algeria. Some of these tactics were, among others, takeover of civilian institutions, arbitrary arrest, internment, torture for information etc. The British translated these into attacking civilians to intimidate them, to put pressure on the IRA to stop fighting, and to perpetuate the myth that the cause of the problems here was hatred between Catholics and Protestants.

This interpretation of what happened here, including what happened in the New Lodge, is based upon observations and conversations over the years. It is based on what very senior members of the Ministry of Defence and very senior British army officers said very clearly. I believe we cannot understand what happened in New Lodge and other places where a number of people were killed either in one incident or within a short period and space unless we look at such an interpretation of events.

What British troops and the RUC were doing made sense in the context of what they wanted to do, but more importantly what they felt more and more unable to do, that is, control the population and the political situation with democratically acceptable methods. In Algeria, the same frustrations had led to much the same results. One can follow also - although it was a less serious matter- the pattern of behaviour of British military and police personnel towards churches, cemeteries and people.

At some stage in the early 1970s, we were puzzled by the fact that British troops insisted on mounting roadblocks and stopping people on their way into churches for Mass on Sundays. When they were also trying to win the people over to their side, actions of this kind were annoying and provoked them needlessly in the other direction.

On one occasion, two priests confronted the British soldiers, stood in front of their guns that were pointed towards the church doors, and said they would stay in front of them as long as necessary to make the soldiers go away. Shortly after this, we learned that British army officers had been told that the IRA brought their guns into the various districts by getting these church-going congregations to carry them in with them on Sundays. The political situation in Belfast required an amount of perception and intelligence that clearly the army did not possess. They were guided by simple principles and one of them was that the Catholic people were the enemy and, as Kitson had said, all the citizens' protective mechanisms had to be rendered useless to them.

In time, it was possible for the British military and the police to enter people's homes at all hours at will, to arrest people on sight, and to enter the churches and cemeteries which once we believed would be considered outside any conflict zone. In other words, all the old rules were being broken, not because of the personal callousness of individual British soldiers but by following a consciously chosen and mandated pattern. It became clear that although the British military and the police had been officially called "the security forces", an important part of their job was to create insecurity as a way of creating dependency and fear in people who could better be controlled by that.

People were given a feeling of insecurity. Neither their homes nor their work, nor their families nor their persons nor their lives were safe. For us, they were not "security forces" as the British government and its supporters claimed, but insecurity forces because such an important part of their job was to inflict this insecurity on the people whom they needed to control. The word was circulated that they had equipment that could overhear conversations in sitting rooms, that they had information coming from all directions. Much of this proved to be untrue, but it contributed to the feeling of insecurity which government had to inflict on the people. The belief that the people no longer had control over their homes, or even their lives, was part of the pattern of the British government's response to the people's dissent.

One of our constant difficulties has been that we could not persuade friendly visiting observers to get rid of the simplistic and misleading interpretation of our situation as a conflict of hatreds between Catholic and Protestant. I hope – and my colleagues in Springhill hope – that this inquiry and other similar inquiries will help us achieve this at last. A true picture of what government did and does with great determination and planning will emerge from the evidence. The deaths that have been caused not at random, not indiscriminately but by careful planning by government and its supporters must be revealed for what they really are. And our sincere thanks are due to the organisers, witnesses and panel of this Public Inquiry for that necessary work.

Preliminary Findings

New Lodge Community Inquiry Panel
Saturday, 23 November 2002

Chairman of the Tribunal, Don Mullan reading out the findings on behalf of the panel this evening said:

“The Committee states there is no doubt that there has been a clear breach of Article 2 of the European Convention on Human Rights – the Right to Life.

The Jury has been deeply moved by the integrity and honesty of the evidence they heard.

We have been deeply shocked by the state’s total failure to investigate the killings and woundings.

The evidence is unequivocal regarding the innocence of the deceased and wounded.

There is no evidence whatsoever that they were armed or acted in a manner that could be perceived as a threat to the security forces.

Jim Sloan and Jim McCann were the innocent victims of a drive-by killing. Serious questions remain concerning whether the loyalist death squad acted alone or in collusion with the security forces. There is evidence that the occupants of the car were military personnel. The easy passage of the car past so many military personnel and fixed military installations and the failure to apprehend the car means that the military were involved directly or indirectly.

Tony Campbell, Brendan Maguire, John Loughran and Ambrose Hardy were all clearly shot by the British army. There is additional distress because of the uncontested allegations that they were gunmen shot in a gun battle. There is no evidence of this claim in the public domain. The claim has not been retracted.

Even at this late stage we call upon all relevant agents to release to the Community Inquiry documents relating to these events.

NEW LODGE SIX COMMUNITY INQUIRY JURISTS' FINDINGS

**JUDGEMENT AND REPORT BY EAMANN McMENAMIN, BCL, - NORTHERN
IRELAND SOLICITOR, ON BEHALF OF DON MULLAN, KATE AKESTER, COLIN
HARVEY,
ED LYNCH AND GARETH PEIRCE**

1. INTRODUCTION

- 3.42 As a former partner of Madden & Finucane, Solicitors, and a Solicitor of 17 years standing with the Law Society of Northern Ireland, I was invited to participate as a Jurist in a Public Community Inquiry into the shooting of six civilians on the night of the 3rd and early hours of 4th February 1973 in the district of the New Lodge, Belfast. I was honoured and flattered to be so invited and after careful consideration I accepted the invitation for a number of reasons.
- 3.43 Until the newspaper publicity leading up to the Public Community Inquiry, I was totally ignorant of the “New Lodge Six” incident. This ignorance turned to shame when I read about the controversial facts surrounding the deaths of six young men within the space of an hour and the subsequent lack of official investigation or publicity surrounding this forgotten incident. I was later to learn that this ignorance was shared by the vast majority of people outside the New Lodge area. This created a sense of duty on me to assist in this Community Inquiry in order to, at the very least, bring it to the attention of the wider public and revive the unanswered controversy surrounding these deaths.
- 3.44 Furthermore, I felt that my own personal experience in handling primarily civil litigation cases concerning controversial incidents involving the British Security Forces would assist the other eminent Jurists on the panel to probe the witnesses and documentation available in an attempt to discover what exactly occurred on that fateful night, including the circumstances beforehand and the subsequent investigations into this incident.

- 3.45 The “Terms of Reference” required us to inquire into the very serious public concern (which had for too long remained dormant) and to examine and ascertain the facts and the circumstances surrounding the deaths of Jim McCann, Jim Sloan, Tony Campbell, Brendan Maguire, John Loughran and Ambrose Hardy, including the identification of those responsible and to have regard to all circumstances or events pre-dating the said deaths which appear to be relevant or connected therewith.
- 3.46 We were further tasked with examining the official response to the killings including the internal investigations by the British Forces, the RUC and the Inquest and to examine whether this response amounted to a breach by the State of the Article 2 Rights under the European Convention for Human Rights of all the deceased.
- 3.47 Finally, if we find that there was a continuing breach of Article 2 Rights, we were asked to recommend what further action should be taken by the British Government in order to provide an effective investigation into the killings in compliance with the said Article 2 obligations.
- 1.07 An International Panel of Jurists chaired by the Author and Human Rights Campaigner, Don Mullan included myself, Kate Akester (an English Solicitor specialising in Civil and Criminal Liberties, Privacy and Justice), Professor Colin Harvey, (Department of Law, Leeds University), Ed Lynch, (private American Attorney and National Co-Coordinator for the Lawyers’ Alliance for Justice in Ireland) and Gareth Peirce (an English Solicitor renowned for her work in Human Rights Law and with Irish prisoners in England).
- 1.08 We acknowledge the great amount of time, work and effort in preparation for this Public Community Inquiry by the New Lodge Six “Time for Truth” Campaign Management Committee and the Solicitors and staff of Madden & Finucane, Solicitors. We are satisfied that every effort was made to put as much evidence, information and documentation before us as was practically available to enable us to consider this matter. We were supplied with 581 pages of documentation to include witness statements (43), maps (10), photographs (22), contemporaneous newspapers articles (30) and all the available evidence and documentation relating to the inquests, post-mortems and forensic examinations of the deceased.

1.01 At this stage, we have to acknowledge the limits within which we had to operate due to the refusal and failure of the Coroner's Office, British Ministry of Defence, RUC chief constable and British secretary of state for Northern Ireland affairs to provide statements and documentation available only to them which would have assisted in this Inquiry. This refusal/failure came in spite of 142 pages of correspondence (96 items) between Madden & Finucane, Solicitors, and these agencies over a period of almost five months immediately prior to this Inquiry taking place. The only available evidence and documentation from, or on behalf of, the RUC and Ministry of Defence were two RUC Statements and five British soldier statements gleaned after exhaustive searches of the Public Records Office, Belfast, and that were already in the public domain in the course of the Coroner's Inquests. In this regard, we adopt the assessment of the European Court of Human Rights in the case of *McKerr -v- United Kingdom* (paragraph 109).... **“In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of the State Agents but also all the surrounding circumstances. Where the events and issues lie wholly, or in large part, within the exclusive knowledge of the authorities, as for example in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries and death which occur. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation.”**

2.0 BACKGROUND

3.53 The “Terms of Reference” require us to have regard to **“All circumstances or events pre-dating the said deaths which appear to be relevant or connected therewith.”** In that regard, we are indebted to the written and oral testimony of Father Des Wilson and Liam Maskey and the publications supplied to us, *“The Politics of Force”* by Fionnuala Ni Aolain and *“State Violence”* by Father Raymond Murray.

2.02 Father Des Wilson in his evidence stated that:
“For us, they were not “Security Forces” as the Government and it’s supporters claimed but “Insecurity Forces” because such an important part of their job was to inflict this insecurity on the people whom they needed to control.....the deaths that have been caused not at random, not indiscriminately but by careful planning by Government and it’s supporters must be revealed for what they really are”.

2.03 We adopt the assessment in *“The Politics of Force”*:

“The first phase of the conflict in the jurisdiction, 1969 - 1974 was a militaristic phase, characterised by the deployment of the Army. According to the Government’s rhetoric, the military was fulfilling its role as an aid to the civilian power. This characterisation was strikingly inaccurate. In fact, this phase clearly manifested military primacy in Northern Ireland, with the Police merely acting in tactical support on the ground. The militarisation phase corresponds most neatly to the traditional criteria for the use of Emergency Powers envisaged by International Law. Like other western democracies, the United Kingdom functions as a willing participant to its international legal obligations. This means that it is obliged to fulfil certain legal requirements before it may resort to the use of exceptional powers in the domestic field. In order to invoke emergency laws, which prima facie violate the individual rights of citizens, there must be in place an exceptional situation which poses a discernible threat to the “whole population and constitutes a threat to the organised life of the community of which the state is composed...” (Page 27)

“A two fold strategy has emerged from the United Kingdom Government since 1969. First in a concentrated reliance on hard-line military tactics to “solve” the conflict on the ground. Second, legal processes have been yoked to manage that conflict. The oscillation between the two has occasionally been interrupted by sporadic attempts to promote political initiatives.” (Page 25)

2.04 Following the decision in *Hume -v- Londonderry Justices*, whereby the Courts found that the Stormont Government was acting *ultra vires* the *Government of Ireland Act* by regulating the Special Powers Act for the use and deployment of the British army in Northern Ireland, the *Act of Indemnity* was quickly passed, legalising both the deployment of British armed forces and all their acts from the moment of commitment. After that date, while the British army’s action and deployment were indemnified, the operational tactics of the British army does not avoid the question of what the applicable legal regime was at the time. The classical legal definition of the duties and responsibilities of a British soldier is that a soldier differs from the ordinary citizen in being armed and subject to discipline, but his rights and duties in dealing with crime are precisely the same as those of an ordinary citizen. In effect, he is a mere “civilian in uniform” in aid of the civilian power. This contrasts starkly with the position of a serving Policeman. Our knowledge of historic events also leads us to agree with the author when she states;

“The Army was demonstrably ill-equipped for the task in which they were engaged - in effect, a quasi policing function in mainly urban areas with poor training and a lack of local knowledge.”

2.05 This would go some way to explain why 90% of deaths attributable to state agency during the period 1969-1974 were attributed to the British army. A total of 188 persons were killed between 1969 and 1974 by state agencies and of that total, 169 were caused by use of force being exercised by the regular military. Significantly, 65% of those killed were indisputably unarmed at the time of death. Only 12% of the deceased (23 persons in all) are confirmed to have been in possession of a weapon at the time of death. A further 15 deaths are subject to dispute in this period, i.e. those where state agent and eye witness accounts are at variance. Another 14 deaths are categorised as being “possibly armed” at the time of death but this cannot be established with absolute certainty. The small number of criminal prosecutions arising from these deaths indicate that the Courts and attendant legal process were playing a minimalist role in the management of the conflict. The question is quite rightly asked by Raymond Murray in “*State Violence*” as follows:

“Why can Agents of the British Government kill people manifestly innocent in very suspicious circumstances and never pay any penalty? Are they really operating under the law if they are never effectively made amenable to law? Are they above the law? Is there a conspiracy to make them immune from effective prosecution?”

4.02 It is also important to examine and recognise the background in the immediate geographical area surrounding the New Lodge at the time of these controversial killings. Examination of oral witnesses by Jurist Ed Lynch established that the entire New Lodge area was surrounded by various military permanent or semi-permanent positions including Girdwood Army Barracks (the main British army installation in North Belfast), the Kinnaird Street Military Sanger, the Glenravel Street Sanger, the permanent observation posts on top of Alamein House and Templar House, as well as the semi-permanent sandbag emplacement at the junction of Edlingham Street and Copperfield Street. Each of these military fortifications was strategically positioned to afford views of almost the entire New Lodge area in order to monitor and control IRA activity. However, by their very nature, they would equally have been capable of monitoring and protecting the area from incursions by loyalist paramilitaries, if desired. This is particularly important when we come to deal with the drive-by shootings of Jim McCann and Jim Sloan.

