

Introduction

Amnesty International UK (AIUK) is a national section of a global movement of over seven million supporters, members and activists. We represent more than 230,000 supporters in the United Kingdom, including thousands in Northern Ireland. Collectively, our vision is of a world in which every person enjoys all the human rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. Our mission is to undertake research and action focused on preventing and ending grave abuses of these rights. We are independent of any government, political ideology, economic interest or religion.

We welcome this opportunity to respond to the Northern Ireland Affairs Committee (NIAC) consultation on Addressing the legacy of Northern Ireland's Past: The UK Government's new legacy proposals, but express our regret this is done in context of Government departing from an agreed way forward on dealing with the past outlined in the Stormont House Agreement (SHA) and the subsequent draft bill which, with further work, would meet the UK Government's human rights obligations and finally bring to an end the piecemeal approach to dealing with the past. The further delay in vindicating victims' rights to truth, justice and accountability is of grave concern.

Executive Summary

- We call on UK Government to abandon the written ministerial statement in March 2020 and revert to pre-existing plans to bring forward long-awaited legislation on mechanisms outlined in the SHA, ensure these are fully human rights compliant, including with the requisite independence, and deliver on commitments made in the Queen's Speech in December 2019 and again in January 2020 in the New Decade, New Approach Agreement;
- We urge that any moves to put former armed forces beyond the reach of the law including through the introduction of a statute of limitations, amnesty or any other measure which would limit the investigation or prosecution of the perpetrators of human rights violations and abuses are rejected;

- We recommend the Committee hears directly from victims on the impact of Government failings in oral evidence sessions. The witnesses referred to below are available to speak with the Committee about their experiences.

Human rights compliance of written ministerial statement and meeting the needs of victims and survivors.

1. The terms of reference of the inquiry seeks evidence on whether the written ministerial statement laid in parliament on 18 March 2020 is compatible with the Belfast / Good Friday Agreement, European Convention on Human Rights (ECHR) and the differences between this with the SHA. Further, it seeks views on whether the ministerial statement will meet the needs of victims and survivors.
2. As any approach which does not meet ECHR obligations will not fulfil the rights of victims and survivors and therefore not discharge State responsibilities, we address these points jointly.
3. In 2014 the SHA outlined agreed measures to deal with the past. This was subsequently followed up with a consultation on a draft bill in 2018 which received over 17,000 responses and an overarching message that reform was needed.
4. We responded to this consultation with a focus on the Historical Investigations Unit (HIU) and the Independent Commission on Information Retrieval (ICIR) and that both, with further work, had the potential to be human rights compliant and discharge Government's ECHR responsibilities.¹ We bring to the attention of members some of the limitations of these which needed to be addressed below.
5. The proposed remit of the HIU – and by extension the provisions which were included in the draft Stormont House Agreement Bill - were restricted to conflict-related deaths and did not include other matters such as attempted murders, torture, or serious injuries. However, Articles 2 and 3 ECHR (and thus the Human Rights Act 1998) create duties to ensure that such matters are effectively and independently investigated in the same way, as numerous domestic cases also make clear. Whilst these investigations would not necessarily have to be undertaken by the HIU, the obligation must be properly discharged. The proposals left a significant gap around such cases. Therefore, Government should clarify how it intends to discharge its obligations in this area.

¹ 'Addressing the Legacy of Northern Ireland's Past, Amnesty International UK response to the UK Government, Northern Ireland Office, public consultation', October 2018. Available: <https://bit.ly/3fH6oaR>

