

**Mandates of 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**

REFERENCE:  
AL GBR 8/2021

5 August 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; and Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Human Rights Council resolutions 45/10 and 44/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the recently announced plan to introduce what amounts to a mechanism for impunity regarding the serious human rights violations committed during the Troubles in Northern Ireland.**

According to the information received:

In December 2014, the so-called Stormont House Agreement was concluded between the United Kingdom, Irish Government and political parties in Northern Ireland, establishing a framework for dealing with the legacy of the Troubles in Northern Ireland.

On 18 March 2020, the Secretary of State for Northern Ireland issued a Written Ministerial Statement outlining the British Government's new approach to addressing the legacy of the past in Northern Ireland. The Statement shifted the emphasis from the imperative of accountability to prioritizing information sharing with victim's families. According to the Statement, only cases where there is a realistic prospect of prosecution, as a result of new compelling evidence, would proceed to full police investigation.

In May 2021, the British Government announced the future introduction of a "legacy package" that focuses "on information recovery and reconciliation, and ends the cycle of investigations".

In July 2021, the Secretary of State of Northern-Ireland presented to Parliament a proposal for addressing the legacy of Northern Ireland's past.<sup>1</sup>

The proposal outlined in the statement establishes a ban on all conflict-related prosecutions through the introduction of a statute of limitations to apply equally to all Troubles-related incidents. In addition, pursuant to it, the Police Service of Northern Ireland and the Police Ombudsman of Northern Ireland would be statutorily barred from investigating Troubles-related incidents. As noted in the statement, the proposal would bring an immediate end to criminal investigations into Troubles-related offences and remove the prospect of prosecutions. The proposal further clarifies that it would end judicial activity

<sup>1</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1002140/CP\\_498\\_Addressing\\_the\\_Legacy\\_of\\_Northern\\_Ireland\\_s\\_Past.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1002140/CP_498_Addressing_the_Legacy_of_Northern_Ireland_s_Past.pdf)

across the spectrum of criminal cases, and current and future civil cases and inquests, effectively also precluding coronial inquests and victim's claims in civil courts. However, the proposal sets out that the statute of limitations would not apply retrospectively, meaning that no pardons would be granted.

Concerning information recovery, the proposal foresees the establishment of a new independent body to enable individuals and family members to seek and receive information about Troubles-related deaths and injuries. The body would primarily focus its efforts on investigating deaths or serious injury at the request of the next of kin or individuals. Where families do not want a case reopened, no investigation would take place, unless it would be required by international obligations. State bodies and agencies would be under a legal duty to provide full disclosure to the body of all relevant documentation, information and material that is required.

The proposal further envisages the establishment of "a major oral history initiative" 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. This is expected to be delivered through new physical and online resources and through the empowerment of the museums sector in Northern Ireland. The work will be led by a partnership of academics, museums, and other relevant organizations, leveraging existing expertise. The statement notes that within this area of work, serious consideration would be given to "statements of acknowledgement by the various actors of the Troubles".

In his statement, the Secretary of State of Northern-Ireland justified these measures stressing that the criminal justice approach is in stark contrast to the wider aims envisaged in the Belfast/ Good Friday Agreement and the Stormont House Agreement of promoting societal reconciliation through acknowledgement, recognition of different narratives and information recovery to the extent that is now possible given the passage of time.

He noted that criminal proceedings drive wedges between communities and undermine public confidence in the police; and that their lengthy, drawn out and complex processes stifle information recovery and reconciliation measures and prevent wider society from moving forward. He further noted that in the government's view, "trust in any information recovery mechanism would be severely weakened while there were ongoing concurrent criminal investigations".

The Secretary informed that the proposal will be consulted with the Irish Government, Irish political parties, victims and survivors, and that legislation will be presented to Parliament.

We express serious concern that the plan to ban all Troubles-related prosecutions, impede Troubles-related investigations and inquests, and preclude victim's civil claims, as contained in the Secretary of State of Northern-Ireland July's statement before Parliament, would effectively institute a blanket impunity for grave human rights violations committed during the Troubles in Northern Ireland, and thus a *de-facto* amnesty, and thwart victims' right to truth and justice, placing the United Kingdom in flagrant violation of its human rights obligations.

