



UK Mission
Geneva

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Note Verbale No. 273

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to submit the response to communication AL GBR 8/2021, further to the letter dated 5 August 2021 from the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; and the Special Rapporteur on extrajudicial, summary or arbitrary executions.

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, 11 October 2021

Special Procedures Branch
Office of the United Nations High Commissioner for Human Rights

**RESPONSE FROM THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND TO JOINT COMMUNICATION AL GBR 8/2021**

ANNEX

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

Statute of limitations

The United Kingdom Government would like to acknowledge the importance and value of the Special Rapporteur's ongoing mission and objectives on the promotion of human rights-compliant approaches to transitional justice. We also welcome the opportunity provided by the Special Rapporteur to provide a response to their recent letter. However, the United Kingdom Government respectfully disagrees with the Special Rapporteur's assessment that its legacy proposals are effectively a 'de-facto amnesty' or a 'mechanism for impunity' regarding human rights violations.

The Government remains fully committed to the rule of law and its human rights obligations. However, as outlined in the Command Paper of July 2021, we believe that any approach to legacy reform must seek to ensure that the disproportionate pursuit of criminal justice outcomes, does not act as a barrier to fulfilling other obligations - such as the right of families to answers about what happened to their loved ones. While a statute of limitations would remove the prospect of criminal prosecutions, a comprehensive information recovery mechanism, with a commitment to full disclosure by the State, would conduct investigations into all cases where requested by the family, and be able to proactively seek information about a death or very serious injury where this is required by Article 2 and 3 of the European Convention on Human Rights.

We know, from recent cases¹ and the advice of operational experts, that it is increasingly unlikely for criminal investigations to satisfy the evidential thresholds necessary for prosecution. It is not simply the case that positive outcomes are rare; the lengthy pursuit of retributive justice outcomes can also have negative consequences by severely holding back information recovery processes, as well as mediation and reconciliation that could provide a sense of restorative justice for many more families than is currently achieved through the criminal justice system. Feedback to the Government's consultation, 'Addressing the Legacy of Northern Ireland's Past' in 2018 strongly suggested that many would not contribute potentially vital information

¹ On 3 May 2021, two former paratroopers ("Soldier A" and "Soldier C") accused of the murder of an Official IRA leader were formally acquitted after prosecutorial evidence was ruled inadmissible. This was the first trial in several years involving charges against military personnel who served in the Northern Ireland conflict. This was followed by a decision by the Northern Ireland Public Prosecution Service on 2 July 2021 to discontinue the prosecutions of two other former military personnel ("Soldier B" and "Soldier F") in connection with separate incidents in Londonderry, on the basis that a "reasonable prospect of conviction no longer existed." In October 2020, the Northern Ireland Public Prosecution Service set out its decision to direct no prosecution against four persons referred to it by Operation Kenova, on the grounds that there was "insufficient evidence to provide a reasonable prospect of conviction."

while the threat of prosecution loomed. Using limited resources - in terms of time and people - to pursue a small number of cases to prosecution standards currently means that, while a tiny number of families may see someone prosecuted, and an even smaller number may see an eventual conviction, this is likely to be at the expense of failing to deliver positive outcomes to the vast majority of families, who will miss out on the opportunities to successfully recover information.

There is an imperative to take action while those who want - or have - information are still alive. We believe the approach outlined by the UK Government in July offers the best chance of delivering tangible and meaningful outcomes.

Establishing the facts about human rights violations

The UK Government also does not accept the Special Rapporteur's assertion that its proposed plan does not include measures for establishing the facts and full extent of the truth about the human rights violations perpetrated during the Troubles. Rather, it is our belief that by removing the operational constraints caused by concurrent criminal investigations we can maximise opportunities for truth recovery and establishing the facts about what happened during the Troubles for as many people as possible - including those families most directly affected and wider society.