4.03 In relation to the attitude and behaviour of the British army to the nationalist population of the New Lodge area we would refer to the evidence of Father Des Wilson and Liam Maskey in particular, coupled with the general evidence and observations of various oral witnesses in respect of incidents before and after the shootings. Specific threats by members of the British army are contained in the statements of Lily McArdle, William Loughran and Paul McAllister. Lily McArdle states, **“In the days and weeks before the Queen’s Regiment had pulled out, they had shouted out to us on the road things like “don’t you be worrying, we’re going to get you before we go”.** William Loughran states, **“In the days before the shooting it felt like something was about to happen. At that time people just knew when things weren’t right. On the Tuesday before John was shot the Marines stopped me.....I remember your soldier said “where’s John”, I said back to him “look, you know more about John than I do and you know where he lives”.** The soldier came back with **“oh, we’ll get him in our own time”.....it was then that I noticed Duncairn Gardens had been sandbagged. I noticed this on the Sunday morning. It seemed odd to me at the time”.** Paul McAllister states, **“On the Monday or Tuesday before 3rd February 1973 I was on my own walking down Hillman Street. I was stopped by several members of the Queen’s Regiment.....One Soldier looked at me and said “We’re going to get you at the weekend”. I expected them to arrest me and was surprised when they didn’t. I think that the only reason they stopped me was to make this threat. The Regiment was about to pull out and they were making it clear that they weren’t going to leave without making a parting gesture.”**

4.32 Another factor to be taken into account, in respect of the background to these killings, is the fact that the British army were using telescopic night sights, probably for the first time that night in the New Lodge area. The significance of these sights appears to have been highlighted in an interview by an Officer of the First Queen’s Regiment to the Belfast News Letter in an article on the 5th of February. Reference is also made to these telescopic night sights as being significant by a number of witnesses, in particular Lily McArdle who states, **“The British army had us like rabbits that night. It was the first night they had night sights on their guns. We knew this because the night sight was a large attachment on the SLRs (self loading rifles) and when the Brits would walk around we could see the night sights.”**

3. THE KILLINGS

(a) Jim McCann and Jim Sloan

3.01 We find that Jim McCann and Jim Sloan were, on the balance of probabilities, killed by members of an under cover military unit as they stood outside Lynch's Bar, unarmed, at approximately 11.45pm on Saturday the 3rd of February 1973. We find that both were killed by machine gun fire from the rear passenger of a dark blue four door Morris 1800 or 2200, a type of vehicle used by the British army at the time for covert operations.

1.01 We accept the testimony of Desmond Breslin and his "mind's eye" recollection of the description of the occupants, the weapon and their demeanour, i.e. that the passenger who fired the fatal shots was a man, aged about 30, clean shaven with a short military type haircut and he was wearing black clothing up to his neck and made no attempt to conceal his face. Furthermore, he was holding a standard sub-machine gun - either a Sterling or a Sten, but definitely a military issue type of gun and he acted with military precision. We particularly note that Mr Breslin had unique experience in his employment. He states: **"...A dark blue four door Morris 1800 or 2200 came up the New Lodge Road and very slowly turned left on to the Antrim Road. The car was low to the ground and seemed to be made of heavy amour like a military vehicle. I distinctly remember thinking at the time that this was a military vehicle or had at one time been used as a military vehicle. I felt this way and was able to immediately discern the make of the car because at the time I was employed in a garage where we worked on those cars. There were some in the garage who were responsible for changing the colour on military vehicles from the standard military green to a dark colour. Dark blue often was chosen because it would cover the green. This case was that same colour of dark blue. I also clearly remember the occupants – or what occupants I could see – of the car. There was a man, aged about 30, in the back seat on the passenger side. He was clean shaven with a short military type hair cut and was not wearing a mask or a hood. He was wearing black clothing up to his neck, but had made no attempt to conceal his face. He was holding a standard sub-machine gun – either a Sterling or a Sten, but definitely a military issue type of gun. In those days everyone was familiar with the type of weapons carried by the military. As the car turned the corner, the man in the back opened fire on us.... I saw the car drive towards town and then do a u-turn around Girdwood barracks and come back up the Antrim Road. The gunman acted with military precision; he had**

held the gun properly when he had opened fire and had changed the clip in his weapon before the car even turned around. I have a vague memory of the gun being pulled in after the first burst of gunfire. This must have been when he changed the magazine. After the u-turn, the car passed right by a Saracen, which did nothing to apprehend it....I have always maintained that the men in the car were not loyalists, but were members of the British army...The only other time I have spoken about this incident was when I gave a statement to Paschal O'Hare about 3 weeks after.'

4.07 Our finding that the occupants of the vehicle were military personnel is not based solely on the evidence of Desmond Breslin but is supported and corroborated by additional evidence and reasonable inferences:

3. The manner in which the vehicle in question circled the area on a number of occasions before the shooting indicates a sense of security and calmness that one would not associate with loyalists acting alone (because of the permanent military installations in the area and the visible nearby presence of the Army Saracen). Furthermore, loyalists acting in collusion with the British army would run an unreasonable risk of being recognised or challenged by the local population in such a staunchly nationalist area. The movements of the car prior to the shooting are documented in the witness statement of Teresa McCombe when she states that Jim McCann and Jim Sloan said to her and her friends **“you better watch out girls because there is a car going around the district there and it is suspicious”**. This conversation is corroborated in the written statement of Marion Connor **“They told us that there was a car cruising about and to just watch ourselves”**. Contemporaneous newspaper reports confirmed this allegation of the movements of the car in question prior to the shooting and thereby dispels any question of recent fabrication in respect of this issue.

4. It is generally recognised that where there is evidence or acknowledgement of collusion between British army and loyalists, this is invariably on a “need to know” basis involving military covert operations rather than the regular British army in general. Accordingly, it is inconceivable that loyalist gunmen in an unmarked car (whether acting in collusion with military intelligence or not) would run the risk of being shot at or apprehended by the considerable number of clearly visible military installations in the area who had a clear view of not only the first shooting (Jim

McCann and Jim Sloan) but also the subsequent second shooting at the Chinese Restaurant on the Antrim Road, i.e. the two observation posts at Alamein and Templar House, the Kinaird Road Sanger and Girdwood Barracks.

5. The actions of the driver and gunman in the passing vehicle are more consistent with the selection of specific targets than a random drive-by shooting. The various witness statements indicate a considerable number of civilians walking around the area of Lynch's Bar immediately prior to the shooting of Jim McCann and Jim Sloan. No attempt was made to shoot these civilians. One must remember that both Jim McCann and Jim Sloan were established members of the IRA (unlike Tony Campbell who had only joined the IRA three weeks before his death) and would probably have been known to Security Forces as such or, at the very least, suspected of being members. This information, which was only released to the general public several days after the shooting, is particularly significant when we look at the initial British army statement, issued within hours of the deaths of the six men, that all six men were IRA gunmen. One must bear in mind that military personnel (as well as RUC officers) quickly attended the hospital where the dead or dying men were taken and would have been in a position to immediately identify them by name and cross reference the names with their intelligence files of suspected/known members of the IRA. It has been my experience, in dealing with numerous cases of controversial shootings and assaults by the security forces, that the security forces are almost always immediately tasked to attend the hospitals to not only get details of the names, ages and addresses of the dead or injured but also to note their descriptions and the clothes they were wearing at the first available opportunity. The suspicion always remains as to whether or not this information is immediately communicated by radio or otherwise to other members of the security forces prior to the completion of their note books and/or statements of evidence. This strong suspicion that Jim Sloan and Jim McCann were specifically targeted because they were recognised and identified as known or suspected members of the IRA is further strengthened by the fact that both were shot at the previous summer by the British army outside Jim Sloan's house where Jim McCann was injured.
6. The "escape" of the car responsible for this shooting is remarkable in two aspects. Not only was there no attempt to open fire on or apprehend the vehicle in question, despite the fact that the shooting from the car would have been in clear view of the

various permanent military installations in the area, but the calmness and audacity of the driver of the vehicle in his escape route is strongly suggestive of a sense of immunity from attack, apprehension or even detention. No fewer than eight witnesses, (K. Sloan, D. Breslin, M. English, G. O'Neill, D. Wright, W. Campbell, M. Connor, T. Mooreland) gave clear indications that not only did the British army personnel in the immediate area allow the vehicle to escape but actually deliberately allowed it to escape and ignored various civilian pleas to open fire on it, apprehend or at least follow it.

7. In the light of the verbal threats by British military personnel against the residents of the New Lodge immediately prior to the 3rd February (referred to at 2.07 above) we can also look at the suspicious activities of the British army personnel on the ground in the hours before the drive by shooting. Bobby Wright in his written statement describes the presence of foot soldiers at McFadden's Chemist from 7.30pm on the evening in question. Their continued presence at the same place for at least 1½ hours was noted to be unusual: **“I started to say to myself that there was something wrong with them still being there. Soldiers never stayed in one place longer than a couple of minutes in those days.”**

8. The shooting of Jim McCann and Jim Sloan bears an uncanny resemblance to the June 1972 Glen Road, Belfast shooting in which three men were shot down by gun fire from a passing unmarked car. Two British soldiers in plain clothes were subsequently arrested, charged but set free.

9. The delay and circumstances in relation to the finding of the vehicle alleged to have been involved in the drive-by shooting requires careful examination. Despite the fact that the vehicle in question was immediately described to British army personnel at the scene of the shooting and would have been clearly visible to the army personnel in the saracen as well as various other army installations, it was not recovered until the 5th of February, two days after the shooting. At the Inquests, according to RUC Detective Sergeant George Maxwell Walton, it was claimed that it was recovered on the 5th of February in Tenant Street, a Protestant area, with eight 9mm casings in the car ejected from a 9mm sub-machine gun. In answer to a question from Mr. Cahill (Counsel for some of the families) he indicated **“there is no direct evidence to show that this car was the car involved.”** The car in question must have been found late on the 5th of February because on the 6th of February the *Irish News* carried an appeal by the RUC still trying to locate the whereabouts of the vehicle in question. This is significant because the post-mortems on Jim McCann and Jim Sloan were only carried out on the afternoon of the 5th of February when it would have been confirmed that Jim McCann was hit by five bullets and Jim Sloan by three bullets. The suspicion remains as to whether or not it was a pure coincidence that only after the Post Mortems confirmed at least eight bullets had hit the two deceased that the vehicle was located close to Tenant Street RUC Station with exactly the same number of casings from a 9mm sub-machine gun in it. Experience shows that killers are likely to abandon their vehicle immediately subsequent to a shooting and for it to remain so long, undetected, close to Tenant Street RUC Station when adequate descriptions of the vehicle had been circulated from the time of the shooting itself fuels the suspicion as to whether or not this was the same vehicle that had actually been used in the shooting. Clear oral evidence establishes that it is unlikely that only eight rounds were fired from the sub-machine gun at Jim McCann and Jim Sloan in the initial shooting and we must add to that the large amount of rounds discharged at the Chinese Restaurant on the Antrim Road. The description by eye witnesses of the manner in which the sub-machine gun was fired on the two

incidents would indicate that the spent cases would have ejected inside the vehicle. It is inconceivable that the perpetrators would have removed some but not all of the cases from the rear of the vehicle when abandoning it. Accordingly there is a strong implication that the vehicle located at Tenant Street was left there with the casings inside it subsequent to the Post Mortems in an attempt to disguise the fact that an unmarked military vehicle had been used in the shooting. The availability of documentation within the possession of the RUC and British army in respect of attempts to locate the vehicle subsequent to the shooting, the actual locating and forensic examination of the vehicle and of the history of the time and circumstances of the theft of the vehicle that was actually located at Tenant Street might shed some light on this aspect of the case to either confirm or dispel our finding, on the evidence available to us, that the vehicle that was actually used in this particular shooting was an unmarked undercover military vehicle occupied by undercover military personnel.

10. The question remains as to whether there was a deliberate and planned nexus between the drive-by shootings of Jim McCann and Jim Sloan and the subsequent four deaths. Was this a planned British army undercover operation to deliberately kill two known/suspected members of the IRA in an attempt to draw out the IRA in the New Lodge that night to enable them to be taken by surprise by the vastly superior capabilities of the British army equipped, for the first time in the New Lodge area (and unknown to the IRA), with telescopic night sights?

3.04 There is a further matter that we feel we need to deal with in respect of these initial two deaths for the sake of completeness. The forensic examination of Jim Sloan carried out by John Martin, Forensic Science Officer, on 5th of February 1973 indicates that lead particles **“consistent with exposure to firearms discharge residue and/or handling of lead objects which could include ammunition”** were on the hands and clothes of the deceased Jim Sloan. However, it appears that this aspect of the evidence was deliberately and physically deleted from the deposition of John Martin at the Inquest and therefore would not have been subjected to cross-examination as to chain of evidence and contamination. Indeed the Newspaper reports of the Inquest indicate that all forensic tests prove negative in respect of the discharge of weapons (*Belfast Telegraph* 27/3/75). It further appears that, curiously, on the instructions of the RUC, only two of the deceased were examined by the Forensic Science Laboratory for firearms discharge. We now know that the other person examined

was John Loughran. In his particular case the forensic evidence in respect of traces of lead appears to have been added as an addendum to the forensic evidence at the Coroner's Inquest but rejected by the Coroner. In a subsequent claim for compensation at Belfast Recorder's Court the Forensic Science Laboratory, evidence of lead traces was again introduced and on this occasion was accepted resulting in the dismissal of the claim for damages. However, after a transfer of Solicitor, the widow of John Loughran secured her own forensic evidence and when the matter came to Appeal before the Lord Chief Justice in the High Court he accepted the forensic evidence produced on behalf of Mrs. Loughran and rejected the evidence of the Forensic Science Laboratory on behalf of the Northern Ireland Office. Additionally, the creditability of forensic testing for lead particles by the Forensic Science Laboratory in the early 70's has since been undermined by various cases (e.g. the Saville Inquiry) and by more modern forensic techniques. The witness statement of Kathleen Sloan confirms that at the Inquest it was proved that neither Jim McCann nor Jim Sloan had a weapon on them at the time they were shot. Furthermore, Mrs. Sloan received £3,500.00 compensation from the Northern Ireland Office, which would have been incompatible with a positive finding of firearms discharge on the deceased under the Criminal Injuries legislation. Given that only two of the six deceased were forensically examined for firearms discharges under the instructions of the RUC and that the positive results of these two examinations were subsequently withdrawn, rejected or deemed inadmissible, this casts considerable doubt and suspicion over the manner in which the RUC investigated these deaths. Again, full disclosure by the RUC, MOD and Forensic Science Laboratory might cast light on this disturbing curiosity in order to confirm or dispel the widely held belief within the New Lodge community that the forensic tests carried out were contrived to correspond with the early British army statement that six IRA gunmen had been shot dead that night. Perhaps such documentation might reveal why the other four deceased were not forensically examined. In an article in the *Irish News* on 17th of February 1973 entitled "*Lawyers say the Army lied*" it was reported that, **"no forensic tests were carried out until Tuesday February 6th. Even then the Department of Forensic Science was instructed by the Police to carry out a forensic test of swabs of only 2 of the victims. There has not been and will not be any further swab tests by the Police for forensic examination."** In spite of the early British army statement that all six deceased were IRA gunmen, there has been no specific allegation that Jim Sloan or Jim McCann were armed or fired weapons at the passing vehicle from which the sub-machine gun was fired. Indeed, subsequent statements by or on behalf of the British army and RUC attempted to describe this shooting as a sectarian attack by loyalist paramilitaries. In any event, there is an

abundance of eyewitness testimony to indicate that both men were unarmed. Desmond Breslin gives clear and cogent eyewitness testimony that both were unarmed prior to, at the time of, and subsequent to the fatal shooting. Neither man had in his hands any weapon or item that could be mistaken for a weapon and no weapons were spirited away. My analysis of the oral and written testimony indicates that a further nine eye witnesses confirm that the two men were unarmed. Four of these witnesses confirm both were unarmed immediately prior to the shooting. Two witnesses, who arrived on the scene immediately subsequent to the shooting, can confirm that there were no weapons to be seen and none were spirited away and a further three witnesses, who did not actually witness the shooting itself, can confirm that neither were in possession of weapons immediately prior to and subsequent to the shooting (K. Sloan, M. English, G. O'Neill).