We are further concerned that in his statement, the Secretary of State of Northern-Ireland justifies these measures conflating reconciliation with impunity and claiming that criminal justice, an essential pillar of transitional justice processes, can impede truth, information recovery and reconciliation. We recall in this regard that the importance of adopting a comprehensive approach in transitional justice process which incorporates the full range of judicial and non-judicial measures is a central tenant of such processes, and that the essential components of a transitional justice approach (truth, justice, reparation, memorialization and guarantees of non-recurrence) cannot be traded off against one another in a “pick and choose” exercise.

We are further concerned that the proposed plan does not seem to include measures for establishing the facts and the full extent of the truth about the human rights violations perpetrated during the Troubles in Northern Ireland and about the circumstances, reasons and responsibilities that led to them, as well as to ensure access to this truth not only to victims but to society as a whole, with due consideration of the needs and safety of victims and with their full consent, as established in international standards.

Moreover, we express concern at the insufficient clarification provided regarding the proposed “statements of acknowledgement by the various actors of the Troubles” and how would this comply with international standards regarding the provision of public apologies, especially with regards to the nature and content of the apology, the responsibilities acknowledged in relation the violations committed, the author and context of the apology, and the consultation with victims in the design of the apology.

We express further concern at the lack of clarity concerning the role that victims will play in the design, implementation and monitoring of the proposed transitional justice institutions and measures, including those relating to memorialization, archiving and truth recovery, and how their full and effective participation will be guaranteed.

Without prejudging the accuracy of the information provided, we urge your Excellency’s Government to adopt the necessary measures to ensure the rights of victims to truth, justice, reparation and guarantees of non-recurrence for Troubles-related violence and human rights violations, and to refrain from regressing on its international human rights obligations through the establishment of statute of limitations for conflict related prosecutions and barring all related investigations, inquests and civil claims.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

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

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 detail in the legal annex.
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.
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 proposal 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.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to ensure that the rights of victims of serious human rights violations and the pursuit of truth, justice, reparation and guarantees of non-recurrence in connection to those violations are not jeopardized and can be effectively fulfilled in the immediate future in compliance with international standards.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

Fabian Salvioli  
Special Rapporteur on the promotion of truth, justice, reparation and guarantees of  
non-recurrence

Morris Tidball-Binz  
Special Rapporteur on extrajudicial, summary or arbitrary executions

## **Annex**

### **Reference to international human rights law**

In connection with the above alleged facts and concerns, and without prejudging the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards.

We would like to refer to Article 2 of the Covenant on Civil and Political Rights, ratified by the United Kingdom of Great Britain and Northern Ireland in 1976, which establishes that States must undertake measures to ensure that persons whose rights or freedoms are violated shall have an effective remedy. Also States must ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy. Similarly, 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 establish the right of victims to have equal access to an effective judicial remedy (paragraph 12).

In this regard, we would like to refer to the obligation to investigate and punish human rights violations and to combat impunity for such crimes, pursuant to Article 2 of ICCPR. The Basic Principles and Guidelines establish that "in cases of serious violations of human rights, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him" (paragraph 4). Similarly, the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, urges States to "undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and to ensure that those responsible for serious crimes under international law are prosecuted, tried and duly punished" (principle 19).

In its General Comment No. 31 (on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant), the Human Rights Committee ruled that, pursuant to article 2 of ICCPR, States have an obligation to investigate and bring to justice perpetrators of serious human rights violations that constitute international crimes, including summary or arbitrary killings, torture and other cruel, inhuman or degrading treatment, and enforced disappearances. Impediments to establishing the legal responsibility of persons who have committed serious human rights violations should be removed (paragraph 18). Furthermore, it observed that failure to investigate and to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the ICCPR, and that impunity for these violations can lead to their recurrence (paragraph 18). With regards to the violations committed by third parties, the Committee also established that "there may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities" (paragraph 8).

Numerous other international instruments and treaties further establish the obligation of States to investigate, prosecute and punish the persons responsible of gross violations of human rights with appropriate penalties, as detailed in the report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence A/HRC/48/60 (pages 5 and 6).