The UK Government's proposals are centred on the creation of a comprehensive and independent new information recovery body with full powers to access information and find out what happened, including where there remain unanswered questions about allegations of wrongdoings by representatives of the state. As well as having access to information from state agencies, investigators would be able to take statements from individuals with potentially vital information - including perpetrators and witnesses who are more likely to come forward than under previous models where such information could be used against them.

All relevant, reasonably verifiable information obtained would be compiled and presented to the relevant individual or family member in the form of a written report or official record of the incident. These reports would be written at the civil standard of proof (balance of probabilities) rather than having to meet the criminal standard of proof (beyond all reasonable doubt). This would ensure that more information than ever before would be available to families. As far as possible, these reports would be made public so that the facts about what happened are made available to wider society (with appropriate safeguards to ensure the safety of individuals is not put at risk). It is also worth noting that, unlike previous proposals, the information recovery body would proactively investigate and provide information relating to very serious injuries as well as Troubles-related deaths.

The UK Government would also like to draw attention to the independent, multi-disciplinary academic research outlined as part of the Government's proposals, which would consider the family reports among other sources as part of the 'themes and patterns'. This seeks to go beyond the 'events-based approach' referred to in the report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence A/HRC/48/60. While the Government believes themes should be determined independent of political and ministerial influence - in line with what was set out in the Stormont House Agreement - we envisage this would include

a gender perspective, with a study into the specific harms suffered by women and girls during the conflict. We also envisage that Research Councils would play a vital role in this work into cross-cutting thematic issues to ensure a rigorous high academic standard and peer review, with research reports published for the benefit of society.

Statements of acknowledgment

The UK Government's proposals include a necessarily high level commitment to giving "consideration" to statements of acknowledgment on the basis of the positive message this would send to victims, survivors and families across Northern Ireland. This is in line with previous commitments made by the UK and Irish Governments to consider statements of acknowledgment in expectation that others would do the same.

The Government's command paper represents a high-level overview of its proposed measures for legacy reform, for the purposes of informing intensive and ongoing engagement with the Irish Government and Northern Ireland parties - as well as other key stakeholders, not least the victims sector. It would not be appropriate for this paper to include further detail on the nature and design of such statements of acknowledgment, which could only follow careful further consideration with the Irish Government and, with participation and agreement by representatives of the victims sector.

The UK Government will continue to consider guidance by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on the design of public apologies to ensure compliance with international standards (A/74/147), and in particular will ensure that the participation and agreement of victims in any apology process.

Role for victims and survivors

The Government has sought the views of victims and survivors from across the community in Northern Ireland and Great Britain, through direct engagement with representatives in the victim's sector. The Government agrees that it is vital that victims and survivors have a role in the design, implementation and monitoring of the proposed information recovery body, which would be an operational matter for the respective body. As part of this process, it is vital to learn from processes and governance structures that have been put in place as part of other legacy processes, including the Police Service of Northern Ireland (PSNI)'s Legacy Investigation Branch and Operation Kenova.

Having prioritised consultations with families of victims at an early stage, these mechanisms have been, and continue to be, designed with the victims and survivors at the forefront. For example, the Government's proposals for an information recovery body include specially trained liaison officers to provide a single point of contact for individuals and families throughout information retrieval processes - providing regular progress updates, addressing any ongoing family requests, and ensuring that the appropriate trauma support is available.

2. Please indicate how the proposal for addressing the legacy of Northern Ireland's past presented to Parliament in July 2021 by the Secretary of State of Northern-Ireland complies with international standards in the field of truth, justice, reparation, memorialization and guarantees of non-recurrence, as described in the legal annex.

Truth, justice and non-recurrence

The UK Government is proposing a move away from criminal prosecutions in favour of a restorative justice approach that will focus on securing information and establishing the truth with regards to Troubles-related conduct. Our objective is to provide information to as many families as possible, allowing them to learn the truth about what happened to their loved ones. We believe shifting the focus from past events and towards facilitating reconciliation among communities would contribute to ensuring non-recurrence. Establishing the truth, and shifting the focus from past events and towards facilitating reconciliation and honesty among communities is a vital step in guaranteeing non-recurrence.