3.05 Accordingly, for the reasons given above, we reiterate our preliminary findings in respect of Jim Sloan and Jim McCann, i.e. **“it is clear they were the innocent unarmed victims of a drive-by shooting at the top of the New Lodge Road in which others were wounded. We further find that it is unlikely that loyalist paramilitary organisations were acting alone in their deaths and that it is clear, beyond doubt, that British Forces were responsible for these deaths.”** A full and careful examination of all the evidence including 238 pages of transcript of the 12 hours of oral testimony, has led us to the conclusion that the British army were acting alone rather than in collusion with loyalist paramilitaries in this drive-by shooting and that considerable efforts have been made by or on behalf of the British army to deflect the responsibility for the killings of Jim Sloan and Jim McCann towards loyalist paramilitaries.

(b) **Anthony Campbell, Brendan Maguire, John Loughran, Ambrose Hardy**

3.06 The killings of Tony Campbell, Brendan Maguire, John Loughran, and Ambrose Hardy on the 3rd and 4th days of February 1973 posed us with fewer problems in coming to our preliminary findings on the 23rd of November 2002. After careful re-examination of all the documentation and papers in respect of this Inquiry and with the assistance of the 238 pages of transcript (based on 12 hours of oral testimony) we can confirm and reiterate our Preliminary Findings as follows;

- “1. **The testimonies, which we have received, are unequivocal concerning the innocence of all 6 of the deceased and the wounded. There is no evidence to**

indicate that any of the deceased or wounded was armed at the time of the shooting or acting in any manner which might have been interpreted as a potential threat to the Security Forces.

- 4. Indeed, there is clear evidence that a number of the deceased were acting in a manner which can only be described as heroic as they attempted to render assistance to the wounded and the dying.**
- 3. Concerning the shooting dead of Anthony Campbell, Brendan Maguire, John Loughran and Ambrose Hardy and the wounding of Charlie Carson, eye witnesses are clear that shots came from 2 and possibly 3 positions controlled by the British Army. These were positioned at the junction of Edlingham Street and Duncairn Gardens and the high rise flats of Alamein House and/or Templar House.”**

3.07 I will deal with each of the four deceased individually although there will be a certain amount of overlap in respect of the examination of the evidence common to all four killings, which I will deal with first. There is naturally a lot of confusion in relation to the timing of events that night. The most reliable starting point is the independent objective evidence available to us from the ambulance man (Houston Boyd) and from the Royal Victoria Hospital. Houston Boyd in his deposition and evidence to the Inquest that states, **“At 12:12 hours on 4th February 1973 I received a call to Edlingham Street and went there with my attendant Michael D’Arcy.”** Almost certainly, this was in response to the phone call by Mary (Minnie) Loughran and was presumably made at approximately 12:05 or 12:10 am. Her original statement to the RUC was taken on the 14th of February 1973 when matters would have been reasonably fresh and clear in her mind and she estimated that the first shooting at Lynch’s Bar took place at 11.45pm and the second shooting took place at midnight from Edlingham Street beside her house. These times would correspond with the following additional evidence’:

- a. Soldier “S” and Soldier “Q” indicate that the first two persons that they shot dead were at 12:05 am (Tony Campbell?) and 12:08 am (Brendan Maguire?).
- b. Soldier “S” and Soldier “Q” were only tasked to go to Edlingham Street sandbag placement at 11:50 pm or 11:55 pm, some five or ten minutes after the shooting at Lynch’s Bar.

- c. The ambulance carrying Tony Campbell, Brendan Maguire and John Loughran arrived at the Royal Victoria Hospital prior to Tony Campbell being admitted at 12:45am on the 4th of February 1973.
- d. Detective Sergeant George Maxwell Walton received a call at 11:45pm to attend a shooting incident at 123, Antrim Road (the Chinese Restaurant).
- e. Soldier 'C' was the Commander of a mobile patrol on the Antrim Road and **“about 11:43 pm hours 3 Feb 73 my patrol was travelling north along Antrim Road. As we passed Kinaird Street I heard a burst of automatic high velocity shots in the area of the junction of Antrim Road and the New Lodge Road.”***(Presumably, this was the initial burst of gunfire at Lynch's Bar.)*
- e. John Loughran must have been shot a short time after Brendan Maguire and prior to the arrival of the ambulance, i.e. between 12:08 am and approximately 12:20 am.

3.08 By all accounts, Ambrose Hardy was shot a considerable period of time after Campbell, Maguire, and Loughran and certainly after the ambulance had left the scene carrying these victims. In the absence of ambulance and hospital records, it is difficult to give an objective, independent estimate of the time. Eyewitness accounts vary. Terence Mulvenna believes that Ambrose Hardy was shot approximately 1 - 1½ hours after the shooting at the top of the road (Lynch's Bar), i.e. 12.45-1.15a.m. The statements of Soldier 'Q' and Soldier 'S' indicate that there was a lull in the shooting at Edlingham Street between when an ambulance arrived at 12:25 am and 1:30 am. During that second engagement they indicate that they came under fire from several different positions and this probably corresponds with the IRA statement to the *Irish News* and the evidence of the local people that the IRA engaged in a gun fight with the Soldiers some time after the ambulances had left. Eyewitnesses indicated that Ambrose Hardy tried to leave the Circle Club during a lull in the shooting, which must, therefore, have occurred prior to 1:30 am. The evidence of Soldier 'S' and Soldier 'Q' in relation to shots fired after 1:30 am would appear to be irrelevant insofar as Ambrose Hardy is concerned because he was clearly shot from the observation post above Templar House or Alamein House and not the sandbags emplacement down Edlingham Street given his exact position when he was hit in the head. Therefore, it would be a reasonable assumption to accept that Ambrose Hardy was shot sometime between 12:45 am and 1:30 am and that subsequently the ambulance was unable to reach him until such time as the acknowledged gun battle between the IRA and Soldiers S and Q ended with the arrival of the ambulance at approximately 2:10 am (*per* Soldiers 'Q' and 'S').

1.01 The British army statement that the six men killed in the New Lodge area that night were all IRA gunmen hit by the British army in the course of a gun battle was almost immediate and featured in the morning newspapers on Monday. It was probably made after the six were identified, probably before autopsies were carried out on the 6 deceased and definitely before the two forensic examinations for firearm discharges were carried out on John Loughran and Jim Sloan on the instructions of the RUC. This British army statement has never, to this day, been retracted. Furthermore, this British army statement was made a considerable period of time before the IRA publicly claimed three of the deceased, (Jim McCann, Jim Sloan and Tony Campbell) as members of that organisation although it acknowledged that none of the three had been on active service at the time they were killed. It is probable if not highly likely (for the reasons stated at 3.03 [3]), that immediately upon identification of Jim Sloan and Jim McCann as two of the deceased, the British army and intelligence services were in a position to correspond their names with intelligence files of known/suspected IRA members. The same cannot be said of Tony Campbell who had, by all accounts, only joined the IRA three weeks prior to this incident. None of the other three deceased (Brendan Maguire, John Loughran and Ambrose Hardy) were IRA members and there appears to be no reason why the IRA would not claim them to be members if they actually were, taking into account the readiness with which they were prepared to acknowledge the membership of Sloan, McCann and Campbell despite the fact that they had not been on active service when killed.

1.02 A subsequent statement to a British National newspaper on Monday 5th February 1973 claiming that forensic tests on all six deceased had indicated that they were all carrying guns was subsequently denied by the British army. However, while this false newspaper statement had the effect of further vilifying the deceased, it had the indirect effect of forcing the British state agencies to admit that only two forensic examinations had been carried out on the instructions of the RUC (John Loughran and Jim Sloan) and that each of these had taken place subsequent to the date of the alleged Army statement. We have already discussed the anomaly and inconsistency between the absence of forensic tests on four of the deceased and British army statement that all six were IRA gunmen – 3.04

3.11 In the course of the Coroner's Inquests into the deaths of these four men, Counsel for the Ministry of Defence continued to argue that all four were IRA gunmen shot in the course of a gun battle. However, the jury, in each case, returned an open verdict and the Coroner

indicated by way of comment that all four were innocent unarmed civilians and that there was no evidence that any had been carrying weapons at the time they were shot.

3.12 Furthermore, all cases for compensation against the Northern Ireland Office for damages arising out of the deaths of these four men were successful despite the continued attempts by the Northern Ireland Office to insist that they were gunmen. Indeed, a futile attempt by the Northern Ireland Office to introduce forensic evidence against John Loughran which succeeded in having the claim for damages dismissed at first instance was subsequently discredited by forensic evidence obtained on behalf of the family on appeal before the Lord Chief Justice. The Criminal Injuries Compensation legislation under which the payments were made does not allow for persons to be compensated if it is established that they were acting in an unlawful manner at the time of death (such as being IRA gunmen).

3.13 A plethora of eyewitness evidence was available to the RUC and other investigating authorities (if they had properly investigated these four shootings), which would have indicated that all four men had been unarmed at the time they were shot. At this stage it should be pointed out that the number of witnesses who were at all times available and remain available to counter the British army statement and attest to the deceased being unarmed are:

Tony Campbell (18 witnesses)

Brendan Maguire (9 witnesses)

John Loughran (10 witnesses)

Ambrose Hardy (10 witnesses)

3.14 Without going into the inconsistencies in the witness statements of Solider 'S' and Soldier 'Q' which have been well documented by the solicitors preparing for this Inquiry (and we adopt and confirm the two pages of inconsistencies and anomalies prepared by the solicitor for the inquiry), the self serving statements of Soldiers 'S' and 'Q' were never subjected to the test of cross examination because of their refusal to give evidence at the Coroner's Inquests and, in our learned opinion, are far outweighed by the quality and quantity of the eye witness statements and oral evidence of the civilians of the New Lodge Road presented to us in the course of this Inquiry. The veracity of the statements of Solider 'S' and Solider 'Q' could be further tested if the relevant contemporaneous documents and disclosure were available to this Inquiry to include tapes of radio transmissions, logs of radio transmissions, radio transmissions between the British army and RUC, RUC Occurrence Book entries of

incidents in the area, original notebooks and hand written statements of the two British soldiers and of the British military police who took their statements, Armoury records, etc. If the state agencies support the accuracy and veracity of the contents of the statements of Soldier 'S' and Soldier 'Q', they should be willing, ready, able and confident in tendering these two witnesses to the rigours of cross examination by legal Counsel equipped with all available relevant contemporaneous material and documentation.

4.35 Soldier 'S' was armed with a general purpose machine gun, whereas Soldier 'Q' was armed with a self loading rifle. Each was equipped with an IWS Night Sight. In the absence of evidence to the contrary it must be assumed by us that the British soldiers deployed at the observation posts on top of Templar House and Alamein House were equally equipped with IWS Night Sights. It is incumbent on the state agencies to provide us with all relevant documentation and information (to include briefings etc) in relation to the issue and instruction in the use of these hitherto novel telescopic Night Sights to help us ascertain whether or not their introduction in the New Lodge area that night was merely a coincidence in the unfolding of the tragic events, bearing in mind the statement of Lily McAuley, **“the British Army had us like rabbits that night. It was the first night that they had Night Sights on their guns.”**

4.36 The statement of Soldier 'Q' was allegedly recorded on Sunday, the 4th of February 1973, at 3:10 pm whereas the statement of Soldier 'S' was not recorded until two days later on the 6th of February. What possible credible explanation can be given for the delay in Soldier 'S' making his statement? Furthermore, what explanation can be given by Soldier 'Q' for the delay of more than 12 hours before he made his written statement? Could it be that he was awaiting as much information as possible from the hospital (in relation to the identity of the deceased, their descriptions and the nature of their wounds) and from the British soldiers who recovered the casings at daylight from the New Lodge area subsequent to the gun battle between the IRA and the British army? If this was the purpose of the delay, it would enable the British soldier in question to make his statement with full knowledge as to the nature and extent of the gun shot wounds to the victims as well as where particular casings relating to particular weapons were found (subsequent to the acknowledged gun battle at approximately 1:30 am). It is noteworthy that no casings were recovered at the junction of Edlingham Street and the New Lodge Road where the multiple civilian eyewitnesses indicate that Tony Campbell, Brendan Maguire, and John Loughran were actually shot.

