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Meeting between the Interdepartmental Committee on the Dublin/Monaghan Bombings and Representatives of Justice for the Forgotten, Government Buildings, Thursday, 12 August, 1999.

Attendance
Mr. Walter Kirwan, Department of Taoiseach
Mr. Paul McGarry, Department of Taoiseach
Mr. Gary Ansbro, Department of Foreign Affairs
Ms. Caitlín Ní Fhlaitheartaigh, Office of the Attorney General

Representatives of Justice for the Forgotten
Mr. Tim Grace, Joint Chairman
Ms. Margaret Urwin, Secretary
Mr. Pat Fay
Mr. Don Mullan
Mr. Greg O'Neill, Legal representative

Mr. Kirwan opened the meeting by welcoming the Group, reiterating the Taoiseach's strong continuing commitment to the establishment of the truth in this case, and explaining the delay in having this first meeting between the Group and the Interdepartmental Committee. Essentially this delay arose from the fact that the Report of Mr. John Wilson, the Victim's Commissioner, had been delayed and the recommendations in his Report relating to the bombings had to be taken into account, because his Terms of Reference specifically mentioned the Dublin/Monaghan bombings.

Mr. Kirwan indicated that thinking among some Ministers on the issue had been leaning towards the implementation of Mr. Wilson's recommendation that a former eminent Judge should be asked to conduct a private inquiry. Mr. Kirwan said that the points in favour of such an inquiry were very strong. Over and above the examination of Garda files and other evidence the Judge would actually come to findings on a series of issues that were detailed in the Terms of Reference which pull no punches and are more or less exactly as proposed by the Group itself for an inquiry; Mr. Wilson recommended that the Judge's Report would be published - the position with regard to a Report by the Interdepartmental Group had not been discussed or settled; Mr. Wilson

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envisaged that, if the Judge found it necessary and so requested, the Judge's inquiry be underpinned by statutory powers, no doubt to call for persons and papers: the Indepartmental Group would have no such underpinning; Mr Wilson made crystal clear that the Judge would go through the Garda files. In addition to these points he said that a judicial figure would have much greater experience of weighing up evidence and of assessing any actions or omissions by police forces than would the Interdepartmental Committee and that the conclusions of the prestigious judicial figure would carry a lot of weight and could not easily be ignored by any Government on an issue as important as the one being considered here.

Mr. Grace responded on behalf of the Group that the appalling vista here was the behaviour of the State. They would not accept anything less than a public inquiry. They had not asked the Victim's Commission to make recommendations that cut across the agreement they had with the Taoiseach. They would not co-operate with any private inquiry by a judge. The political establishment had failed them and the security forces here had failed them. The Garda Commissioner of the time stood indicted. What they want was the truth. They believe that something was being covered up and they had no guarantee that a private inquiry would uncover the truth. Mr Grace and Mr Fay spoke movingly about their own loss and sense of abandonment by the State and said that the State was still trying to cover-up.

Mr. Mullan said there was a loss of trust on the part of the relatives in the State system. This was reflected in their insistence on a public inquiry. He and Mr. O'Neill said that they were conscious of the sensitivities about certain information such as information given to the Garda in confidence and were open to the idea of parts of the inquiry being held in private, to cover the aspect cited or cases where people would be reluctant to give evidence in public. Even though it could be a controversial area, they were even prepared to envisage anonymity for certain witnesses. But, for the present, the interdepartmental committee would be examining privately all the documentation involved.

Mr. Kirwan said that he had indicated the trend of Government thinking but had also made clear that the Interdepartmental Committee had been asked to meet the relatives group and to obtain their views on the Wilson

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recommendations. These had been made abundantly clear and would be reported to Ministers. The Government would consider all aspects and take their decisions. In the meantime, the relatives might indicate how they saw the work of the interdepartmental group, if it were to continue, and its interaction with themselves.

Mr. Greg O'Neill said that what they had wanted to do today was to work out how their Group would interact with the Interdepartmental Committee and discuss how a public inquiry might be conducted. They believed that this Committee should operate on a strict time limit of about 6 months. It would have to review all the material available and it would require the co-operation of the British Government. Their Group had already met with Labour M.P.s in Westminster and they would help the relatives get the support of the British Government.

