



Ulster Human Rights Watch

NIO Consultation Paper *ADDRESSING THE LEGACY OF NORTHERN IRELAND'S PAST*

Does it ***FIT THE BILL*** for Victims and
Survivors of Terrorism in Northern
Ireland?

If not

What is the Alternative?

Issues of Concern about the Proposed Bodies and an Alternative

The purpose of this document is to highlight the key issues of concern about the four proposed new bodies and their weaknesses and to suggest an alternative. An analysis of the NIO proposals reveals that the proposed new bodies will be complex and burdensome and may result in undesirable and disappointing outcomes for victims of terrorism. This is why an alternative for addressing the legacy of the past, based on fundamental principles and dealing with the key issues is necessary, in order to produce a positive result for victims of terrorism and society at large.

I. Key issues of Concern about the Proposed New Bodies and their Weaknesses

The key issues of concern and weaknesses of each one of the four bodies will be stated for the Historical Investigations Unit (HIU), the Independent Commission on Information Retrieval

(ICIR), the Oral History Archive (OHA) and the Implementation and Reconciliation Group (IRG).

1. Key Issues of Concern about the Proposed HIU

- The HIU will be contrary to British justice because it deals not only with criminal investigations, but also with: firstly, reports which will identify perpetrators even where a prosecution cannot be brought, secondly criticism involving identification of police officers and others in connection with any death and finally investigations into alleged 'non-criminal police misconduct', again identifying the officers concerned even if they are long since retired.
- It is contrary to principles of British justice for anyone to be identified in any report with a verdict of guilt unless the guilt is proven in court beyond reasonable doubt.
- The focus is likely to be on the police rather than the terrorists because HIU will have access to all police and other security force records enabling it to deliver criticism of police and security forces while there will be a complete absence of terrorist records
- All the misconduct investigations will focus on the police. There will be no investigation of any other professional body involved in dealing with the Troubles.
- It is confusing because not all investigations will be transferred by the PSNI (LIB) and PONI to the HIU.

- There is also confusion because serious injury cases will not be dealt with by the HIU but by PSNI and PONI.
- HIU will not investigate all cases. Those where an HET Report has been issued will not be investigated, save in exceptional cases, at the discretion of HIU.
- All families whose loved one(s) died between 11 April 1998 and 31 March 2004 should have the option to have their cases investigated by the HIU or not.
- The proposed HIU will generate false expectations as to the possibility of reaching a better outcome since the rules that will regulate the HIU will be substantially the same as those that currently apply to the PSNI and PONI.
- It is unlikely that many cases can be brought to court for successful prosecution.
- The HIU will be unfair and degrading for police officers who may be investigated twice by the same body (criminal and misconduct investigations) while terrorists will only be investigated once for criminal activity(ies).
- Police officers who have long since retired may be hauled into investigations by HIU causing great stress and trauma.
- The HIU will have no impact whatsoever on the Coroners Service, which will continue to operate independently.
- The HIU will not provide any support for police officers whose actions are investigated, nor for their families.
- The disclosure mechanism is complex and may be used to undermine the State and security forces.
- Annual reports will be produced by the HIU over which victims of terrorism would have no control. These reports

are likely to focus on the police and security forces because of HIU's access to their records, while terrorists will escape such scrutiny.

- After five years a report on patterns and themes will be sent directly by the HIU to the IRG and not made available to the public.
- The cost of setting up this new body will be prohibitive.
- It is likely to take several years before the HIU can become fully operational and yet the Government proposes that its work should be completed within five years. All this will discourage victims.

2. Key Issues of Concern About the Proposed ICIR

- It will be a purely voluntary process for terrorists to confess to their crimes – it is unlikely that many will confess.
- The ICIR will control all confessions and other information divulged to it – victims will not be entitled to direct access to any of the information.
- Information will be released only at the discretion of the ICIR and could never be certified to the same standard of evidence that would be expected in the criminal justice system.
- There will be no possibility for the families to check the veracity of the information received, as was the case with the Independent Commission for the Location of Victims Remains (ICLVR).

