



AMNESTY INTERNATIONAL STATEMENT TO THE OIREACTHAS JOINT COMMITTEE ON THE IMPLEMENTATION OF THE GOOD FRIDAY AGREEMENT

TIME TO DEAL WITH THE PAST IN NORTHERN IRELAND
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We would like to thank the Committee for the kind invitation to come before it today to present the findings of Amnesty International's research report, *Northern Ireland: Time to deal with the past* (AI Index EUR 45/004/2013, <http://www.amnesty.org/en/library/info/EUR45/004/2013/en>). We will also take this opportunity to reflect on proposals contained in the draft Proposed Agreement that was published on 31 December 2013, following the multi-party talks chaired by Dr Richard Haass and our view as to how to take them forward.

As the Committee is aware, Amnesty International carried out research during the three decades of political violence in Northern Ireland and documented a range of human rights violations and abuses. A key part of our organization's global work is to campaign for effective investigations and for victims to be able to secure their right to remedy and reparation. Therefore we took the opportunity of the fifteen year anniversary of the Good Friday/Belfast Agreement to examine what has been put in place in Northern Ireland to investigate past human rights abuses and violations.

Our research assessed the investigatory mechanisms that exist in Northern Ireland in light of international human rights law and standards, and the degree to which they are delivering for victims.

Of course not all victims seek the same things or speak with one voice; each person will have their own experiences and perspectives. However, there is a common call amongst the majority of those to whom we spoke for political leaders to give greater priority to victims' quest for truth, justice, acknowledgment and support.

The central overarching finding from our research is that the approach to dealing with the past in Northern Ireland is not adequate; it has too often let victims down and does not fulfil the UK's human rights obligations.

The report identifies two key problems with the current approach. The first is at the level of the individual mechanisms that have been established or directed to investigate past violations and abuses. Our research focused in this regard on the Historical Enquires Team (HET), the Office of the Police Ombudsman for Northern Ireland, (OPONI), coroner inquests, public inquiries and criminal investigations carried out by the Police Service of Northern Ireland (PSNI).

Victims and families who engaged with these mechanisms reported a range of experiences. Although some of these mechanisms have worked well in specific instances and delivered good reports, by and large our research found that they either have fallen or are falling short of human rights standards because of their failure to conduct prompt, thorough and effective investigations in an independent and impartial manner. Repeated investigative failures across the mechanisms have also crucially undermined confidence and trust in their ability to deliver the truth about the past. For example, with respect to the HET, our research reflected the findings of Her Majesty's Inspectorate of Constabulary report which raised substantive concerns about the independence and impartiality of reviews. We also highlighted other concerns, in particular a lack of thoroughness in many reports. Another example is the coroner inquest system, where we highlight in our report chronic delays, repeated and ongoing failures by the PSNI to ensure timely and adequate disclosure to



the coroner, and other structural obstacles which are resulting in the inquest system in Northern Ireland remaining deficient in practice with respect to certain historical cases.

The second more pressing point is that even if all these mechanisms were operating fully in compliance with their mandates, the piecemeal approach to investigations adopted in Northern Ireland is too diffuse and too incomplete to provide a comprehensive picture of all the violations and abuses that occurred during the decades of political violence. Inherent limitations within the mechanisms, and their discrete, individualized nature, have meant that much of the truth remains hidden, while those in positions of responsibility have remained shielded. It has also contributed to a failure to develop a shared public understanding and recognition of the abuses committed by all sides.

The current accountability mechanisms in Northern Ireland focus primarily on the investigation of killings and suspicious deaths, mostly excluding people who were injured as a result of life-threatening attacks or who were subject to torture and ill-treatment. Their exclusion means that the truth about the past cannot be properly established, and the harm that they suffered is not acknowledged.

The mechanisms' focus on individual cases has also limited the possibility for thorough examinations of patterns of abuses and violations that occurred during the conflict. It has also limited the opportunities for wider public understanding and acknowledgment of the wrongs perpetrated by all sides.

For instance, although armed groups were responsible for the vast majority of deaths and other human rights abuses during the decades of political violence, the details of their operations remain unclear and under-investigated. There needs to be a more thorough and comprehensive approach to the investigation of abuses by armed groups, their institutional culture, their policies and practices, and the knowledge of and responsibility of those in high-level positions of authority in those groups

The role and actions of particular UK state bodies and agencies have also not been subject to effective investigation, nor has sufficient scrutiny been given to the investigation of state policy or state-sanctioned practices and whether they deliberately or indirectly gave rise to unlawful conduct. For instance, state collusion with republican and loyalist armed groups is one of the key issues that has yet to be addressed effectively by existing mechanisms. It is clear that collusion took place during the conflict. Various investigations have evidenced collusion in a range of ways in particular cases. However, substantial questions remain as to the degree and level of collusion that took place, the responsibility of various state actors and agencies, and what those in senior levels of government knew and what actions they took.