In relation to how the Committee would work with the relatives, given the sensitivities involved, the Committee should examine all the information on the Justice files and the Garda files and all of the information relating to the television programme - Hidden Agenda. Such information as was not inimical to the security of the State should be made available to the relatives' Group, to enable them to make a submission on what the Tribunal of Inquiry should focus on. There would need to be a sharing of information between the Group and the Interdepartmental Committee. They envisaged a central role for the Attorney General's Office in this. This related to the constitutional role of the Attorney General as defender of the Constitution and the rights of citizens. The Group would make their submission to the Interdepartmental Committee as to how the Tribunal of Inquiry would be conducted. A submission in this regard had been made to John Wilson and this Department already.

They didn't want too wide or too loose Terms of Reference, which would give rise to a tribunal having no clear terms and a circus-like dimension. They suggested that the inquiry into the Blood Transfusion Board was a model that could be followed. Its content was defined by the period in which contamination of blood occurred and the number of people given it, Dublin/Monaghan was a time limited event. In this case the atrocity happened on one day and an inquiry should focus on the investigation. A period of 3 to 6 months of time had to be looked at. In fact the situation with the Blood Transfusion Board inquiry was that a longer period of time - 6 to 7 years - had to be looked at, with very many witnesses and conflicting expert opinion. This was a worse situation than the Dublin/Monaghan case, as regards the management of relevant data. The Tribunal re Dublin/Monaghan would focus

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on what went wrong, how the police responded to a particular event and what should be good practice. If there were matters that had to dealt with other than in public then that could be done. What the relatives wanted was a process that would not be a circus. In the Blood Tribunal some witnesses had given evidence screened from the press and public but in the vision of the chair and of counsel.

Mr. O'Neill added that in his own experience - in the case of the Tallaght 2 - police files and the files of the Chief State Solicitor's office were examined by the Attorney General and were released to the legal advisers of the Tallaght 2, when they were appealing there case, to help them to prepare the appeal. No leakage of sensitive information had ensued.

For justice to be seen to be done a process was required, similar to that, on a basis of confidentiality, where victims would be seen to be empowered. When decisions come to be taken on the Terms of Reference and when the cabinet came to consider the case, it should be on the basis of a bipartisan analysis by both the relatives' Group and the Committee. Mr. O'Neill said that as far as they were concerned, the advantage of the Indepartmental Committee was that there should be role for the Attorney General's Office to look at documentation and carry out a forensic analysis of it and the sharing and disclosure of information to the legal representatives of the Group, so that they would have a realistic, rational input into the Terms of Reference of the Tribunal.

Mr. Kirwan said that he would report back the views that the relatives' Group had expressed today and the Committee would have a further meeting with it. When asked about timing, he said that in due course the full spread of the Wilson recommendations would have to be considered by the Government but that it was likely that, ahead of that, they would focus on the recommendation in regard to an inquiry into Dublin/Monaghan when they reconvened in September.

The relative's Group asked about the state of the Garda enquiry following the statement by Mr. Weir. Mr. Kirwan responded that he was not in a position to comment but that he understood the Gardaí believed that there was sufficient merit in the statement to warrant further inquiries.

The meeting ended with Mr. Kirwan saying that he would revert to the Group in early September.

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Meeting with Justice for the Forgotten Group, Government Buildings, Thursday, 12 August, 1999.

Speaking Note

1. Welcome. Some of you have previously met my colleague, Paul McGarry, who acts as secretary of the Interdepartmental Group - he also worked with us in relation to the Bloody Sunday assessment. But can I introduce the other members of the Group - Gary Ansbro, representing the Department of Foreign Affairs and Caitlín Ní Fhlaitheartaigh, representing the Office of the Attorney General.

2. You will note that there are not representatives of the Department of Justice or of the Guards on the group. This is because it was felt, by reference to things your group has said and also the terms of reference you proposed for an inquiry into the bombings, that representation of those entities could give rise to a perception - including by your good selves - of a possible clash of interest. So, it was felt better not to have them on our interdepartmental group, but, of course, we can interact with them, as necessary.

3. I propose to make some opening remarks and then to let you put forward the views of your group but first you may want to introduce yourselves, for the benefit of my colleagues who have not met you previously.