- Information released to the families will be limited and not in any event admissible in court.
- The names of those responsible for murder or any other crime will not be disclosed.
- Information may be withheld by the Secretary of State if releasing it would prejudice national security interests.
- It is likely that the limited and unsatisfactory amount of information released by ICIR to families will leave them disappointed and frustrated.
- Families will be barred from access to the courts to seek remedy against the ICIR. There will be no legal remedies available in relation to the information released, such as judicial review proceedings or legal actions on the basis of the GDPR or FOI legislation.
- Annual reports will be produced by the ICIR over which victims of terrorism would have no control.
- After five years a report on patterns and themes will be sent directly by the ICIR to the IRG and not made available to the public.

3. Key Issues of Concern about the Proposed OHA

- The Northern Ireland Department will not be able to give any directions to the Deputy Keeper in relation to the OHA.
- The Steering Group with members appointed by the Deputy Keeper (PRONI) will provide advice on the organising of the archive.

- It is likely that terrorists and their sympathisers will flood the OHA with account glorifying their exploits, vilifying the police and security forces and causing harm and distress to victims of terrorism including names of people and accounts of incidents that may not be true or accurate.
- There will be no legal action in defamation possible against the Deputy Keeper (PRONI) in relation to the OHA.
- Families will not be able to check the veracity of the information received.
- Annual reports will be produced by the OHA over which victims of terrorism would have no control.
- After five years a report on patterns and themes will be sent directly by the OHA to the IRG and not made available to the public.

4. Key Issues of Concern about the Proposed IRG

- The members of the IRG will be appointed by politicians, including one of them appointed by the Government of Ireland.
- Over a period of five years there will be around 20 annual reports produced by HIU, ICIR, OHA and the Coroners Service and sent directly to the IRG, which will be used to progressively develop patterns and themes.
- At the end of each year the IRG will produce an annual report that will be released to the UK and ROI

Governments and the First Minister and deputy First Minister but not made public.

- At the end of five years HIU, ICIR, OHA and the Coroners Service will each produce a report on patterns and themes that will not be made available to the public.
- The IRG will commission an academic group to produce a final report but the academics will be limited to considering these reports and certain specified supplementary material. The academics will be barred from considering any material or evidence relating to the whole scope of the troubles.
- Unless the academics are genuinely independent the final report may well be an attempt to justify terrorism and to re-write the history of Northern Ireland.

II. The Alternative for Addressing the Legacy of the Past

The alternative is based on fundamental principles that will be implemented by a simplified Historical Investigations Unit (HIU) dealing with criminal investigations only and the Police Ombudsman for Northern Ireland (PONI) dealing with investigations related to police conduct that will be supported by ancillary justice services such as the Intelligence Retrieval Commission (IRC), the Legacy of the Past Record (LPR) and the Committee for Peace and Freedom (CPF).

1. Fundamental Principles

The fundamental principles on which the alternative should be based are as follows:

1. Principles of British justice.
2. Principle of adequate support for victims and survivors.
3. Principle of the right to life for everyone (Art. 2 ECHR).
4. Principle of the right for an independent and impartial investigation when deprivation of life has occurred (Art. 2 ECHR).
5. Principle of the right to a fair trial by an independent and impartial tribunal (Art. 6 ECHR).
6. Principle of the right to an effective remedy (Art. 13 ECHR).
7. Principle of the right to private and family life (Art. 8 ECHR).
8. Principle of the prohibition of abuse of rights (Art. 17 ECHR).
9. Principle of the prohibition of discrimination against victims of crime (Art. 14 ECHR).
10. Principle of the acknowledgement of the sufferings of victims and survivors.
11. Principle of education and prevention by the testimonies of victims of terrorism.