Our view is that the information recovery process would facilitate a sense of restorative justice for many. The state's obligation to investigate human rights violations under Article 2 and 3 would be fulfilled by the establishment of a new information recovery body, the sole purpose of which would be to investigate deaths and cases of very serious injury that give rise to investigative obligations. These investigations would result in a comprehensive report to be issued to the families or victims that requested the investigation and our intention is that these reports also be made available to wider society.

There is precedent in Northern Ireland to our proposed approach of removing the prospect of prosecution for perpetrators of human rights violations, such as disappearances, in favour of information recovery and facilitating reconciliation and non-recurrence. The Independent Commission for the Location of Victims' Remains grants immunity from prosecution to individuals in exchange for information on the location of victims' remains - a model that has proven to be successful in yielding results for victims and their families and contributing to long-term reconciliation in Northern Ireland. The Northern Ireland Arms Decommissioning Act 1997 created a scheme to facilitate the decommissioning of paramilitary weapons which ensured that there would be no prosecutions for any offences relating to those weapons. Through the decommissioning of those weapons, significant forensic evidence was lost.

Preservation of Memory

A core part of the UK Government's proposals, as outlined in the Command Paper, concerns 'oral history and memorialisation' relating to the Troubles. The Government believes that the measures outlined in this section are in line with previous international agreements - namely the Stormont House Agreement which included an 'Oral History Archive' - as well as international principles on the promotion and protection of human rights, and in particular Principle 3 concerning the "Duty to preserve memory".

Measures include a major oral history initiative funded by the UK Government to create opportunities for people from all backgrounds to share their experiences and perspectives related to the Troubles, and to learn about those of others. The intention is for this to be delivered by a partnership of trusted museum/archival organisations to ensure such work is independent of any political interference, and with strong safeguards to ensure a degree of balance and to protect against ‘the development of revisionist and negationist arguments’. For example, there would be a proactive effort to collect and promote the voices of those who have traditionally been under-represented in the past, via a gap analysis of the existing oral history landscape. Further protections around contextualisation include the factual academic research work outlined at para 28 of the command paper, and described in the previous answer which would tie directly to work around oral history.

The command paper also mentions that there would be a focus on working with groups already working in this space at the community/grassroots level which, in part, is to ensure the long-term preservation of existing collections or those held elsewhere, in line with the Principle 3 aim of “preserving the collective memory from extinction.” In order to help ensure the ‘transmission’ of this collective memory, the Government has proposed thoughtful new physical and online resources to present a balanced and contextualised history of events and experiences to wider society in order to help build a shared understanding of the past. In particular, para 26 of the Command Paper mentions a focus on promoting engagement with Troubles-related history among younger generations to ensure that lessons about the past are not forgotten’.

Reparations

The Government recognises that victims of human rights violations can be entitled to receive reparation for the harm suffered, as outlined in the Updated Set of Principles (articles 31-34) and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

Financial restitution and compensation is a devolved matter and the responsibility of the Northern Ireland Executive. However, in the absence of the Northern Ireland Executive (at the time), the UK Government, as required by Parliament, made legislation establishing a victims payments scheme in January 2020.

The Victims’ Payment Regulations 2020 provides for a scheme that acknowledges the harm caused to the small number of people who, through no fault of their own, are living with a permanent disablement caused by serious injury in Troubles-related incidents. The scheme provides a fair, balanced and proportionate basis for helping those who suffered most throughout the Troubles.

Having delivered this legislative framework, the restored Executive of Northern Ireland through its Department of Justice has put in place the necessary administrative arrangements for the scheme, which opened on 31 August 2021. The UK Government remains firmly committed to this scheme and will continue to support the NI Executive’s delivery of it.