   [Introduction of Justice for the Forgotten representatives]

4. I want, firstly, on behalf of the Taoiseach, simply to reiterate that he is deeply committed to the establishment of the truth in regard to the Dublin/Monaghan bombings, including all the aspects mentioned in your own proposed terms of reference. I think he accepts that looking back, it has to be said that, taking account of all the different dimensions, the State here fell short of what should have been its response to the trauma and tragedy that arose for the people you represent, arising from the atrocities in Dublin and Monaghan. There is no question of his wanting

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to cover anything up, if there is anything wrong or deficient about the investigation into the bombing. He is on holiday but I was speaking to him on the phone within the past few days, about Mr. Wilson's report, our meeting today and the whole business. I can assure you that he remains as committed today to doing everything that is possible to bring out the truth as he was when he met you in April and offered to set up this interdepartmental group.

5. I am sorry that it has taken so long for us to have a meeting. As I previously explained in a letter to Greg O'Neill, we had originally understood, at the time the group was initiated, that the report from Mr. John Wilson's Victims Commission was going to be completed and published very soon after that. The Taoiseach had told you, when he met you and had repeated in the Dáil, that Mr. Wilson's report would have to be taken into account - simply because, as you know the Government had put the Dublin/Monaghan bombings explicitly into Mr. Wilson's terms of reference. He was asked to consider, in particular, the needs and concerns of those you represent.

6. So we thought that as it was supposed to be coming very soon, we would hold over the substantive work of the group until Mr. Wilson's report was available. But its completion slipped back. And then the I.R.A. gave information on the purported location of the remains of people they had killed. Mr. Wilson had been made the member from the South on the cross - border Commission on the Location of Victims' Remains. He and the secretary of the Victims' Commission, Eamonn Mulligan became very much involved for a time in the efforts to locate the bodies of the disappeared. That led to further delay in completion of his report, so much so that the Taoiseach felt we could wait no longer to get the work of this group under way - and he asked me to do so. It was then necessary to have discussions among the various Departments involved about some of the issues bearing on the group's work. These had not been completed when the holiday period intervened, so I wrote to Greg O'Neill explaining this and saying I hoped our group could meet your sub-committee in early August.

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7. By then - early August - as you know, Mr. Wilson's report was presented to the Minister for Justice and published. Myself and Paul were at his press conference and we saw, of course, the reaction of the relatives who were present and the questions raised by the media. I spoke to Greg and to Don Mullan there and we arranged this meeting. I am assuming that you want to focus today particularly on the recommendations of Mr. Wilson that relate specifically to inquiring into the Dublin/Monaghan bombings but I have seen what you said in your statement last Saturday about other aspects of his report and if you want to put forward views today about any such other aspects, we will be glad to hear them and to pass them on. But we have assumed that your main focus will be on the inquiry aspect.

8. As indicated, I have seen the press reports of your statement last Saturday. For the Government's part, the Minister for Justice issued a statement on the publication of Mr. Wilson's report. In case the Minister's Department did not send you copies, we have given you some.

9. We have noted your response of disappointment to what Mr. Wilson recommended in regard to an inquiry. It may be worth saying a few words about what he did not say, as well as about what he did say. He did not say that there should not be a public inquiry. On the contrary, he did say:

> "If the Judge sees fit he or she may recommend any further action which he or she thinks might lead to the uncovering of more information".

Thus, the Judge is not precluded from recommending a public inquiry - quite the reverse. So, far as recommending for or against a public inquiry, the judge, as proposed by Mr. Wilson, is in exactly the same position as this indepartmental group was to be, according to the mandate that the Taoiseach told you we would have - neither predisposed against or for a public inquiry. For this group, as for a Judge, it would all depend on the examination of the circumstances and the evidence. The Taoiseach told you, as regards the role envisaged for this group, that a

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public inquiry was not ruled out, nor, as yet, ruled in. The same applies as regards the examination by a judge, as proposed by Mr. Wilson. His proposal means that a judge would do the examination of files and other evidence, at this stage, rather that the interdepartmental group.

10. It is, of course, for yourselves to make your own assessment. But I would personally feel that from your standpoint, Mr. Wilson's proposals involve several advances, as compared to the position at the conclusion of the meeting on 22 April:

(1) over and above the examination of the Garda files and other evidence, ~~which was envisaged for the interdepartmental group~~, the judge would actually come to findings on a series of issues that are detailed in the terms of reference which pull no punches and are more or less exactly as proposed by yourselves for an inquiry

(2) Wilson recommends that the judge's report would be published - the position in regard to a report by this group had not been discussed or settled

(3) Wilson envisaged that, if the judge found it necessary and so requested, the judge's inquiry be underpinned by statutory powers, no doubt to call for persons and papers : this group here would not have such underpinning.