(c) Tony Campbell

3.17 Tony Campbell was the first of the four to be shot. He had been out celebrating his 19th birthday at the Newington Disco with family members and friends. As he walked south along the New Lodge Road towards Edlingham Street, he and others near him heard the same blast of rapid gunfire at the top of the New Lodge Road which took the lives of Jim McCann and Jim Sloan. When he arrived at the Catholic Ex-Servicemen's Association Club (The Circle Club), there was considerable pandemonium and panic among the many local people who were on the streets subsequent to the shooting outside Lynch's Bar. Several eyewitnesses indicate how Tony Campbell, despite his tender years and the fact that he had a considerable amount of drink taken in the course of his birthday celebrations, took command and ushered people to stay indoors and out of harm's way. He was clearly concerned for the safety of others rather than himself. When the shooting began from the sandbags emplacement down Edlingham Street, an older couple were screaming in fear as they tried to get into their house on the opposite side of Edlingham Street from where Tony Campbell was. Patrick Johnston describes how Tony Campbell, despite the pleas of others to stay in cover, ran across the road to assist them and in the course of this errand of mercy he was shot from the direction of the sandbags down Edlingham Street. All witnesses present indicate that the only gunfire at that time was coming from the direction of that British army sandbag emplacement. After Tony Campbell fell wounded, he attempted to crawl to safety but as soon as he moved he was a target for further fire from the same position. The post-mortem examination later revealed that he had been struck no fewer than seventeen times and although none of the wounds individually caused his death, he bled to death due to a combination of the quantity of wounds that he sustained. No fewer than eighteen witnesses gave oral evidence and/or witness statements to confirm that Tony Campbell was not in possession of any firearm nor had he anything in his hands that could be mistaken for a firearm. Contrary to the assertion of the statements of Soldiers 'S' and 'Q' that he was carried away by two women and his rifle spirited away by them, two men were shot dead trying to pull his body to safety (Brendan Maguire and John Loughran) before Tony Campbell was eventually dragged out of the firing line by Seamus Perry and Paul McAllister.

3.18 Despite the British army statement that all six deceased were IRA gunmen shot in the course of a gun battle, no attempt was made to forensically examine Tony Campbell for firearms residue. The Coroner at the inquest found that there was no evidence that Tony Campbell

had been carrying or firing any weapon when he was shot. No claim for compensation against the Northern Ireland Office for Criminal Injuries was made on behalf of Tony Campbell, probably because he was over eighteen and had no dependants and therefore ineligible for compensation. It subsequently emerged that Tony Campbell had joined the IRA some three weeks prior to his death, but this was clearly more a coincidence than a circumstance contributing to his death. The subsequent IRA statement indicated that he was not on active service when he was shot. Indeed, it is well known throughout Northern Ireland that IRA men on active service are not allowed to consume alcohol and although there is no autopsy report on Anthony Campbell available to the Inquiry, there is clear evidence that he had consumed a considerable amount of alcohol during the course of his 19th birthday celebrations. It should be pointed out at this juncture that the autopsy report on Jim McCann and Jim Sloan indicated that they had consumed a considerable amount of alcohol prior to their deaths (56mg per 100ml by each of them), which is supported by oral evidence that they had been in Lynch's Bar enjoying themselves prior to them being shot. Again, this is an indication that they (McCann and Sloan) were not on active service at the relevant time.

- 3.19 Soldier 'Q' indicates in his written statement that at approximately 12:05 am he fired two rounds from his SLR (self loading rifle) at a man running across Edlingham Street causing him to fall. A few moments later he fired a further four rounds at this person when he began to crawl and allegedly point his rifle at him. Soldier 'S' on the other hand admits firing two rounds from his GPMG (general purpose machine gun) at the same man while he was on the ground subsequent to having been shot by Soldier "Q". Despite the unreliability of the contents of the statements of Soldier 'S' and Soldier 'Q' for the reasons I have already alluded to at paragraph 3.14 and 3.16, this incident may very well refer to the shooting of Tony Campbell because he was the first person shot crossing Edlingham Street and it occurred at or about that time. However, the main areas of conflict in evidence between the British soldiers' statements and the evidence of the civilians are as follows:
- a) Tony Campbell was not armed (eighteen civilian witnesses) as alleged by the two British soldiers;
 - b) The two British soldiers' statements conflict with each other in major aspects as highlighted by the two page summary of inconsistencies prepared by the solicitor for the Inquiry;
 - c) Tony Campbell was shot at the junction of Edlingham Street and New Lodge Road (eighteen civilian witnesses) and not further into Edlingham Street as alleged by the two

soldiers. Could it be that the two soldiers needed to place Tony Campbell where they alleged because of the subsequent retrieval of bullet casings from that position and the total absence of bullet casings from the position where the 18 eyewitnesses indicate Tony Campbell was actually shot?

- d) Tony Campbell was, according to the evidence at the Coroner's inquest, shot seventeen times whereas the two British soldiers only admit to firing eight rounds at him. Could this be that the soldiers would have difficulty in explaining why it was necessary to shoot an already disabled alleged gunman fifteen times after the initial two shots had brought him down?
- e) The British soldiers allege that Tony Campbell was pulled away by two women who presumably recovered his rifle whereas there is an abundance of eyewitness statements indicating that he had in fact been dragged away, eventually, by two men and that he was unarmed.

3.20 As indicated earlier, no fewer than eighteen witnesses can give evidence that Tony Campbell was unarmed prior to, at the time and/or subsequent to his being shot. An analysis of the statements provided indicates that two witnesses will testify that he was unarmed immediately prior to being shot, three witnesses give evidence that he was unarmed both immediately prior to and at the time he was shot, a further three witnesses indicate that they can assert that he had no weapon either immediately prior to being shot, at the time of being shot nor was there any weapon near him after he was shot, three witnesses testify that although they did not see him actually being shot that they can attest that he had no weapon immediately prior to being shot and nor was there a weapon in his vicinity subsequent to his being shot and a further seven witnesses observed Tony Campbell immediately subsequent to his being shot and can testify that there was no weapon at or near him while he was lying wounded in the street nor were there any weapons spirited away when he was dragged out of the line of fire. It must be pointed out that it is not just the quantity of these witnesses that impressed us but the forthright and convincing manner in which the relevant witnesses gave their oral evidence on this matter.

(d) **Brendan Maguire**

3.21 Brendan Maguire was 32 years of age, single, and worked as a dock labourer. He was plagued with asthma his entire life and this gave him the barrel chest that earned him the nickname of "Fat" that everyone in the New Lodge knew him by. On Saturday the 3rd of

February 1973 he had been suffering from the flu, but despite this went out that night for a drink of coke and a chat with his friends. Brendan was in the Circle Club when, around 11:45pm, shooting was heard on the New Lodge Road and he along with other men went out to see what was happening. The circumstances surrounding the death of Brendan Maguire are best described in the Deposition of Malachy Joseph Cunningham to the Coroner's Inquest on the 27th of March 1975. After Tony Campbell had been shot and was lying wounded in Edlingham Street, Malachy Cunningham and Brendan Maguire were the first to go to his assistance despite the fact that they did not know who he was at the time. In his deposition and evidence to the Coroner's Court Mr Cunningham describes it as follows: **“Other shots came up Edlingham Street and then there was a lull in the shooting. Brendan Maguire and myself then ran across the face of Edlingham Street towards Mr Campbell around 11:50 or 11:55pm. I was a few paces behind Mr Maguire. As Mr Maguire reached the body he knelt down and as he did so a further burst of gunfire came up Edlingham Street and Mr Maguire said “I'm hit” and he then slumped over the other body. The shots continued to come up Edlingham Street and I lay face downwards on the ground and started to crawl back from Edlingham Street to the New Lodge Road for safety.”** Subsequently, Malachy Cunningham was joined by Charles Carson and they jointly managed to pull Brendan Maguire out of Edlingham Street and carried him into Loughran's house.

- 3.22 There are no fewer than nine witnesses who gave oral testimony and/or written statements to this Community Inquiry to the effect that Brendan Maguire, far from being a gunman as alleged by Soldiers 'S' and 'Q', made a selfless, heroic attempt to rescue a wounded man whose identity was unknown to him. In doing so, he paid the ultimate sacrifice of laying down his life for a stranger.
- 3.23 Because he was the second man shot in Edlingham Street from gunfire that emanated from the sandbags at the British army position, we can, to a certain extent, equate Brendan Maguire with the second person whom Soldiers 'S' and 'Q' alleged they shot at 12:08 am. The timing of Brendan Maguire's shooting some three minutes after that of Tony Campbell is approximately correct. Also correct and not in dispute is the fact that he emanated from the same side of the road as Tony Campbell. Because of the absence of the Coroner's Inquest documentation from the Public Records Office, it is not possible to examine the autopsy report for Brendan Campbell to indicate how many times he had been shot. The civilian witness statements clearly indicate that he sustained a fatal head injury in the eye

area but it is unclear whether he was hit by a second bullet, bearing in mind that Soldier 'S' appears to have fired two rounds from his general purpose machine gun at Brendan Maguire.

3.24 In respect of all other matters contained in the statements of Soldier 'S' and 'Q', I repeat the observations already made in respect of Tony Campbell above insofar as they allege that he was armed, crossed Edlingham Street at a location where spent cases were subsequently found, and that he was dragged away by two women who spirited away his rifle (See paragraphs 3.19 and 3.20).

3.25 In relation to the general British army statement that all six deceased were IRA gunmen killed in the course of a gun battle, it is again noteworthy that in these circumstances no forensics were carried out on this deceased. Furthermore, and this comment applies to all six deceased, there was no immediate subsequent raid on the dwelling of Brendan Maguire. If, as alleged, the security forces really believed that Brendan Maguire and the others were IRA gunmen, one would have expected, in the normal course of events, the security forces to immediately ascertain his name and home address and without delay search the said home address for weapons, etc., before anyone would have the chance of removing any such incriminating evidence from that address. No such raids took place in the immediate aftermath of any of the six deaths and that, in itself, casts considerable suspicion over the genuineness of the belief of the British army and/or security forces that the six deceased were IRA gunmen.

4.48 Again, at the Coroner's Inquest, notwithstanding the allegation that each of the six deceased were IRA gunmen, the jury returned an open verdict and the Coroner added that Brendan Maguire was an innocent civilian and that there was no evidence available to suggest that he was carrying or fired any weapon at the time of his shooting.

4.49 Subsequently, the Northern Ireland Office paid out £2583 compensation (a full award) to the parents of the late Brendan Maguire (because he was a bachelor living at home and supporting his parents). In the course of that hearing, Mr Michael Lavery QC and Mr James Johnson, Solicitor for the family, attacked unsubstantiated newspaper articles that had wrongly indicated that Brendan Maguire and the other five deceased were IRA gunmen and that lead tests carried out on all six had proved positive. Mr Johnson stated, **“The press should take into consideration that there are usually surviving relatives who can suffer**

untold hardship as a result of rash press articles..... It was established beyond any doubt that Brendan Maguire was an innocent victim and not, as the newspaper had put it at the time, a gunman.” As stated before, if there was evidence that Brendan Maguire had been a gunman when he was shot his next of kin would have been precluded from obtaining compensation under the Criminal Injuries Legislation.

- 3.28 In total nine witnesses gave oral testimony and/or written statements that Brendan Maguire had not been in possession of any firearm nor had he in his hands anything that could be mistaken for a weapon immediately prior to, at the time of and/or immediately subsequent to his being shot.
- 3.29 In the written statements submitted to the Community Inquiry, twenty one witnesses present at the junction of Edlingham Street and New Lodge Road at or about the time of the shootings of Tony Campbell, Brendan Maguire and John Loughran (the majority of whom gave oral evidence) clearly and unequivocally state that the only gunfire at that time was coming from the British army position at the sandbags emplacement at the bottom of Edlingham Street and that no fire whatsoever was being directed at the British soldiers at that time. Indeed, if, as alleged by Soliders ‘S’ and ‘Q’ there had been an exchange of gunfire, it would have been beyond all reason that so many people would have remained positioned where they were, over that period of time, protecting themselves only from gunfire coming up Edlingham Street from the direction of the British army sandbag emplacement.
- 3.30 Despite all the above, the initial British army statement claiming that Brendan Maguire was an IRA gunman shot in the course of a gun battle remains unretracted to this day and the statements of Soldiers ‘S’ and ‘Q’ remain unchallenged by way of cross examination and/or examination of contemporaneous documents.

(e) **John Loughran**

- 3.31 The best description of John Loughran, as a person, is in the written witness statement of his brother, William Loughran:
- “Our John was married with three children and his wife was expecting another baby the following month. She gave birth to a little son on St Patrick’s Day and she called him Patrick. The other children where four, two and one year of age. He worked as an**

asphalter and was in steady employment. He was a totally committed family man who didn't gamble and drank very little. His whole time was spent with his wife and family. He was well known and respected in the area. He boxed for the Star ABC Club in his young days. He was a good, genuine, loving son and brother. I know he wouldn't like me saying that but he was always the one people went to when in trouble – totally trustworthy and supportive.”

- 3.32 A total of ten oral testimonies and/or written statements gave a clear, consistent and unequivocal account of how John Loughran was killed when acting as the ultimate Good Samaritan. John was at home with his expectant wife, Anne, when his mother Minnie came to the door and said that people needed help. He rushed out in a white t-shirt, his jeans and his boots which he hadn't even time to lace up. He returned to the house with Brendan (Fat) Maguire, quickly pulled on his jumper and ran out again. His wife, in a poignant exchange, tried to persuade him not to go out again **“we heard a wee young voice say “Help me, get me away from the corner”. It must have been TC Campbell. When I heard the voice I said to John “Don't you be going out there, just don't you be going again”. John turned to me and said “Anne, I have to – I have to go. You hear that wee lad”. John went outside”**.
- 3.33 Charles Carson describes the moment John Loughran was shot:
“He and I decided that we would try and get the other body (which I now know to have been Mr TC Campbell) around the corner in the same manner. Mr Loughran crawled around the corner and caught hold of the body. I then braced myself to start pulling Mr Loughran backwards when another burst of gunfire came up Edlingham Street. Mr Loughran, though on his tummy, had his head raised, probably to assist him to pull the body backwards and as a result of this burst of gunfire I saw Mr Loughran fall forward. I realised that he had been shot.” (*Deposition of Charles Carson to Coroner's Inquest*).
- 3.34 Despite the clear and unequivocal evidence of ten eye witnesses that the shots that killed John Loughran came up Edlingham Street from the British army sandbag emplacement, there is no reference in the statements of Soldier 'S' or Soldier 'Q' to a third person being shot at by them at or about that time.