2. HIU to Deal with Criminal Investigations Only

- The HIU will take over the entirety of the caseload that is presently with the Legacy Investigation Branch (LIB), while PONI and the Coroners Service will be kept separated.
- The HIU should have the power to investigate any historical case (between 1966 and 1998) where there appears to be new evidence of any crime or new lines of inquiry appearing in relation to any crime.
- The HIU should also deal with the review and investigation of injury cases.
- Families whose loved ones died between 11 April 1998 and 31 March 2004 should also have the option to have their cases investigated by the HIU or not.
- The rules, procedures and processes of the HIU must be reviewed and improved, taking into consideration the fundamental principles.
- The HIU should be accessible to victims and survivors, and efficient in carrying out reviews and investigations.
- The HIU will be able to refer cases to PONI where possible conduct issues on behalf of the police have occurred.
- The HIU rules and procedures will ensure that appropriate support is provided to any former member of the army or police whose actions may be investigated.

- The procedure for disclosure of security information will be simplified while ensuring that national security is protected at all times.
- Funding should be provided for the HIU to be operational as quickly as possible.
- The cost of setting up such a body should not be prohibitive.
- An annual report on the work carried out by the HIU should be released to the public.

3. PONI to Deal with Investigations Related to Police Conduct

- The police should be entitled to have their conduct investigated by PONI which was established to investigate the actions of the police.
- PONI will continue to deal with death and injury cases.
- PONI rules, procedures and processes will have to be thoroughly reviewed, taking into consideration judgements rendered by the courts in Belfast as a result of judicial review proceedings.
- PONI rules and procedures must ensure that appropriate support is provided to any former member of the police whose actions are under investigation.
- The procedure for disclosure of security information must be simplified while ensuring that national security is protected at all times.

- Funding should be provided for PONI, which could be immediately operational and undertake the investigation of important cases that have been delayed for many years.
- The cost for adjusting PONI rules and procedures will be relatively limited.
- Reports on investigations will continue to be published by PONI.

4. Intelligence Retrieval Commission (IRC)

- Data protection applies to living people only.
- Names of terrorist perpetrators of serious incidents (murder and/or injury) who were subsequently killed or died of natural causes, should be revealed.
- The actions of dead terrorists involved in murder and/or serious injury cases should be revealed to members of families who were seriously injured or lost loved ones.
- The IRC will receive requests for information in relation to incidents that have affected victims and/or survivors to find out if dead terrorists were involved in the murder of their loved ones or the serious injuries they caused to them even though they were never charged or convicted.
- The IRC will have the power to access security information so as to establish whether or not there is sufficiently reliable intelligence to confirm that a named terrorist was involved in the incident and to what degree.
- Information will be released confidentially to the family of the victim.

5. Legacy of the Past Record (LPR)

- True personal stories and experiences about what happened during the Troubles should be allowed to be told and entrusted to PRONI.
- It is currently possible to deliver and entrust the keeping of such documents at PRONI.
- PRONI could create a repository, dedicated to receiving stories and experiences about the Troubles, that will be managed according to rules and guidelines developed for that purpose under the Public Record Act (NI) 1923.
- Stories and experiences could be received by PRONI from organisations serving victims or by victims and survivors themselves.
- No specific legislation should be introduced to protect the Deputy Keeper from legal action.

6. Committee for Peace and Freedom (CPF)

- The lessons from the past should be learned in order to prevent terrorism and radicalisation.
- Policies and educational programmes to combat terrorism and radicalisation and promote peace and freedom should be developed and implemented.
- Policies should be implemented at every level of government to prevent terrorism and radicalisation.

- Education programmes could be used in schools, universities and elsewhere to prevent a repeat of the past with future generations.

Doesn't FIT THE BILL for Victims and Survivors of Terrorism in Northern Ireland

- TRUTH
- JUSTICE
- ACKNOWLEDGMENT
- REWRITING OF HISTORY
- JUSTIFICATION OF TERRORISM
- DEFAMATION OF INNOCENT VICTIMS
- WITCH-HUNT OF SECURITY FORCES
- EXCLUSION OF HET CASES/INJURIES
- IMPRACTICAL STRUCTURE/COSTS
- COMPENSATION NOT ADDRESSED

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