6. The ICIR and powers of compulsion – Such powers were entirely absent from the proposals for the ICIR, which would operate on the basis of the voluntary cooperation of persons willing to give testimony. This is particularly important with respect to the role of the ICIR in the examination of patterns and policies, where its lack of powers to compel witnesses or the production of documents would significantly undermine its ability to come to informed conclusions. If members of loyalist or republican armed groups, for example, cannot be compelled to appear and provide information about the motivation for, planning, and execution of an operation, the ICIR would be hampered in its ability to carry out a thorough inquiry and produce a comprehensive record of human rights abuses committed by armed groups.
7. Likewise, an examination of torture and other ill-treatment of detainees, and whether state policy or state-sanctioned practices deliberately or indirectly gave rise to such unlawful conduct, would require robust investigation, including the possibility to compel witnesses and the production of documents. The lack of powers of compulsion for the ICIR contrasts with the previous proposals put forward by the Independent Consultative Group on the Past, which allowed for the use of protected statements, but proposed that the unit charged with thematic analysis would have powers of compulsion.
8. Overall, AIUK believes that the proposals for the HIU and ICIR were a positive development with the potential to advance efforts to secure truth and justice for victims of human rights violations and abuses. Though work still needs to be done to ensure these mechanisms operate in compliance with international human rights standards, we urged that further momentum to address the past in Northern Ireland was not lost. Our expectation, and that of victims, was that Government would commit to refining these proposals to ensure full human rights compliance and that the establishment of effective mechanisms to deal with the legacy of the past would swiftly become a reality.
9. The written ministerial statement in March 2020 was a significant departure from the SHA and commitments made by Government to legislate to implement this. The commitments include those contained in the Queen’s Speech of December 2019 and again in the New Decade New, Approach Agreement in January 2020. The

abandonment of these commitments has significantly undermined any confidence that remained that the Government will deliver on its rights obligations and bring an end to the piecemeal approach to dealing with the past which has been failing victims.²

10. The fact that this statement was laid without prior consultation with the Irish Government, political parties in Northern Ireland, and victims and survivors – as was done with consultation around the Stormont House Agreement draft bill, suggests the interests of achieving a sustainable, human rights compliant way forward has not been considered.
11. The timing of this statement coincided with the Government's Overseas Operations Bill which, in its current form, could in certain circumstances, effectively decriminalise torture, as well as war crimes and crimes against humanity. This only contributes to the lack of confidence in the current approach of Government to fully meet its human rights commitments.
12. The written ministerial statement, whilst lacking in detail in key areas and with no further detail available since, nonetheless sets out clearly the direction of Government including the establishment of a single legacy body which presumably would incorporate the remit of the HIU and ICIR and possibly the Implementation and Reconciliation Group (IRG). No mention is given to the oral history archive.
13. It is our view that these proposals will not be compatible with ECHR obligations, the incorporation of which are integral to Belfast / Good Friday Agreement, nor the Stormont House Agreement, and therefore will fail to meet the needs of victims and survivors.
14. The written ministerial statement states, "we need to shift the focus of our approach to the past" and "The Government is committed to the rule of law but...". These statements are deeply concerning given that victims have been left wanting by the piecemeal and non-human rights compliant approach to dealing with the past to date. The "rule of law but" is especially troubling, particularly when it is then followed by proposals which suggest raising the threshold for investigations of conflict-related deaths and attempts to differentiate between "investigations which

² See, 'Northern Ireland: Time to deal with the past', Amnesty International, September 2013. Index: EUR 45/004/2013 https://www.amnesty.org.uk/files/time_to_deal_with_the_past_0.pdf

are necessary” – which according to this statement refers to those which have “a realistic prospect of a prosecution as a result of new compelling evidence” and “would proceed to a full police investigation and if necessary, prosecution” and those which would deliver a family report and the case “would be closed and no further investigations or prosecutions would be possible”.

15. We submit that a process which would see the swift and permanent closing of cases would clearly fail to meet the standards required under Article 2 of the ECHR for an effective investigation and further would breach the Article 2 duty to reinvestigate as detailed in *Brecknell v United Kingdom*.
16. *Brecknell v UK* (2008) 46 EHRR 957, para 71. “The Court (ECtHR) takes the view that where there is a plausible, or credible, allegation, piece of evidence or item of information relevant to the identification, and eventual prosecution or punishment of the perpetrator of an unlawful killing, the authorities are under an obligation to take further investigative measures.”
17. Any process which fails to be Article 2 compliant will likely be the subject of further litigation leading to further delays to victims and survivors having their rights of truth, justice and accountability realised.