- 3.35 As stated previously, John Loughran, for whatever reason, was one of only two persons whom the RUC directed to be forensically examined for firearms discharge. The initial typed report indicated that no lead residues were detected. However, as an addendum in handwriting at the time of the Coroner's Inquest evidence of further examination was given and this appears by way of handwritten notes on the typed deposition. Unfortunately, it is impossible to read or decipher these handwritten notes but in any event the Coroner found that there was **“no concrete evidence to indicate they had been shooting at the Army. Scientific tests on clothing and swabs taken from the men proved negative.”** Accordingly, the Coroner, Mr James Elliott, rejected the allegations that the four men, including John Loughran, had been snipers shot during the course of a gun battle.
- 3.36 However, at a later Court hearing for a claim for damages under the Criminal Injuries Compensation Scheme, the Recorders Court dismissed the claim for damages in respect of John Loughran after the Counsel for the Northern Ireland Office had claimed that Mr Loughran was engaged in firing shots at the British army or at Protestants in Tigers Bay on that occasion. At the Appeal Hearing, however, the Lord Chief Justice accepted forensic evidence produced on behalf of Mrs Loughran which showed that no traces of lead were found on Mr Loughran's body and accordingly awarded her and her children £6,750.
- 3.37 Accordingly, there is absolutely no evidence, credible or otherwise, forensic or documentary, to support the bold statement issued by the British army that John Loughran was one of six armed IRA men shot dead by the British army in the course of an IRA gun battle with them. The clear, consistent and unequivocal evidence of ten eye witnesses that he was unarmed and acting as a Good Samaritan when he was shot by British soldiers firing from the sandbag placement at the bottom of Edlingham Street is irrefutable. Nevertheless, the British army statement remains unretracted.

(f) **Ambrose Hardy**

- 3.38 We find that Ambrose Hardy was shot dead by a single high velocity bullet fired by a member of the British army from the permanent observation post on top of either Alamein House or Templar House high rise flats at some time between 12:45am and 1:30am (see paragraph 3.07 as to timing). We further find that he was unarmed and posing no conceivable threat to the security forces while waving a white petticoat as a white flag prior to sticking his head out of the front doorway of the Circle Club in an attempt to get home to

alleviate the fears of his mother whom he believed would be worried about him because of the gun fire that night.

3.39 The most difficult aspect of Ambrose Hardy's killing to determine, from the evidence available to us was to ascertain the approximate time when Ambrose Hardy was shot and to ascertain whether or not it had been before or after the gun battle had commenced between the IRA and the British soldiers subsequent to the departure of the ambulance carrying the bodies of Tony Campbell, Brendan Maguire, and John Loughran. Details of the IRA statement subsequent to the shootings appeared in the following *Irish Times* article of the 5th February 1973:

“After these three deaths the area cleared and it was about this time the IRA opened fire. They said in the statement that at no time were the IRA involved in offensive action and that it was only after the deaths that they fired at the two groups involved, the British army and loyalists. They did this, they said, to provide cover to enable the dead and wounded to be attended to.....The last man to die with gunshot wounds was twenty six year old Ambrose Hardy from Hillman Street. His twin brother Joseph told yesterday how his brother had gone to the Catholic Ex-serviceman's Club on the New Lodge Road to buy cigarettes. He had no gun and it was nearly an hour after the major shooting. He was hit in the doorway of the Club. Because of the angle, the shots could not have come from Edlingham Street and they most probably came from the Army post on the top of Templar House flats.”

3.40 The vast majority of the ten eyewitnesses who gave oral evidence and/or written statements in respect of the circumstances surrounding the death of Ambrose Hardy are clear that he was shot before the IRA engaged in a gun battle with the British army later that morning. Irrespective of the chronology of events and the actual time of the shooting of Ambrose Hardy, it is clear to us and we find that Ambrose Hardy was shot by a single high velocity bullet fired by the British army from one of the observation posts on top of the high rise flats. Such was the accuracy of the shot within such a short period of time after Ambrose Hardy would have become a target, we further find that the British soldier who shot Ambrose Hardy was almost certainly using a telescopic IWS Night Sight.

3.41 David Saunders states:

“Ambrose Hardy was standing across the road in the doorway of the Circle Club. He was giving the finger to the Brits at the top of Templar House flats. He did not come

out of the Club, he just put his head out and the next thing, bang, he was shot. He fell back into the hall, nobody pulled him back in, he just fell. I believe this was the first time the Brits fired from the flats.”

3.48 In his written statement of evidence Charles Smith states:

“I am nearly sure that Ambrose went home earlier and then came back for cigarettes or something. Either way, I would put my life on the fact that he was not carrying a weapon of any kind or anything that looked like a weapon. Ambrose wanted to get back home because he thought that his mother would be worrying. He was determined to get home and there was nothing going to stop him. We would have had to jump on him to keep him inside - he just had to get home. I remember there was a lull of about 5 or 10 minutes and Ambrose thought that it seemed quiet enough to make it home. He was going to go out and we were all shouting, “Don't go out, don't go out.” Ambrose had just stepped outside the door - which was getting closed as quickly as he was getting let out - and he was shot. It happened so quickly that I don't remember him actually being hit even though I was in the hallway”.

3.43 Lily McAuley testifies how Ambrose Hardy asked her for something white to wave because he wanted to go to his mother's house as he was afraid that she would hear the shooting and not know where he was. He wanted to go home so she wouldn't go out herself looking for him. Lily McAuley stepped out of her underskirt and gave it to Ambrose. She continues, **“Ambrose opened the door, waved the underskirt, and came back in. Then he waved it a second time. This time, he put his arm out of the door first and then stuck his head out. As soon as he put his head back out they shot him. He fell back into the Club.....The British army had us like rabbits that night. It was the first night that they had Night Sights on their guns”.**

3.44 Paul McAllister in his written and oral testimony states:

"I had moved about three feet away and suddenly Ambrose was shot in the head. I think that this may have been the first fire from the top of the flats.....A while later I was aware that gunfire was being returned. In those days, you could tell the difference between gunfire from the British army and the gunfire from other sources. I remember distinctly, however, that fire was not returned until well after the ambulances had arrived to take the bodies away, it was not returned until after Ambrose had been shot".

3.45 Terence Mulvenna states:

"Ambrose Hardy was in the Circle Bar with us that night as well. I remember seeing Mrs McAuley take off her slip and hand it to him. I don't remember what happened to bring this on, I remember this was right around the time that gunfire started coming from the top of the flats. I remember very clearly that Ambrose did not have any type of weapon in his hands or anything that looked like a weapon, when he put his head out the door he was shot right in the entrance. I did not see him actually get shot".

3.46 Teresa McKinney in her written statement and oral evidence testifies:

"Finally, at about 1:00am I went home. When I got home, I turned on a small transistor radio I had. I could hear the police radio on it as well as army transmissions. That night, after I got home I remember hearing the British army on the radio. There was a British soldier saying, "There is a man coming out of the Circle waving a white cloth". Then there was a response of something along the lines of, "We got him."

3.47 In the witness statement and oral evidence of Kathleen McCormack, along the same lines as Teresa McKinney, she states how she lived on the 12th floor of Alamein flats directly below the British barracks on the top floor and how she could hear conversations of the British military. In the course of that night she heard British soldiers saying, **"I got that one you get the other,"** and, **"No, you missed, have another go."** She describes how there were other things like banter between the British soldiers in her block and those in Templar Flats. They would say things like, **"We got him, now it's your turn,"** and **"That one is up for us boys."** She said she could hear the other British soldiers responding similarly over the radio. She continues as follows in her statement:

"When I heard about the killings by the British I realised that what I had been hearing the night before was the soldiers aiming at the men in the street. I was sickened to realise that what I had thought was some kind of game was actually the murder of these boys - certainly of Ambrose Hardy. Never once when I was listening to the soldiers did I hear them saying that gunfire was returned or that someone on the ground had a weapon. It was just the soldiers aiming and trading targets. I can hear the voices to this day".

- 1.1 In his written testimony Liam Maskey states that, **"I would say that definitely a comfortable amount of time passed from the time that Ambrose was shot and the time that fire was returned"**.
- 3.49 Each of the ten witnesses who gave oral and/or written evidence in respect of the death of Ambrose Hardy (including the witnesses referred to above) were adamant that Ambrose Hardy had nothing in his hand except a petticoat and that he did not have any firearm or anything that could be mistaken for a firearm immediately before or at the time he was shot. The clear, consistent and unequivocal evidence all points to the fact that a British army sniper with a telescopic night sight must have been aiming at the front of the Circle Club waiting for the next person to come out and then immediately shot Ambrose Hardy even though he waved a white petticoat before he stuck his head out.
- 3.50 Mr Terence Mulvenna, when questioned about the nature of the head wound sustained by Ambrose Hardy, confirmed that the impression was that the entry wound had been to the top right hand side of his head and the exit wound was lower down at the back of his head. He agreed that this was in accordance with the autopsy report: **"There was a large elongated wound on the top of the scalp with a large hole in the skull beneath.....The injuries were consistent with the tangential impact of a high velocity bullet.....There was a considerable amount of alcohol in the body. Its concentration in the blood was 120mgs per 100ml."** Photographs of the scene showing the front door of the Circle Club indicate a clear line of sight to the top of the observation posts on the high rise flats and this line of sight was clearly consistent with the line of fire which hit Ambrose Hardy. More importantly, the position of his head, as evidenced by the numerous eyewitnesses, coupled with the forensic evidence contained in the autopsy report in respect of the entry and exit wound, clearly indicates that the bullet in question must have come from well above ground level at a height consistent with that of the British army observation post above the high rise flats.
- 3.51 Again, the high level of alcohol in Ambrose Hardy's blood is inconsistent with him being on active service for the IRA on the night in question.
- 3.52 Despite the fact that the Ministry of Defence representatives at the inquest of Ambrose Hardy indicated a complete ignorance of where and when he was shot, there was no attempt

to obtain forensic tests from his hands or clothes despite the British army statement that he was one of six armed IRA men killed in a gun battle.

- 3.2 At the inquest, the Coroner, Mr James Elliott, found that there was no concrete evidence that Ambrose Hardy or others had been carrying or discharging any weapons and declared that he was an innocent victim.
- 3.3 Furthermore, his brother Geordie Hardy states, **“No soldier or member of the RUC ever came about to check for forensics or do an investigation. As far as I can remember they didn’t even raid the houses the next day.....I think they knew that they had shot and killed innocent people.....My family went ahead with a case for compensation in order to prove his innocence. We were awarded a mere £90 in compensation.”** While the paltry figure of £90 is a disgraceful value to place on a life, the mere fact that there was an award under the Criminal Injuries Compensation Scheme means that the Northern Ireland Office and/or the Court were satisfied that Ambrose Hardy was not an armed gunman at the time of his death nor was he engaged in any unlawful activity.
- 3.55 For the reasons we have given and after careful analysis of all the evidence made available to us we therefore find, in respect of paragraphs 1 and 2 of the Terms of Reference that all six men killed on the 3rd and 4th days of February 1973, namely Jim McCann, Jim Sloan, Tony Campbell, Brendan Maguire, John Loughran and Ambrose Hardy were each shot dead by members of the British army in circumstances which clearly indicate that none of the deceased were armed at the time of the shooting or acting in a manner which might have been interpreted as a potential threat to the security forces.

4. OFFICIAL RESPONSE TO THE KILLINGS

- 4.01 In paragraph 3 of the Terms of Reference, we have been asked to examine the official response to the killings including the internal investigations by the British forces, the RUC and the Inquest, and to examine whether this response amounts to a breach by the state of the Article 2 Rights of all the deceased and, if so, whether the state continues to breach their Article 2 Rights.

In our Preliminary Findings on the 23rd of November 2002 we found as follows:

1. **There is no doubt in the Jury's mind that there has been a clear breach of Article 2 of the European Convention on Human Rights - which guarantees the Right of Life.**
2. **The Jury has been shocked by the State's total failure to investigate the circumstances surrounding the deaths of the six victims and the wounding of several other persons, including Mr Charlie Carson whose testimony we have heard.**
3. **Even at this late stage, we call upon all relevant agents of the UK Government to assist us by releasing to this Community Inquiry, documentation relating to these events.**

1.01 Following further examination of the vast amount of documentation made available to us, reconsideration of the oral evidence with the assistance of the detailed transcript provided (238 pages), we confirm and reiterate our above preliminary findings and further find that there is a continuing breach of all the deceased's Article 2 Rights in respect of the ongoing failure, to date, of the national authorities in their obligation to carry out a prompt and effective investigation into the circumstances of the deaths.

(a) **Internal investigations by the British Forces**

4.03 As recently as 1996, Field Marshall Lord Carver was able to state that:

“A soldier differs from the ordinary citizen in being armed and subject to discipline; but his rights and duties in dealing with crime are precisely the same as those of an ordinary citizen.” Irrespective of what are the legal rights and duties of a soldier acting in aid of the civilian power (as opposed to wartime), the *de facto* position that prevailed in February 1973 (as confirmed by documentation and disclosure made public in the course of the Saville Inquiry) was that where members of the British army were involved in or suspected of being involved in the deaths of civilians by way of lethal force, the procedure was that, rather than be interviewed in respect of the matter by an RUC officer, the royal military police took charge of the investigation and interviewed and took statements from the British soldiers suspected of being involved in the said deaths.

4.04 The fairness and effectiveness of this investigation by the Royal Military Police cannot be properly assessed in this case because of the lack of documentation. Only five Army statements have been made available to this Community Inquiry and each of these has come via the Public Records Office, (Records of Coroner's Inquests). Two of the statements are purely administrative (Sergeant Sibley and Corporal John) in that they indicate that they took written statements from Soldiers 'Q' and 'S' respectively. The statement of Lance Corporal 'C' deals with his arrival at the scene of the shooting outside Lynch's Bar subsequent to hearing shots at 11:43 pm. Despite arriving on the scene immediately subsequent to these shootings, no attempt was made by him to ascertain the identity and addresses of relevant eyewitnesses (for the purpose of taking witness statements at a later date) or to take witness statements from eyewitnesses at that time. Despite the fact that the Lance Corporal was on "Internal Security Duties" in Northern Ireland, he made no attempt to conduct any form of investigation to ascertain the circumstances surrounding the shooting either from the civilian witnesses present at the scene or nearby members of the British army.