(4) he makes crystal clear that the judge would go through the Garda files

11. In addition to those points, there is the aspect that a judicial figure would have much greater experience of weighing up evidence and of assessing any actions or omissions by police forces than would we here and that the conclusions of a prestigious judicial figure would carry a lot of weight, probably a good deal more than any conclusions of this group. Such a figure would be independent and I need scarcely say that judges or retired judges are people of impeccable integrity.

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12. All these points have weighed with the relevant members of the Government in disposing them, as I told Don Mullan before Mr. Wilson's report came out publicly - Ministers had very slight advance notice of it - to tend towards accepting Mr. Wilson's recommendation that a judge examine the material rather than the interdepartmental group. There are other considerations, too, but I have gone on for too long, so that I should stop now and ask you to put forward your views.

13. Except, perhaps, to add one more thing. In his report Mr. Wilson places great emphasis on the importance of supporting arrangements under which victims can tell their stories. He makes clear that this was a point strongly put to him by victims themselves. He clearly envisaged this being done, in general, through arrangements separate from any inquiries into atrocities such as Dublin/Monaghan. But if it were felt by you that it would be useful to have any report by a judge include a coherent narrative of what actually happened, including the stories of those affected by the bombings, I'm sure that the Government would be open to adding an appropriate piece to the terms of reference recommended by Mr. Wilson. If that were to be agreed, arrangements could be made with your advisers - Don and the legal team - to help the judge in getting the stories from all concerned for inclusion in the report. As I said, as a general rule, Mr. Wilson envisages other, separate arrangements to facilitate victims' stories being told and heard and heeded but there is no reason why an exception could not be made in the Dublin/Monaghan case, as, the largest atrocity, by far, and the stories and narrative, in this case, included in the judge's report.

14. You may perhaps feel that in a report from an interdepartmental group there is an element of accountability involved, that the group can be held responsible through the political accountability of the Taoiseach. However, at this stage what we are all concerned with is the assessment of evidence and the establishment of the truth and in that regard we all want a thorough, effective job done without any undue delay. Of course, it would be extremely difficult for any Government to ignore the published recommendations of an esteemed judge or former judge who had been asked by the Government to inquire into a matter as important at this.

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[NOTE

To the extent that the relatives' sub-committee query what other considerations influence Ministers to favour the Wilson proposal or that they resist the proposal, it may be appropriate to draw on the following points:

In Irish practice, great importance has been attached, for very good reasons, to the principle of the independence of the Gardaí in the operational conduct of criminal investigations. The underlying principle is that such investigations should not be subject to political interference, either by directions to the police to pursue a particular person or line of approach or, alternatively, not to do so. This principle was further developed in 1974 when the Director of Public Prosecutions was set up as an independent officer of State, under an Act which also prohibits any improper interference or representations, from politicians or anybody else, to the Gardaí or the DPP in regard to possible or actual prosecutions.

By reference to this principle, there is no precedent for another group under the direct control of Ministers having access to Garda files.

There is also the concern, as a matter of policing methods and effectiveness, that information obtained in confidence from informants by the Gardaí should not be seen to be revealed to anybody other than the Office of the DPP. The concern here is that if it is seen that information given in confidence to the Gardaí is exposed to other people, the flow of information coming to the Gardaí could start to dry up. These concerns, as you know, led to the State's resistance in the High and Supreme Courts to your group having access to Garda files. The dossier that your legal advisers sent us some time back contains an analysis by Prof. Dermot Walsh of the strong degree of autonomy of the Garda Commissioner, under Irish law, vis-á-vis Ministers or even the Taoiseach or Government, in regard to the operational conduct of investigations.

By reference to all there principles and concerns and taking account of the fact that under our Constitution, the judiciary are a separate branch of government,

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independent of the executive branch, that is to say of Ministers and officials, it seems preferable that the examination of Garda files should be conducted by a judicial figure, rather than by a group of civil servants, like ourselves, who are under the direction of Ministers. Such an approach to the examination of the files is likely to be more acceptable to the Garda Commissioner and should thus help to advance the co-operation necessary to get at the truth.

The important points are **(1)** that the files would still be examined, but by a judge and **(2)** that just as much as we could have done, a judge would be able to recommend, if he thought it necessary and likely to be effective in getting at the full truth, that there be a public inquiry. This aspect would remain completely open.]

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