The Government's proposals presented to Parliament in July 2021 also seek to provide effective reparation in the form of satisfaction, including measures aimed at acknowledging the violations suffered by victims and the responsibility of perpetrators. As outlined in previous answers, the UK Government believes an approach centred on information recovery offers the best chance of giving more families some sense of justice through acknowledgement, accountability and restorative means, rather than a focus on retributive justice that in recent years has almost never delivered meaningful outcomes for families or society more widely. As also outlined previously, the Government will continue to consider guidance by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on the design of public apologies to ensure compliance with international standards (A/74/147), and in particular will ensure that the participation and agreement of victims in any apology process.

3. Please indicate how the measures adopted by the Government to redress the human rights violations committed during the Troubles in Northern Ireland, up until this stage, comply with international standards in the field of truth, justice, reparation, memorialization and guarantees of non-recurrence.

Justice

At present, investigations continue to be taken forward by the independent Police Ombudsman Northern Ireland; the Coroners Service Northern Ireland and police forces across the United Kingdom.

The Police Service of Northern Ireland; other UK police forces; and the Police Ombudsman of Northern Ireland continue their work investigating Troubles-related incidents not only in respect of deaths but also, for example, into abductions and non-fatal shootings. Where there is evidence of any crime - including torture or sexual harm - these bodies have the powers to investigate.

In line with international standards, the UK Government recognises the importance of independence and impartiality in investigations. A number of structures are in place to achieve this within Northern Ireland.

Office of the Police Ombudsman of Northern Ireland (OPONI)

OPONI is set up as an arm's length body of the Department of Justice and has complete operational independence over its investigations and findings. The Department of Justice has powers in legislation to provide annual funding and it is for the Ombudsman to decide how she allocates her resources.

The Office of the Police Ombudsman has a remit to investigate alleged misconduct or criminal action by police in Northern Ireland. This occurs if a complaint is made about the conduct of a police officer and there have been no prior criminal or disciplinary proceedings. Since 2010, a Historical Investigations Directorate within the Police Ombudsman has been tasked with looking at matters where there are allegations that members of the police may have been responsible for deaths or serious criminality in

the past. It has approximately 25 staff, drawn from a variety of professional backgrounds, including those with an expertise of investigation and complaint handling. Its work is particularly focused on the period of the Troubles (therefore covering the time period in which all the relevant deaths occurred).

Police Investigations

The investigation of matters relating to the suspected involvement in the death of a person - including in relation to conduct by the military or the security services - is the responsibility of the Police Service of Northern Ireland (PSNI).

The PSNI is hierarchically and institutionally independent of the former Royal Ulster Constabulary and military although it is noted that the practical independence of the police to investigate certain deaths remains the subject of litigation in the domestic courts including an appeal to the UK Supreme Court. The Chief Constable of the Police Service of Northern Ireland is very conscious of the need to ensure that, in appropriate cases, an incident involving the security forces is investigated by persons who are independent of those implicated in the incident and has powers at his disposal to ensure this is the case. Under Section 98(1) of the Police Act 1996, where one police service may provide aid to another, the Chief Constable also has the power to appoint independent officers from a police service in Great Britain to carry out an investigation into any incident within the PSNI's remit exercising all the necessary powers and privileges of police officers of the Police Service of Northern Ireland, to ensure an effective investigation takes place.

As demonstrated by recent referrals (for example the high profile 'Operation Kenova' led by the former Chief Constable of an English police force, Jon Boutcher) investigative teams may be drawn from across UK enforcement services and can explicitly exclude personnel who might have had or be perceived to have a conflict of interest depending on the specific circumstances of any investigation. The Chief Constable remains mindful of the need to make use of this power in appropriate cases.

In addition the Independent Commission for the Location of Victims' Remains (ICLVR) was specifically established to focus on disappearances. Arising out of the Good Friday Agreement and established by bilateral treaty between the UK and Irish Governments, the ICLVR was established in 1999 to locate the remains of sixteen people who "disappeared". To date, the remains of thirteen of the Disappeared have been recovered, with working continuing on the remaining unaccounted for.