4.05 In February 1973, an RUC Force Order operated whereby the RUC permitted the British army to investigate and police itself in circumstances where they were responsible for the use of lethal force, even against unarmed civilians. The practice, which flowed from this Force Order, was severely criticised by Lord Chief Justice Lowry in *Reg. v. Foxford* - **"The preliminary statements of many of the civilian witnesses were not the only ones taken by an unorthodox procedure. We learnt that from September 1970 until September 1973 an RUC Force Order was in operation whereby if an offence against the ordinary criminal law was alleged against military personnel in Northern Ireland the interviewing of military witnesses and the alleged offenders themselves was conducted exclusively by military investigation. This practice has been discontinued, but we deprecate this curtailment of the functions of the police and hope that the practice will not be revived."**

4.06 The relevance of these comments is strengthened when we look at paragraph 124 of the European Court of Human Rights Judgement in *McKerr v. United Kingdom* in respect of a police investigation. That case involved RUC officers investigating the use of lethal force by other police officers and in that case the police officers' weapons were not handed over to the Scenes of Crimes Officer until the day after the shootings and the officers were not

interviewed until some three to four days after the incident. The Court commented as follows:

“It is perhaps surprising that the guns were not required to be surrendered as soon as possible and that the officers were not interviewed at an earlier stage...it does however lend weight to assertions that investigations into the use of lethal force by police officers gives the appearance of being qualitatively different from those concerning civilian suspects...in such a context the necessity for safeguards against undue influence and a lack of impartiality is thrown into prominence. It must be noted that the investigation into the killing by RUC police officers was headed and carried out by other RUC officers....The power of the Independent Commission for Police Complaints to require the RUC Chief Constable to refer the investigating report to the DPP for a decision on prosecution or to require disciplinary proceedings to be brought is not, however, a sufficient safeguard where the investigation itself has been for all practical purposes conducted by police officers connected with those under investigation.”

Obviously, the force of these comments ought to apply equally to the death of the New Lodge Six insofar as the British military investigated their own personnel.

- 1.01 The statements of Soldier ‘Q’ (non-commissioned officer) and Soldier ‘S’ are the only statements that could properly have been described as having been taken during the course of a Royal Military Police investigation of the circumstances. However, as noted beforehand, neither of the statements could be described as prompt or contemporaneous, having been taken from the soldiers at 3:10 pm on the 4th of February 1973 (Soldier ‘Q’) and at 3:00 pm on the 6th of February 1973 (Soldier ‘S’). There is no reference within these statements to more contemporaneous, extraneous documentation such as armoury logs, debriefings, etc., and there has clearly been no attempt to probe the two British soldiers in respect of the numerous inconsistencies between the two statements which have been highlighted in two pages by the Solicitor to this Inquiry.

- 1.02 One must remember that immediately subsequent to the six deaths in the New Lodge area, a British army statement claimed that all six were IRA gunmen shot dead by the British army during the course of a gun battle. At the very most, the two statements of ‘S’ and ‘Q’ can be seen on the face of them to deal only with the shootings of Anthony Campbell and Brendan Maguire. The very earliest available newspaper articles (*Irish News*, 05/02/73) clearly indicates allegations of British army collusion in the murders of Jim Sloan and Jim McCann

or, alternatively, that the men in the car were British soldiers in civilian clothes. These allegations were repeated from many sources over the forthcoming days but do not appear to have prompted any internal British military investigation into the deaths of Jim McCann or Jim Sloan.

1.03 More worrying is the fact that although the deaths of John Loughran and Ambrose Hardy are clearly not covered within the particulars of the statements of Soldiers 'S' and 'Q', no statements exist or, at the very least, have not come to light in respect of the questioning of the other British soldiers who opened fire and/or claimed hits that night. At their very height, the combined statements of Soldier 'S' and 'Q' claim a maximum of four hits. In the *Belfast Newsletter* on the 5th of February 1973 an Officer of the First Queen's Regiment confirmed that about twelve of the forty British soldiers "involved" were using telescopic sights on their self-loading rifles. In a *Belfast Telegraph* article on the same date it was indicated (presumably from a British army source) that more than two hundred shots were fired at soldiers who were reported to have returned one hundred and fifty rounds. At the very most, according to their statements, Soldier 'S' fired twenty-eight rounds from his general purpose machine gun whereas Soldier "Q" fired fifty three rounds from his SLR (despite the fact that he had only been issued with forty rounds). This leaves approximately seventy rounds unaccounted for and the number grows by the time the British minister of state for Northern Ireland, Mr David Howell made a statement to the House of Commons on the 5th of February to the effect that one hundred and eighty nine rounds were fired at British security forces who returned one hundred and sixty eight rounds. By the time of the Coroner's Inquest hearings on the 28th of March 1975 the number of rounds fired had grown to about "two hundred and fifty bullets being fired from terrorists, the army returned two hundred and eighty six rounds." No statement had ever been supplied or made public in relation to the other two hundred and five rounds fired by the British army that neither night nor are details available as to how many soldiers fired them. There is no evidence available that these additional British army soldiers were even interviewed or statements taken from them.

4.10 In the five months leading up to the Community Inquiry extensive correspondence from Madden & Finucane, Solicitors, to the Queen's Royal Hussars, the army historic disclosures, the Queen's Lancashire Regiment, the British army press centre and British army HQ in Northern Ireland failed to bring about the disclosure of a single document despite the detailed and comprehensive manner in which the request for documents was specified. At

this juncture, I would repeat the comments of the European Court of Human Rights in the case of *McKerr v. United Kingdom* to the following effect, **“In light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State Agents but also all the surrounding circumstances. Where the events and issues lie wholly, or in large part, within the exclusive knowledge of the authorities, as for example the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries and death which occur. Indeed the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation.”**

4.11 In light of the non-disclosure of documentation, statements, etc., by or on behalf of the ministry of defence, (save the five British army statements referred to above) we feel that we are entitled to infer, given the silence of the British army in the face of requests for documentation and information, that no such documentation ever existed and accordingly there cannot, in any sense of the words, have been a prompt or effective investigation by the British forces if indeed there was any investigation at all.

4.12 On the contrary, the British forces have, at every juncture, attempted to thwart any investigation and cover up the truth in a number of ways:

1. The initial statement by the British army press officer that all six deceased were IRA gunmen killed in the course of gun battle has subsequently been proved to be untrue and without foundation. One can speculate that the reasons behind such a statement were to deflect any criticism from an investigation into the British army themselves.
2. The continued stubbornness of the British forces in adhering to their original statement in the face of compelling evidence to the contrary had the affect of thwarting any possible chances of investigating the real circumstances of the deaths in the course of the Coroner's Inquest and the hearings for compensation under the Criminal Injuries Legislation.
3. The ministry of defence has consistently and deliberately avoided answering correspondence from Madden & Finucane, Solicitors, in respect of the disclosure of documents subsequent to the European Court Rulings of *McKerr*, *Jordan and Others*.

4. The extremely important deposition/statement of Detective Sergeant Walton is worthless hearsay in the absence of full and detailed statements from the “Number of soldiers” from whom he recovered spent bullet cases.

1. Despite the obvious absence of RUC officers on the ground subsequent to the shootings, the British soldiers who attended the scene of the shootings of Sloan and McCann at Lynch's Bar and those who entered the Circle Club subsequent to the shooting of Ambrose Hardy made no attempt whatsoever to take details of the names and addresses of potential eyewitnesses on those occasions. Such abject failures on their behalf could well have proved crucial if there had been, at a later stage, any potential prosecution of British soldiers or indeed IRA men relating to the circumstances of that night.

2. In certain respects, the British army were proactive in destroying evidence and/or perverting the court of justice for example when, according to the written statement of Alice Smith, a group of special British soldiers came to her house and seized a tape recording of potentially incriminating evidence from British army radio transmissions and destroyed it.

(b) RUC Investigation

1.1 In respect of the RUC, the question is not so much as to whether or not there had been a prompt and effective investigation, but rather whether there had been any investigation at all. Were any RUC investigation files even opened in respect of the six deceased?

1.2 The “Police Report Concerning Death” prepared for the purpose of the Coroner's Inquest and dated 26th November 1973 on each occasion (presumably after almost ten months of RUC investigations) are derisory in their lack of content. In respect of the portion of the report “Persons witnessing the death”, the entries are as follows:

Anthony Campbell - Not known (despite the fact that a witness statement had been taken from Charles Carson by Detective Constable Sheehan himself at RVH on the 6th of February 1973)

Ambrose Hardy - Not known

John Loughran - Mrs Mary Loughran (despite the fact that she did not witness her son being shot)

James McCann - Daniel Sloan (he was not a witness to the death or shooting but merely arrived on the scene afterwards)

James Sloan - Daniel Sloan (as above)

Brendan Maguire - The Inquest documents, including the RUC Report, were not available to the Community Inquiry because an RUC officer took them from the Public Records Office for some unknown reason during a time when, to the knowledge of the chief constable of the RUC, Madden & Finucane were attempting to retrieve all relevant documentation.

- 4.15 In respect of the entries in the five available RUC Reports under the paragraph “Circumstances relating to death”, the entries after almost ten months of investigation were as follows:

Anthony Campbell - During gun battle between terrorists and British troops in the New Lodge Road area. Deceased was removed injured to the Royal Victoria Hospital (RVH) where he died during operation

Ambrose Hardy - During gun battle between British troops and gunmen in New Lodge Road area. Deceased was removed to RVH by ambulance

John Loughran - During gun battle in New Lodge Road area between British troops and terrorists. Deceased removed to hospital and found dead

Jim McCann - Came out of Lynch's Bar. Was chatting to Jim Sloan at the corner. Believed shot from passing car

Jim Sloan - Deceased was one of six persons taken from New Lodge Road area during gun battle in which the British army and civilians were involved. Sloan was believed shot from car passing along Antrim Road.

4.16 The only evidence that appears to have been secured by the RUC in the course of their investigation is as follows:

1. Forensic examination of Jim Sloan and John Loughran on the instructions of RUC (for whatever reason no forensic examinations were secured on the instruction of the RUC in respect of the other four deceased);
2. A very short medical report in respect of the cause of death to Anthony Campbell from Dr. Calvert FRCS dated 19th February 1973, which only deals with the cause of death. (This can hardly be said to be an adequate substitute for a post-mortem report particularly when Tony Campbell was hit seventeen times by gunfire. One wonders if the replacement of a short medical report for a full autopsy report in this particular death was for the purpose of covering up the ferocity of gunfire attacks on Anthony Campbell);
3. Statement of Charlie Carson dated 6th February 1973 (which Charlie Carson alleges was not taken from him and does not bear his signature and at the very least, taking into account his injuries, was taken in dubious circumstances);
4. Statement to the RUC of Mary (Minnie) Loughran 14th February 1973 to Detective Sergeant Sheehan.

4.17 One does not know if the British army statements of Soldiers 'S' and 'Q' were even provided to the RUC or, if they were, whether the RUC were afforded the opportunity to question the two British soldiers in respect of the clear inconsistencies within those two statements.

4.18 I have already commented on the circumstances surrounding the delay and eventual suspicious circumstances in which a vehicle was recovered at Tenant Street on the 5th February 1973. One does not know if any or adequate forensic examination of the vehicle was undertaken or if any enquiries were instigated as to where, when and how the vehicle was presumably stolen or the movements of the vehicle between the 3rd and 5th February 1973.

- 4.19 Quite apart from the controversial circumstances surrounding the actual deaths of the six deceased, one would have thought that the RUC would have attempted to allay public concern and suspicion into the deaths by way of transparent and open statements in respect of their investigations subsequent to the controversy that followed the shootings in the media and the House of Commons.
- 4.20 The only public appeal issued for witnesses made by the RUC was in respect of the vehicle used in the drive-by shootings of Jim Sloan and Jim McCann. There was never any attendant request for witnesses to come forward in relation to the actual six shootings themselves nor was there any attempt to obtain witness statements or even the names and addresses of relevant eyewitnesses through contacting local representatives or through door to door enquiries. Indeed, when the RUC were present at the Royal Victoria Hospital, and they had the opportunity to take such details from concerned family and friends, it appears that the RUC confined themselves to ascertaining the statutory minimum requirements of securing somebody to identify the deceased and obtain particulars of the deceased from that person.
- 4.21 Repeated correspondence from Madden & Finucane, Solicitors, to the RUC chief constable over a period of two months prior to the Community Inquiry failed to obtain any information or documentation whatsoever despite references to Article 2 obligations pursuant to the European Court Judgements in *Jordan, McKerr and Others*. The only substantive reply that touched on the RUC investigation were two letters dated 10th October 2002 from the DPP, which confirmed that there was no record of an RUC investigation file being submitted to the DPP in respect of the deaths of James Sloan or Ambrose Hardy. The position in relation to the other four deceased is as yet unknown.
- 4.22 At this stage, I would refer to the correspondence directed to the RUC chief constable by Madden & Finucane, Solicitors, in which they set out, in great detail, the information and documentation they require and the legal basis upon which same is requested, as of right, in order to guarantee the Article 2 Rights of the six deceased and under of the Right to Life provision of the Human Rights Act 1998.
- 1.1 I would refer again to the quotation of the Judgement of the European Court of Human Rights in the *McKerr* case in respect of the absence of documentation and the failure/refusal of the RUC to provide same in accordance with their Article 2 obligations. Accordingly, in the absence of any documentary evidence or information save that referred to above, and in

the face of the continuing refusal of the RUC to provide same, we are drawn to the conclusion that no effective investigation was ever carried out by the RUC into these six deaths.

(c) **The Coroners Inquests**

4.24 In Northern Ireland, as in England and Wales, investigation into deaths may also be conducted by Inquests. Inquests are public hearings conducted by Coroners, independent Judicial officers, normally sitting with a jury, to determine the facts surrounding a suspicious death. Although the Inquest in respect of the New Lodge Six deaths was indeed public, it was not effective.

4.25 An essential purpose of an Inquest is to allay rumours and suspicions as to how a death came about but domestic courts in this jurisdiction have considered it important that such an inquiry should not be allowed **“To drift into the uncharted seas of rumour and allegation.”** The narrow interpretation in case law by the National Courts, where the Coroner is required to confine his investigation to the matters directly causative of the death and not extend his inquiry into the broader circumstances, has the effect of depriving the Coroner of the power to carry out an effective examination of relevant matters.

4.26 Rule 9 (2) of the 1963 Coroner's Rules states that any person suspected of causing the death may not be compelled to give evidence. In practice (as occurred in this case), in Inquests involved in the use of lethal force by members of the British security forces in Northern Ireland, the RUC or British soldiers concerned do not attend. Instead, written statements or transcripts of interviews are admitted in evidence as was the case of the admission of the statements of Soldiers “S” and “Q” in these Inquests. This procedure did not enable any satisfactory assessment to be made of either the reliability or credibility of the statements on crucial factual matters and detracted from the Inquest’s capacity to establish the facts relevant to the death. Accordingly, this practice failed to protect the deceased’s Article 2 Rights under the Convention.