We wish to point out that, contrary to what transcribes from July's statement, ensuring victim's access to an effective judicial remedy for the violations suffered and effectively investigating, prosecuting and sanctioning the perpetrators of those violations is an obligation of the State. Unfulfilling or obstructing the realization of this right, and incompliance with such duties, entails a breach of the ICCPR and a new human rights violation. As noted by the Special Rapporteur, beyond the fact that international instruments irrefutably establish the duty to prosecute and punish such violations, "the requirements of life in society make their necessity evident. It is inconceivable that societies would punish ordinary crimes in order to preserve the rule of law; but would leave the most heinous and atrocious crimes unpunished" (A/HRC/48/6.pag.18).

With regards to the question of the statutes of limitations, we would like to recall that the Updated Set of Principles establish that States should adopt and enforce safeguards against any abuse of restrictive rules, such as those pertaining to prescription (statute of limitations), that fosters or contributes to impunity (principle 22). Moreover, the rule of prescription (or statute of limitations) shall not apply to crimes that are imprescriptible under international law. Even when such principle is applicable, it shall not be effective for victims seeking reparations for their injuries. (principle 23). Similarly, the Principles and Guidelines establish that "statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law" (paragraph 6).

With regards to the arguments expressed in July's statement that criminal investigations would hamper reconciliation, we would like to recall that as stressed by the Special Rapporteur on the promotion of truth, justice reparation and guarantees of non-recurrence on numerous occasions, reconciliation cannot be conflated with impunity and that, on the contrary, properly implemented prosecutions strengthen the rule of law and contribute to social reconciliation. The mandate further recalled that reconciliation implies the rebuilding of trust among members of society among themselves and, above all, in the State. To achieve effective and lasting reconciliation, States must adopt a holistic process, complying with the five pillars of transitional justice (truth, justice, reparations, guarantees of non-repetition and memorialization processes), in full consultation with victims and civil society. (A/HRC48/60, pages 5 and 19)

Moreover, in contraposition to what is expressed in the statement, blatant violations of human rights and the rule of law principles such as those brought about by impunity mechanisms can be an important element contributing to the weakening of individuals' trust in State institutions and in society, thus undermining any prospects of reconciliation and enabling new forms of violence. A State where serious human rights violations go unpunished provide an example to society, and to the rest of the world, that offenders can get away with crime, thus seriously undermining the rule of law, guarantees of non-recurrence and peaceful coexistence.

Concerning the argument that opposes criminal justice to information recovery and other transitional justice aims, we would like to stress that as noted by the Special Rapporteur, individual transitional justice mechanisms should not be seen as an alternative to criminal accountability for perpetrators of serious violations of human rights and international humanitarian law. The accountability of the perpetrators of gross human rights violations is an essential pillar of a peaceful and sustainable transition. Truth mechanisms complement and do not replace justice or comprehensive reparation, just as criminal prosecutions or reparations cannot replace truth seeking. He further underscored that discussions regarding the adoption of impunity mechanisms for the "benefit" of other pillars of transitional justice place victims at an inappropriate crossroads, forcing them to choose between satisfying their right to justice or their right to truth, imposing a disproportionate historical burden on them. This is illegitimate, ineffective and re-victimises victims. (A/HRC48/60, page 19).

In this regard, we wish to recall that Human Rights Council resolution 45/10 emphasizes the importance of adopting a comprehensive approach in transitional justice process which incorporates the full range of judicial and non-judicial measures (including, among others, individual prosecutions, reparations, truth-seeking, institutional reform, vetting of public employees and officials), in order to, inter alia, ensure accountability, serve justice, provide remedies to victims, promote healing and reconciliation, establish independent oversight of the security system and restore confidence in the institutions of the State, and promote the rule of law in accordance with international human rights law.

We would also like to refer to the inalienable right to know the full extent of the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led to the perpetration of those crimes, as established in the updated Set of Principles (principle 2). Full and effective exercise of the right to truth provides a vital safeguard against the recurrence of violations (principle 5).