Differences between Government’s new proposals and Stormont House Agreement

18. The written ministerial statement outlines that “...proposals have... evolved to remain rue to the principles of the Stormont House Agreement... It is proposed that these measures should be carried out by one independent body to ensure the most efficient and joined-up approach, putting the needs of the individuals most affected at the heart of the process. This body will oversee and manage both the information recovery and investigative aspects of the legacy system and provide every family with a report with information concerning the death of their loved one.”
19. As noted, this infers the single body would merge the proposed remit of the HIU, ICIR and possibly IRG. We hold that such a body is unlikely to discharge ECHR obligations, particularly Article 2 compliant independent and effective investigations and work was already required to the Stormont House Agreement draft bill to provide for victims of torture and those with serious injuries.

20. The Stormont House Agreement represented, for the first time, a broad-based consensus on dealing with the past. It is concerning that current proposals were laid without prior warning on Government's significant departure from this and reflected in the assertion in the written ministerial statement that "The Stormont House Agreement in 2014 was an important milestone, but it did not stop the debate continuing".

'Vexatious claims' and statute of limitations

21. A statute of limitations was not part of the draft Stormont House Agreement bill. However, this issue was addressed in many responses to the consultation and showed that a majority in Northern Ireland reject a statute of limitations and amnesties in whichever form they manifest.

22. We note that repeated calls have been made for a statute of limitations to be introduced for armed forces - including previously from the Defence Committee - and these calls are largely based on an inaccurate and harmful 'witch hunt' narrative. We remind committee members that all victims of human rights violations and abuses, including Article 2 and 3 violations, from Northern Ireland's conflict have a right to an independent investigation, with the possibility of prosecutions to follow where the evidence leads and that any steps to remove this recourse would be a betrayal of victims' fundamental right to justice.

Victims waiting for justice

23. It is vitally important that the Committee listens to those who are being failed by Government's approach to dealing with the past.

24. Amnesty works with a number of victims still seeking truth, justice and accountability for the loss of their loved ones. We have included details of some of these cases below and advise that Michael O'Hare and a representative of the Fox family would be happy to speak with the Committee.

25. **Majella O'Hare** - On 14th August 1976, 12-year-old Majella O'Hare was on her way to church with a group of friends in the Armagh village of Whitecross. They walked past

an army patrol and, when she was about 20 or 30 yards beyond it, a shot was fired from a general-purpose machine gun. Three shells were found; two of the bullets had hit Majella in the back. Majella was airlifted to Daisy Hill hospital but was confirmed dead on arrival.

26. A deeply flawed investigation (see below) by the Royal Military Police (RMP) followed, alongside a failure by the Royal Ulster Constabulary (RUC) to ensure a thorough investigation.
27. Private Michael Williams was charged with manslaughter. The judge in the case, Lord Justice Maurice Gibson, sitting alone with no jury, accepted the soldier's testimony and Williams was acquitted.
28. The Historical Enquiries Team (HET) conducted a review into the death of Majella in 2010, post the incorporation of the Human Rights Act 1998. As a result, this review outlined for the first time the respective failures of the initial investigation, and the steps that were not taken at the time, or since then. Most importantly, the HET noted the absence of an independent investigation in its entirety, which has still not been commissioned to this present day.
29. In March 2011 the Ministry of Defence, through the Defence Secretary Liam Fox, apologised for the killing of Majella O'Hare. Crucially, he stated that the explanation given by Private Williams was "unlikely". This apology was prompted by a HET request at the time. The letter states:

"I apologise for Majella's death and offer you my heartfelt sympathy. Although many years have passed, I have no doubt that your grief and that of your family has not diminished ... both the initial investigation by the RUC and the more recent review have concluded that it was unlikely that there was a gunman in the area when the soldier involved opened fire and struck Majella, as he laimed.

"The soldier's actions resulted in the loss of a young and innocent life, causing sorrow and anguish for those who knew and loved Majella.

"On behalf of the army and the government, I am profoundly sorry that this tragic incident should have happened."

30. AIUK is supporting Michael O'Hare, brother of Majella, in his pursuit for an independent, human rights compliant investigation into his sister's killing.

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