4.27 The Jury's verdict in these cases could only give the identity of the deceased and the date, place, and cause of death (whereas in England and Wales the Jury is able to reach a number of verdicts including unlawful death). Even if the Coroner in these cases sent a written report to the DPP, if he considered that a criminal offence might have been committed, it is

not apparent however that the DPP would have been required to take any decision in response to this notification or to provide detailed reasons for not making any response. Accordingly, the Inquest in these cases was unable to play an effective role in the identification or prosecution of any criminal offences which may have occurred and, in that respect, fell short of the requirements of Article 2.

1.1 Although the next of kin to the deceased in these six cases were legally represented at the Inquests by Solicitors and, in some cases, Counsel, the non-availability of Legal Aid in Inquests (particularly when coupled with other handicaps faced by the next of kin as outlined in this section of our report) can and often does have a significant prejudicial affect on the fairness of the proceedings particularly when the British state is invariably represented by the highest quality of legal representation paid for out of public funds. This real risk of prejudice cannot be offset by any voluntary practice whereby the legal profession in any particular jurisdiction offer their services *pro bono*. It has to be noted that, subsequent to these Inquests, legislation, which could have provided for Legal Aid at the hearing of Inquests (the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 Schedule 1 Paragraph 5) has never been brought into force. However, on 25th July 2000, the Lord Chancellor announced the establishment of an Extra Statutory *Ex-gratia* Scheme to make public funding available for representation for proceedings before Coroners in exceptional inquests in Northern Ireland. In March 2001, he published for consultation the criteria to be used in deciding whether applications for representation at Inquests should receive public funding. This included, *inter alia*, consideration of financial eligibility, whether an effective investigation by the state was needed and whether the inquest was the only way to conduct it, whether the applicant required representation to be able to participate effectively in the inquest, and whether the applicant had a sufficiently close relationship to the deceased. While these developments may go some way to remedy one of the defects in the Coroner's Inquest procedures over the last thirty years, we are not in a position to assess the effectiveness of the Scheme until it has been in operation for some time.

1.2 In the 1975 Inquests into the February 1973 deaths of the six deceased, the families of the deceased, at that time, were not able to obtain copies of any witness statements until the witness concerned was actually giving evidence. This practice led to a "legal ambush" scenario where the families of the deceased were often taken totally by surprise and thereby unable to prepare properly to counter unexpected and often complex, technical and voluminous evidence. We note that the practice of non-disclosure has changed in the United Kingdom in light of the

Stephen Lawrence Inquiry and it is now recommended that the police disclose witness statements 28 days in advance. This practice has since been adopted within the Northern Ireland Jurisdiction. As with the recent developments in the availability of legal assistance, this development has come too late to have any impact on the effectiveness of the 1975 Coroner's Inquest into these six deaths. We adopt the Court's ruling in *McKerr v. United Kingdom* and consider that the right of the family of the deceased whose death is under investigation to participate in the proceedings requires that the proceedings adopted ensure the requisite protection of their interest, which may be in direct conflict of those of the police or security forces implicated in the events. For this reason also, we find that the interests of the next of kin of the six deceased were not fairly or adequately protected in this respect.

4.30 In respect of the delay in the proceedings by way of inquest, it is noted that the inquests into these six deaths took place on the 27th March 1975, almost two years and two months subsequent to the deaths. In the context of Northern Ireland, this delay might, when compared to other inquests, not seem unreasonable. However, when we look at the particular circumstances of these inquests we find that there has been undue delay, which to this date remains unexplained:

- a. These six inquests were not delayed by any potential or pending criminal proceedings nor does there appear to have been any active British army or RUC investigation throughout the period;
- b. These inquests were not delayed by any lengthy correspondence or Judicial Review applications in respect of the Inquest procedures or availability of documentation;
- c. The "Police Report Concerning Death" addressed to the Coroner in each of the six cases was completed on the 26th November 1973 and presumably forwarded to the Coroner with all relevant documentation on that date. Effectively, this signalled the end of any RUC investigation. There is no explanation available to us for the subsequent delay of sixteen months nor can we conceive of any credible explanation that might be available for such a lengthy delay.

Therefore, we find that the Coroner's Inquest in these particular cases failed the "promptness" requirement of Article 2.

- 4.31 The statutory and procedural shortcomings of the inquest system in Northern Ireland as outlined above had a significant direct affect on the effectiveness of the Coroner's Inquest into these six deaths in acting as a public forum to allay public concern in respect of rumours or suspicions relating to the deaths and to seek out and record as many of the facts concerning the death as public interest requires.
- 1.9 The delay of more than two years in holding these inquests had the affect of undermining the public nature thereof. The vast majority of eyewitnesses who could have given evidence to the Inquests were, at the time of the Inquests, totally unaware that they were taking place and in many cases, almost thirty years later, were unaware that Inquests had even taken place into these six deaths. This could hardly be described as having the affect of allaying public concern, particularly if it resulted in ignorance within the community itself who were directly affected by the events of that night.
- 1.10 The lack of any inquiry, effective or otherwise, into the drive-by shootings of Jim McCann and Jim Sloan can hardly be described as satisfying the following test: **“The function of an inquest should simply be to seek out and record as may of the facts concerning the death as the public interest requires.”** There was no investigation into the Army statement that all six were gunmen nor was there any inquiry (effective or otherwise), into any evidence to support the coroner's statement that they (McCann and Sloan) were victims of a sectarian assassination.
- 4.34 There was no inquiry, effective or otherwise to determine where and exactly when Tony Campbell, Brendan Maguire, John Loughran or Ambrose Hardy were shot (as opposed to the finding as to where and at what time they were pronounced dead). No inquiry or investigation was even attempted to account for the two hundred and five rounds fired by the British army not accounted for in the statements of Soldier 'S' or 'Q' despite the fact that on the bare face of their two statements nothing corresponds to the death of John Loughran or Ambrose Hardy. It has been noted that even at that early stage in March 1975 the Solicitor for some of the next of kin, Mr Paschal O'Hare, complained about the procedure in which the British soldiers' evidence was produced and that the soldiers were not in Court themselves to face cross examination.

- 1.1 An “Open” verdict by the jury in each of the six deaths and comments by the Coroner to the effect that each of the six deceased were unarmed and innocent when they were shot cannot, by any stretch of the imagination, satisfy even the most basic purposes of a Coroner’s inquest and indeed, if anything, raised more questions than it provided answers to and had the affect of increasing rather than allaying public concern into these six deaths.
- 1.2 It has to be admitted that the Coroner was hampered by the apparent lack of any effective police investigation and the failure of the RUC to comply with Section 8 of the Coroner’s Act (Northern Ireland) 1959 which provides as follows: **“wherever a dead body is found or an unexpected or unexplained death, or a death attended by suspicious circumstances, occurs (Superintendent) within whose district the body is found, or the death occurs shall give or cause to be given, immediate notice in writing thereof to the Coroner within whose district the body is found or the death occurs together with such information also in writing as he is able to obtain concerning the finding of the body or concerning the death.”** *Emphasis added.* It is clear, despite the subsequent delay of some fourteen months after the police report was probably received by the Coroner, that the contents of the police report and the accompanying documentation were all available well before November 1993 (probably in or around March 1993 at the latest) and yet there was no “immediate” notice in writing to the Coroner. Furthermore, the requirement is for the police to provide such information “as they are able to obtain.” This casts an obligation on the police not just to provide information that they have in their possession but to actively pursue such information in the course of an appropriate police investigation. We have already discussed the inactivity and/or refusal of the police to conduct the necessary door to door enquiries or seek out eyewitnesses to the six deaths.
- 1.3 Furthermore, *Lecky and Greer, Coroner’s Law and Practice in Northern Ireland* states, **“It is the duty of the Chief Officer of Police to convey to the Coroner, for the purposes of a public inquest, all material in his possession touching the cause and circumstances of the death...As a matter of sensible public administration it seems essential that the Coroner should have the material obtained by the police so that he can decide what witnesses to call and to investigate the matter generally. He could of course conduct his own inquiry de novo.”** (*Peach v. Commission of Police of the Metropolis*) (1986) 2 AER129. The documentation that springs to mind are the statements of the other British soldiers who fired the other two hundred and five fires that night (if indeed they were ever supplied by the British army to the police) and the documents concerning the

finding of the car allegedly used in the drive-by shootings of Jim McCann and Jim Sloan. For the RUC to be engaged in a process of extracting what they viewed as the “relevant” documentation held by them and providing only those documents which they determine to be relevant to the Coroner is, in our view, clearly contrary to the provisions of Section 8 of the Coroner’s Act and also Section 17 of the Coroner’s Act which clearly indicate that it is for the Coroner and not the RUC to determine what documents are relevant so that the Coroner could fulfil his statutory function.

4.38 For the reasons stated above, we find that the Coroner’s Inquest failed to provide an effective investigation into these deaths and, indeed, we believe that the public and prompt ingredients required for an effective Article 2 investigation were severely undermined by the unexplained delay in this particular case which resulted in the vast majority of eyewitnesses to these six deaths not even knowing that an inquest had even taken place, despite the fact that they lived in the actual locality and were directly affected by the deaths in question.

4.39 It is noted by the panel of Jurists that the decisions of the European Court in *Jordan, McKerr and Others* were delivered on the 4th of May 2001 and to date no effective steps have been taken by the Government of the United Kingdom to comply with the Article 2 obligations set out in those Judgements. The delay in such an important international obligation is to be condemned rather than merely regretted. It is noted that in a letter from the Northern Ireland Office dated 17th October 2002 to Madden & Finucane, Solicitors, it was stated as follows: **“The Government has prepared a package of measures to address the points raised in the Judgements and this was submitted to the Secretariat of the Council of Europe on 19th March 2002. The measures in the package are still evolving through a process of dialogue with the Secretariat and with the rest of the Committee of Ministers.”**

(d) **The Director of Public Prosecution**

4.41 While we have not been specifically tasked in the Terms of Reference to look at the role of the DPP and the Civil Litigation Courts in Northern Ireland as part of the “Official response to the killings” we feel that in light of the content and comments within the European Court Judgement of *McKerr v. United Kingdom* we should allude to them.

4.42 The Director of Public Prosecutions (The DPP), appointed pursuant to the Prosecution of Offences (Northern Ireland) 1972 is an independent officer whose duties under Article 5 of the 1972 Order enable him **“to consider, or cause to be considered...any facts or information brought to his notice, whether by the chief constable...or by any other authority or person.”**

Article 6 of the 1972 Order requires Coroners and the chief constable of the RUC to provide information to the DPP **“where the circumstances of any death investigated or being investigated by a Coroner appear to him to disclose that a criminal offence may have been committed he shall as soon as practicable furnish to the DPP a written report of those circumstances.”**

4.43 Quite clearly, neither the Coroner nor the RUC caused any such report or information to be placed before the DPP but the public concern arising from the media coverage surrounding the six deaths and the findings of the Coroner ought, by themselves, to have caused the DPP to have requested such a report or information. As has already been stated, the DPP has confirmed that in the cases of Ambrose Hardy and Jim Sloan no police files were ever sent to the DPP and the position remains unknown in respect of the other four deaths. Given the public controversy surrounding the six deaths and the subsequent Inquests, we find that the Director of Public Prosecutions cannot excuse his inactivity in acting as an independent officer with oversight of all matters touching on criminal prosecutions by relying on the failure of the RUC or the Coroner to furnish him with a report. We consider that he has a right, and indeed a duty, to **“consider or cause to be considered”** the circumstances surrounding such controversial deaths as occurred on the 3rd and 4th of February 1973 with a view to, at the very least, considering the initiation of criminal proceedings.

4.44 We further find that there is a continuing breach of Article 2 obligations by the DPP in its failure to cause to be re-examined circumstances surrounding these six deaths subsequent to the May 2001 European Court decisions in *Jordan and McKerr*.

(e) **Civil Litigation**

4.45 In the European Court Judgement in *McKerr v. United Kingdom* (paragraph 118) the Court indicated that it **“does not consider that there are any elements established which would deprive the Civil Courts of their ability to establish the facts and determine the lawfulness or otherwise of...death.”** We beg to differ from the opinion of the Learned Court in that regard.

4.46 The Criminal Injuries Compensation Legislation provides a means whereby the Northern Ireland Office will pay damages to persons injured by Criminal Acts or to the dependants of the victims of unlawful killings. The matter of compensation, particularly when it comes from the state rather than from the pockets of the person or persons responsible for the criminal acts, is of very small concern to the victims of unlawful state violence seeking to obtain truth and justice. The Criminal Injuries legislation does not pretend to offer “truth and justice”, merely compensation. In some cases, as in the case of Ambrose Hardy, the award of as little a sum as £90 by way of dependency can act as a derisory insult rather than compensation. At most, as can be seen in the successful appeal in the case of John Loughran, the criminal injuries system can supply a finding that the deceased was an innocent victim (something that had already been established by the Coroner’s Inquest).

4.47 Furthermore, the Criminal Injuries compensation system is not available to everybody. Any person who has a conviction for a “terrorist” related offence, no matter how trivial or how long ago, is automatically debarred from using the Criminal Injuries Compensation procedure. In cases of death by lethal force by the security forces, such a previous conviction is not only common in respect of the deceased but sometimes contributory to the circumstances surrounding his death.

1.1 Additionally, in the case of the deceased, a person over eighteen who is single and has no dependants (either by way of children or elderly parents) does not fall within the ambit of the Criminal Injuries legislation because there is no “financial loss” sustained by anyone as a result of his or her death.