Therefore, in light of our research, our report calls for an overarching mechanism to be established to comprehensively address the past. Our report also sets out human rights guidelines that could inform the establishment of such a mechanism. We emphasize that it should be victim-focused and be able to, among other things, investigate individual cases and patterns of abuses and violations; and where sufficient evidence exists there should be the possibility of bringing those responsible to justice. It should have powers to compel witnesses and documents. It should also be able to develop recommendations aimed at securing full reparation for victims and helping to bring an end to violence and division. We believe that such a mechanism would be an important step towards ending impunity for human rights violations and abuses in Northern Ireland, and allowing for public recognition and understanding about the harm that was inflicted by all sides.

Our report also highlights that any mechanism established to investigate the human rights abuses and violations in Northern Ireland must be able to effectively investigate relevant connections with the Republic of Ireland. As you will be aware, there are longstanding allegations that Irish authorities turned a blind eye to arms smuggling across the border and to members of republican groups fleeing – after attacks had been carried out - back to the Republic of Ireland where they lived. There are also allegations concerning collusion by An Garda Síochána. A number of cases concerning collusion between authorities in Northern Ireland and loyalist armed groups also have direct links to Ireland. For example, on the same day of the explosion at Donnelly's Bar, Armagh, a fatal bomb explosion occurred outside Kay's Tavern, Dundalk, Ireland, killing Jack Rooney and Hugh Waters, and injuring 20 others. The attacks were believed to have been coordinated and carried out by the same loyalist group. The Report of the Independent Commission of Inquiry into the Dublin and Monaghan bombings (the Barron Report, published in 2003) also linked the Dublin and Monaghan



bombings with the same group of loyalists and members of the RUC and UDR. The report further made a number of criticisms about failures by An Garda Síochána during the investigation. Given these connections, we have urged not just that the Irish government support the establishment of a comprehensive mechanism to address the past in Northern Ireland, but, once established, to provide it with full cooperation regarding alleged links to the Republic of Ireland. This may require Ireland to enact legislation to ensure that any investigative body for Northern Ireland's past has powers of compulsion not just in the UK and Northern Ireland, but also here in Ireland.

As you know, in September 2013 the five Executive parties in Northern Ireland began talks, chaired by Dr Richard Haass. Amnesty International's focus of interest was on the talks' strand on the past and we spoke with the Haass team, as well as a number of the Northern Ireland parties.

We have provided you with our official response to the proposals in the draft Haass agreement of 31 December 2013. Our response focuses on the establishment of a Historical Investigations Unit (HIU) and an Independent Commission for Information Retrieval (ICIR). In summary, however, we believe that the proposals provide a solid basis on which progress can, and should, be made.

With respect to the HIU, the Haass proposals importantly highlight the need for a mechanism that is capable of carrying out investigations that are compliant with Article 2 of the ECHR in an independent manner and which can command the confidence of the entire community in Northern Ireland. We therefore believe efforts should be made to introduce legislation that will finally establish an effective investigatory mechanism that is capable of securing a measure of truth and justice for victims of human rights abuses and violations. Furthermore, as a number of cases have cross-border implications and connections, it is important that any bodies established have the full support and cooperation of the Irish government and its agencies, including if necessary through the drafting of legislation.

There are some areas where further clarification or changes to the Haass proposals should be considered. For example, there should be explicit guarantees of sufficient resources. The importance of guaranteeing sufficient resources is starkly highlighted by the caveat in the Haass Agreement that the HIU would conduct reviews and investigations into cases involving serious injuries only "if resources permit". There must be an effective procedure to guarantee that all relevant intelligence, including from the UK Ministry of Defence, the security services, and other government departments, is made available to the HIU.

Amnesty International considers that proposals in the Haass Agreement for a separate truth recovery process – the ICIR – provide a good basis on which to pursue further discussions. However, we believe that the powers and remit of the ICIR as conceived in the Agreement need to be strengthened in a number of areas.

For instance, powers of compulsion are 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.

Crucially, however, these draft proposals at the moment remain just that – draft proposals. It is important that we do not let yet another opportunity slip by, where sensible proposals that could be developed, brought into existence and deliver for victims and their families come to nothing because of a lack of political will. We are deeply concerned that the Haass proposals on the past may be held hostage to the lack of agreement on flags and parades, or indeed fall victim to the recent row about the UK government's scheme for so-called "on the runs". The Downey case is a stark example of how the "on the runs" scheme has the potential to perpetuate impunity. We are concerned that there may be other cases where similar errors have been made, and where the prosecution of members of armed groups suspected of committing abuses may fail for the same or similar reasons. The announcement of a judge-led inquiry to examine the scheme is therefore a positive development. It must be made clear that the assurances contained in these letters cannot be a bar to further investigation or the possibility of bringing fresh prosecutions.

These recent revelations show precisely why a new comprehensive approach to the past – rather than the



fragmented, piecemeal approach adopted to date – is needed in order for victims of human rights abuses and violations to secure truth and justice. We are therefore urging the NI political parties, and the UK and Irish governments, to play their part in taking the proposals forward. As the draft Agreement itself emphasizes, the time to rise to the challenge of the past is now, as “Northern Ireland does not have the luxury of putting off this difficult, but potentially transformative, task any longer.”

Amnesty International asks this Committee to support our calls. We further urge you to encourage the Irish Government to work towards the establishment of a comprehensive mechanism to address the past in Northern Ireland and, if it is established, to provide full cooperation with its investigations.

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