In connection to the plan sketched in July's statement for information recovery, we would like to recall that the obligation to ensure access to the truth about serious human rights violations extends to all victims and to society as a whole. As established in the Updated Set of Principles, societies that have experienced serious crimes perpetrated on a large scale may benefit in particular from the creation of a truth commission or other commission of inquiry to establish the facts surrounding those violations so that the truth may be ascertained and to prevent the disappearance of evidence. Regardless of whether a State establishes such a body, it must ensure the preservation of, and access to, archives concerning violations of human rights and humanitarian law (principle 5). As stated by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, the right to truth entitles the victim, his or her relatives and the public at large to seek and obtain all relevant information concerning the commission of the alleged violation, the fate and whereabouts of the victim and, where appropriate, the process by which the alleged violation was officially authorized (A/HRC/24/42, para. 20). Similarly, Human Rights Council Resolution 21/7 stresses the importance for the international community to endeavour to recognize the right of victims of gross violations of human rights and serious violations of international humanitarian law, and their families and society as a whole, to know the truth regarding such violations, to the fullest extent practicable, in particular the identity of the perpetrators, the causes and facts of such violations and the circumstances under which they occurred. Importantly, and as noted in July's

statement, effective measures shall be taken to ensure the security, physical and psychological well-being, and, where requested, the privacy of victims and witnesses who provide information. (Updated Set of Principles, principle 10).

We would further like to recall that the right to know implies that archives must be preserved. Technical measures and penalties should be applied to prevent any removal, destruction, concealment or falsification of archives, especially for the purpose of ensuring the impunity of perpetrators of violations of human rights and/or humanitarian law. Access to archives shall be facilitated in order to enable victims and their relatives to claim their rights. (Updated Set of Principles, principles 14, 15).

In addition, principle 3 of the Updated Set of Principles establishes the duty of States to preserve memory about serious human rights violations and their responsibility in the transmission of such history. It underscores that "people's knowledge of the history of its oppression is part of its heritage and, as such, must be ensured by appropriate measures in fulfilment of the State's duty to preserve archives and other evidence concerning violations of human rights [...] and to facilitate knowledge of those violations". We welcome the plans to establish memorialization mechanisms and urge your Excellency's Government to do so in full compliance with international standards in this field, as recalled in report A/HRC/45/45 of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, in particular to ensure that such processes are designed, implemented and monitored in full and effective consultation with, and with the participation of, victims. We would further like to recall that such measures shall aim at preserving the collective memory from extinction and, in particular, at guarding against the development of revisionist and negationist arguments. Interpretation of past events that have the effect of denying or misrepresenting violations are incompatible with the aforementioned obligations of the State (A/HRC/45/45).

Furthermore, we would like to recall the right of victims of human rights violations to receive full reparation for the harm suffered. The Updated Set of Principles (articles 31-34) recall the duty of States to make reparation to victims. Similarly, 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 establish the right of victims to receive adequate, effective and prompt reparation for the harm suffered. Reparation should be proportional to the gravity of the violations and the harm suffered. Victims should be provided with full and effective reparation, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition (paragraphs 10, 11, 15, and 18).

With regards to measures of satisfaction, these should include measures aimed at acknowledging the violations suffered by victims and the responsibility of the perpetrators, and at restoring the dignity of victims, including through a public apology, a public declaration restoring the dignity and rights of victims, and an accurate account of the violations they endured as established in 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 (paragraph 22.c). The report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on public apologies (A/74/147) provides detail guidance on the design and implementation of such measures to ensure compliance with international standards. In designing and



implementing apologies, it is important to carefully assess the nature of the apology and the nature of the acknowledgement of the facts and responsibilities, the authority offering the apology, the context of the apology and, decisively, the participation and agreement of victims in the apology process. The effects of an apology will depend fundamentally on whether the victims and their families were involved in the process and perceive it as authentic. For its part, the gesture of apology will be purely symbolic if it is not connected to other means of reparation and other transitional justice mechanisms such as truth-seeking or memorialisation.

We would also like to refer to General Comment No. 36 of the Human Rights Committee. The Committee stated that investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death, and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations (CCPR/C/GC/36, para. 27).