- 1.2 At most, the Criminal Injury hearing itself might afford the next of kin for the deceased an opportunity to publicly vent their anger and frustration at the circumstances surrounding the death of their loved one and to seek media publicity in relation thereto. In any event, the criminal injuries compensation legislation does not provide a forum to establish the necessary facts within the ambit of Article 2 obligations.
- 4.50 Insofar as Civil proceedings for damages are concerned, where a deceased has been killed by lethal force by members of the security forces the normal avenue is to issue proceedings for damages under the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) and the Fatal Accidents (Northern Ireland) Act 1977 for personal injuries, loss and damage sustained by the deceased, his estate and dependants by reason of the assault, battery, conspiracy, negligence and trespass on the person by the state agents. In theory, these civil proceedings have the potential of providing a full and effective hearing into the circumstances surrounding a controversial death. However, this potential is totally dependent upon the willing participation of the defendant in each individual case.
- 4.51 The Defendants in a civil case cannot be compelled to call any particular witness (e.g. the soldier responsible for a particular death) or any witnesses whatsoever. Nor are the Defendants capable of being compelled to disclose any documentation whatsoever. Of course, the Defendants failure or refusal to call appropriate witnesses or to furnish relevant documents may well lead to the ultimate sanction of a judgement being entered against them. This can, and has been in the past, a strategy adopted by Defendants to thwart the exposure of relevant witnesses to cross examination or to make available relevant documentation to the Plaintiff. A judgement, coupled with an award of damages, against the Defendant when the money will come out of public funds, rather than out of the pocket of the person or persons responsible for the controversial death, does little to satisfy the Plaintiff's quest for "truth and justice", particularly when there is no ability to award exemplary or punitive damages against the Defendant (irrespective of how arbitrary and unconstitutional their behaviour was) in the case of a deceased. Therefore, ultimately, the award of damages and the paper judgement against the Defendant are no more satisfactory or remunerative than that available under the Criminal Injuries Compensation. Personally, from my own experience, I could give countless examples of the sense of lack of "truth and justice" experienced by victims of state violence even where full compensation is awarded to a plaintiff subsequent to a full hearing.

- 4.52 For the reasons stated, we confirm that the official response to the killings including the internal investigation by the British forces, the RUC and the Inquests amounted to a breach by the state of the Article 2 Rights of all the deceased. Individually, each of the methods of official response to the killings failed miserably to come anywhere near the standards required under the state's Article 2 obligations. This failure was not remedied by the cumulative affect of each of the individual responses.
- 4.53 We further find that the state continues to breach the Article 2 Rights of the deceased. There is a continuing obligation upon the state to conduct an effective investigation, promptly and with reasonable expedition and with a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The continuing Article 2 obligation might cease if, at any stage, due to the passage of time or other events, it became impossible or impracticable to carry out such an investigation. Despite the passage of almost thirty years since the fatal killings in this case, we hold that it is neither impossible nor impracticable to hold such an investigation and accordingly the breach continues. The finding is supported by the following two considerations:
- b. The ability of the New Lodge Six "Time for Truth Campaign" to gather all available witness statements, documentation etc for the purpose of this Community Inquiry.
 - c. The success, to date, of the Saville Inquiry into the circumstances surrounding Bloody Sunday, despite the passage of time.

5. **State Responsibility for the Unlawful Killings of the New Lodge Six**

5.01 Paragraph 4 of the terms of reference requires us to establish whether the state is responsible for the unlawful killing of any of the deceased. For the reasons outlined in relation to each of the six deaths in the course of our dealing with Paragraphs 1 and 2 of the Terms of Reference, we find that British soldiers were responsible for each and every one of the six deaths.

5.02 Although fanciful, we must, as best we can, consider any possible defences that the British army or state might raise to defend itself in respect of its responsibility for the unlawful killing of the six deceased by the relevant British soldiers. The leading authority on this matter in this jurisdiction is:

Copeland v. The Ministry of Defence (1999) NICHC 12, (1989) NIJB234 (19 May 1999)

In this unusual and extreme case, the Plaintiff was struck by two bullets fired by the second named Defendant, Andrew Brian Clarke, who was a serving soldier in the British Army in Northern

Ireland. At the material time he was in uniform on duty in an Army land rover, which was out on patrol in the City of Belfast. In their amended Defence, the Ministry of Defence denied that at any time material to this action Clarke was acting under its direction or control or in the course of his employment with the Ministry of Defence and asserted that at all material times he was acting outside the course or scope of his employment with the Ministry of Defence. After a careful consideration of the authorities Mr Justice Sheil came to the following Judgement:

“While Counsel has cited to me a considerable number of cases both in this jurisdiction and outside this jurisdiction in support of their respective submissions, they have been unable to cite to me any authority which is directly in point in the present case. Bearing in mind a statement in *Salmond & Heuston Law of Torts*, to which I have already referred, that “once it is conceded that the servant was doing something in his working hours, on his employer’s premises, and that his act had a close connection with the work which he was employed to do, then the onus shifts to the employers to show that the act was one for which they were not responsible”, I hold that the Ministry of Defence has not shown that the shooting was one for which they were not responsible for in law.

Further, I consider that, as a matter of public policy, when the state sends out a soldier or police officer armed with a lethal weapon which he is authorised to use in certain circumstances and that soldier or police officer, while on duty, intentionally or otherwise fires that weapon injuring a third party in circumstances which are not authorised and in which, as in the present case, there is no justification or defence for so doing, the state should be liable in damages for any injury, loss or damage sustained by that third party.”

Therefore, as a matter of common sense, law, and public policy, we find that the state is responsible for the unlawful killings of each of the New Lodge Six and that the state is responsible for the actions of the individual British soldiers who fired the lethal shots.

6. **Recommendations**

In Paragraph 5 of the Terms of Reference we have been requested to recommend what further actions should be taken by the British Government in order to provide an effective investigation into the six killings in compliance with their obligations under Article 2 of the European Convention of Human Rights.

Retraction of Army Statement

6.01 We reaffirm our comments in our Preliminary Findings on the 23rd of November 2002 in respect of the additional distress experienced by the bereaved families through the uncontested British army statement published in the mainstream media in the immediately aftermath of the killings which claimed six gunmen had been shot dead in a gun battle. No credible evidence has been put in the public domain to support this claim. This claim remains to this day unretracted. We invite the Ministry of Defence and/or the UK government to publicly retract that statement and acknowledge that each of the six deceased were unarmed, innocent civilians when they were shot.

Documentation

6.02 We confirm and repeat our request at paragraph 13 of our Preliminary Findings that, even at this late stage, we call upon all relevant agents of the British government to assist us by releasing to this Community Inquiry, documentation relating to these events. We also ask the relevant agents to respond to the request for information and documentation contained in the 142 pages of correspondence from Madden & Finucane, Solicitors, to the Ministry of Defence, Chief Constable, Coroner, DPP, Northern Ireland Office and UK Government.

Immediate police investigation

6.03 Insofar as no effective investigation has to date taken place and there is a continuing breach of Article 2 obligations by the state, we recommend that immediate steps are taken to commence an effective, transparent and independent police investigation into all the circumstances surrounding the death of the New Lodge Six. Pending acceptance of a package of measures currently being considered by the Secretariat to the Council of Europe in respect of UK compliance with the European Court Judgements, we recommend that no further delay ought to take place in

commencing an effective investigation which will, in any event, be required for whatever form the public inquiry into these matters may be, in accordance with the state's Article 2 obligations.

Independent outside police force

6.04 For a number of reasons, we recommend that such investigation ought to be carried out by an outside police agency, totally independent of the RUC, PSNI and the Ministry of Defence, in a manner similar to the Stalker/Sampson Inquiry or the Strathclyde Police Inquiry into the circumstances surrounding the injuries sustained by David Adams.

We make these recommendations for the following reasons.

Part of the investigation will necessarily involve an inquiry into the abject failure/refusal of the RUC at the time to conduct any effective investigation into the circumstances surrounding the deaths of any of the six deceased.

Such was the inter-relationship and interdependence of the RUC and British military in or about the early 1970s, that an effective investigation would have to be conducted by an outside independent police force. This aspect of concern has not been addressed by the "reformation" of the Royal Ulster Constabulary and its renaming as the Police Service for Northern Ireland. The same continuity of personnel and, to a large extent structure, mitigate against the notion that the Police Service for Northern Ireland is a new police force.

The continued interdependency and close relationship between the PSNI and Ministry of Defence in respect of both security and intelligence matters also casts some doubt over the notion that the PSNI are able to, and can be seen to, conduct an independent, unbiased and objective investigation into the Ministry of Defence.

The level of public concern in respect of these six deaths and the number of deaths themselves warrants the exceptional step of involving an outside independent police agency in the investigation.

Coroner's Inquest

6.05 It has now been accepted by the state authorities that a radical overhaul of the Coroner's Inquest system in Northern Ireland is required subsequent to the European Court decisions in *Jordan, McKerr and Others*. While we note that a package of measures is currently being considered by the Secretariat of the Council of Europe, we feel compelled to recommend utmost expedition in bringing this process to a conclusion and preparing the enabling legislation to fulfil the state's Article 2 obligations. We further note, with some concern, the lack of transparency and public consultation in respect of the package of measures that have already been put forwarded for acceptance by the Secretariat. We recommend that irrespective of whatever form the replacement for the current Coroner's Inquest system takes, that the following matters must be effectively addressed:

- Safeguards and procedures must be put in place to ensure that the effective investigation/inquiry is prompt and conducted with reasonable expedition;
- The present system, which precludes "findings" by the jury in respect of the deaths, must be discontinued;
- The whole question of Public Interest Immunity Certificates needs to be overhauled to prevent any possible abuse of that system and to avoid necessary or unnecessary delays in challenging such certificates which interfere with the reasonable expedition of the effective investigation/inquiry;
- Proper staffing and budgets will have to be put in place to ensure that the new proposed system is operated by qualified and experienced professionals given the vastly more complex and important tasks that they will have to perform;
- The practice whereby persons responsible for particular deaths are not compellable as witnesses needs to be discontinued even at the expense of safeguards and procedures to cater for the individual human rights of such witnesses.
- Legal Aid for the replacement system must be made available on the grounds of merit and financial eligibility. The Extra Statutory Ex-gratia scheme recently adopted by the Lord Chancellor needs to be carefully monitored and if necessary adapted or replaced as and when any difficulties in respect of its operation come to light.

One thing that has been learned from the history of Inquests in Northern Ireland is that to leave matters of clarification or reform in respect of procedures to Judicial Review causes extremely lengthy delays and infringes upon the promptness and reasonable expedition to be expected from

effective investigations/inquiries. A Law Reform Working Group needs to be established to continue to monitor, publicly consult and, where necessary, amend procedures as and when problems are identified.

Further, the entire process of effective investigation-inquiry needs to be publicly transparent to allay public concern, rumour and suspicion. Naturally, this will have to be balanced with individual human rights where there are possible, anticipated or pending criminal prosecutions.

The scope of the investigation/inquiry must be properly defined and established to prevent its gradual erosion by case law. We recommend the adoption of the “**Minnesota Protocol**” (*Model Protocol For a Legal Investigation of Extra-Legal, Arbitrary and Summary Executions contained in the UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*) as set out in Section B on the “*Purposes of an Inquiry*”:

“As set out in paragraph 9 of the Principles, the broad purpose of an Inquiry is to discover the truth about the events leading to the suspicious death of a victim. To fulfil that purpose, those conducting the inquiry shall, at a minimum, seek:

To identify the victim;

To recover and preserve evidentiary material related to the death to aid in any potential prosecution of those responsible;

To identify possible witnesses and obtain statements from them concerning the death;

To determine the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death;

To distinguish between natural death, accidental death, suicide and homicide;

To identify and apprehend the person (s) involved in the death;

To bring the suspected perpetrator (s) before a competent Court established by law”

Furthermore, in Section D it is stated that “**In cases where government involvement is suspected, an objective and impartial investigation may not be possible unless a special commission of inquiry is established.....**”

Public Independent Judicial Inquiry

6.06 As stated in Section D of the “**Minnesota Protocol**”, in certain circumstances a “**special commission of inquiry**” would have to be established. In this jurisdiction, this normally takes the form of a Public Independent International Judicial Inquiry along the lines of the Saville Inquiry into the events surrounding Bloody Sunday. Where, for whatever reason, it appears unlikely that the new procedures to be put in place can provide the necessary compliance with Article 2 obligations, an alternative and more extreme forum of inquiry must be made available. In that regard we adopt and recommend *Paragraph 11 of the United Nation Principles on the Effective Prevention and Investigation and Extra-Legal, Arbitrary and Summary Executions adopted on 24th May 1989 by the Economic and Social Council Resolution 1989/65 (UN Principles on Extra-Legal Executions)* which specifies:-

“In cases in which the established investigative procedures are inadequate because of a 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 recognised 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 injury. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided in these principles.”

Army Ombudsman

6.07 The failings of the internal investigations by the British forces and the RUC in this particular case highlight what is, regrettably, a continuing problem. There is no effective watchdog along the lines of the Police Ombudsman (Nuala O’Loan) in respect of military services. The framework within which the Police Ombudsman is operating in respect of the police appears to be broadly acceptable to most people although, at this early stage, the fruits of her labour have, to a large extent, yet to be made available for public assessment. We can see no reason why a military ombudsman, along the same lines and with the same powers as those of the Police Ombudsman, should not immediately be created. This particular lacuna has been highlighted recently in respect

of the contrasting manner in respect of which plastic bullets fired by the British army and by the Police Service for Northern Ireland have been investigated in the Short Strand area of East Belfast.

The DPP

6.08 Although the DPP did not feature in the course of the investigation of the Community Inquiry that, in itself, causes us concern, particularly taking into account his duties under *Article 5 of the Prosecution of Offences (Northern Ireland) Order 1972*. We appreciate that at present, as part of the overall examination into the Criminal Legal System in Northern Ireland, the role of the DPP is being examined but we feel that we must recommend that, in future, his office ought to be totally independent of the Attorney General and the RUC in respect of political matters, policies, prosecutions and, if appropriate, investigations. Furthermore, the DPP needs to be given additional duties to proactively initiate investigations and supervise the investigating authorities from the very outset. His role ought to be transparent and accountable, as far as is practicable, and we recommend an immediate discontinuation of the practice whereby the DPP refuses to make public (or at the very least give details to the victims) the reasons behind a decision not to prosecute.

Exemplary damages in fatal death Civil Actions

6.09 In respect of Civil Litigation, we recommend the government take steps to legislatively introduce exemplary and/or punitive damages in cases where the deceased was the victim of arbitrary and unconstitutional actions by the state or its agencies. We believe that such a move would increase greatly the ability of the Civil Courts to act as an additional forum for “truth and justice” and close the escape route whereby Defendants have the potential of thwarting an effective public inquiry into circumstances surrounding a controversial death by means of a refusal to call relevant witnesses or to disclose relevant documentation in the full knowledge that the worst that can happen is a “paper judgement” and assessment of damages on the basis of dependency.

The Media

6.10 We would also, at the same time, recommend the introduction of legislation whereby the next of kin of a deceased can bring libel actions for damages, including exemplary damages, against the media for deliberately or recklessly maligning a deceased person particularly when same is for the purpose of sensationalism and/or profit.