Inquests

Following earlier proposals from the then Lord Chief Justice, Declan Morgan, for a Legacy Inquest Unit to address the backlog in legacy related inquests, on 28 February 2019 the Northern Ireland Department for Justice announced funding for an initiative to support a significant expansion of capacity to clear outstanding legacy inquests. These proposals were developed following consultation with the international human rights community, about the principles that should underpin an Article 2 compliant model for dealing with legacy cases. Among those involved were the Council of Europe Commissioner for Human Rights and the United Nations' Special Rapporteur.

Following an initial set up phase (2019-2020), the Legacy Inquest Project is proceeding and currently hearing cases. As of May 2021, of the 46 cases within the Legacy Inquest Project, six have been completed. A further three inquests have been completed and findings are awaited, and one further inquest is at hearing.

Truth

Criminal investigations, the bringing of civil damages cases and the hearing of inquests are felt by many families to be the only routes to gain information ('the truth') about the circumstances of their loved ones' deaths. As well as putting great strain on the Courts and other parts of the criminal justice system, the current system rarely delivers the outcomes families hope for. That is why, as outlined in the previous answer, the Government of the United Kingdom recognises that reform of the approach to Northern Ireland legacy is required, and is committed to introducing legislation to address the legacy of the Troubles in Northern Ireland which focuses on reconciliation, delivers for victims, and ends the cycle of re-investigations that is failing almost all families. Obtaining information - which we know is so important to many victims and survivors - is the cornerstone of the proposals the UK Government has put forward, including access to information from UK state agencies.

Reparations, memorialisation and guarantees of non-recurrence

As set out above, in the absence of the Northern Ireland Executive (at the time) and under a legal requirement from Parliament, the UK Government legislated for a scheme to make payments to severely injured victims of the Troubles in January 2020. This legislation - the Victims Payments Regulations 2020 - provides a fair, balanced and proportionate basis for helping those who suffered most throughout the Troubles.

Having delivered this legislative framework, the restored Executive of Northern Ireland through its Department of Justice has put in place the necessary administrative arrangements for the scheme, which opened on 31 August. The UK Government remains firmly committed to this scheme and will continue to support the NI Executive's delivery of it.

4. Please indicate if effective consultation has taken place with all relevant stakeholders, including victims and civil society, concerning the aims and details of the proposals and whether their views have been effectively taken into consideration. Please indicate what measures are envisaged to ensure victims' full and effective consultation and participation in this regard moving forward.

The Government's proposals presented to Parliament in July 2021 were informed by and followed extensive engagement with various community groups, victims support groups, religious leaders and groups from across academic and civil society, as well as the Northern Ireland parties and Irish Government. Notwithstanding the challenges of the COVID 19 pandemic which at times limited the UK Government's ability to engage in the effective and sensitive manner required, this process of engagement to find a way forward on legacy began following the Secretary of State's written

ministerial statement, 'Addressing Northern Ireland Legacy Issues', of 18 March 2020, and has intensified over recent months.

In particular, the UK Government fully recognises the importance of engaging with victims and survivors, and their families as part of this process, and the Secretary of State has consistently stated his commitment to doing so. Meetings have taken place regularly with representatives from the victims sector, at both ministerial and official level - including the Commission for Victims and Survivors and many of the statutorily funded groups. This engagement has included oral briefings on the position that the Government outlined publicly in July.

Following the British and Irish Intergovernmental Conference on 24 June, the UK and Irish Governments initiated a joint process of ongoing intensive engagement with the Northern Ireland parties and others, with a view to making progress on this issue as soon as possible. In a published communique announcing these talks, the Irish Minister for Foreign Affairs, Simon Coveney and the Secretary of State for Northern Ireland, jointly agreed that "the interests and perspectives of victims and survivors, and all those most directly affected by the Troubles, had to be central to the discussions." As part of this commitment, representatives from the victims sector - as well as academics and other experts from civil society - have been given the opportunity to share their views directly with delegates at these talks during regular information sessions.

The Government of the United Kingdom remains fully committed to working with the victims sector, and all parts of the community, to deliver a way forward for victims, survivors and their families, and for the future of Northern Ireland.

6 October 2021