



# Ulster Human Rights Watch

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

Guidance Notes to Support  
Completion of Consultation  
Response Document

August 2018

Truth and Justice for  
Victims and Survivors of Terrorism

# Introduction

## ***Before Answering Questions Please Read the Accompanying Legacy Consultation Booklet***

In its Consultation Paper the Northern Ireland Office has set out a series of questions for answer by those who wish to make submissions. We consider, however, that the Consultation Paper ignores many of the questions that should be raised in any genuine attempt to address the whole of the 'Legacy of the Past'.

The questions raised by the Northern Ireland Office are set out below. Under each question **we suggest some points which those making submission may wish to consider to include in response**. However, we consider that there are many other important points which should be made to the Northern Ireland Office.

So please answer in **your own words, giving your individual responses to the questions raised by the Northern Ireland Office**. Also, please inform the Northern Ireland Office of **all the other points and matters which you feel should be taken into account** in any genuine attempt to address all the issues of the legacy of the past.

Please feel free to include your own experiences for the benefit of the Northern Ireland Office to help them understand. (But do not include any information which you would not wish to see being made open to public access.)

Of course, **you do not need to answer all questions**. If you feel that anything is irrelevant or you do not have a view, just put n/a or that you do not wish to answer. However, we suggest that Question 14 is very important as it asks if you have views on different ways to address the problem, not outlined in the Consultation Paper. So, this offers everyone the opportunity to make their own suggestions and we do suggest that you should set out in detail your suggestions if you have any problems with what the Northern Ireland Office is proposing.

Feel free to make brief responses.

## Question 1: Current System for Addressing the Past

Do you consider that maintaining the current system for dealing with the issues of the past through legacy inquests, PSNI and OPONI investigations is the right approach, or do you think there is a need for reform?

- Probably, most people would agree that the current system is complicated but it would be difficult to simplify it. The NIO proposals create 4 new bodies (Historical Investigations Unit (HIU), Independent Commission on Information Retrieval (ICIR), Oral History Archive (OHA), Implementation and Reconciliation Group (IRG)) to deal with the past in addition to those that already exist i.e. PSNI (Legacy Investigation Branch (LIB)), Police Ombudsman for Northern Ireland (PONI), Coroners Service, Attorney General for Northern Ireland (AGNI), Public Record Office for Northern Ireland (PRONI), Public Prosecution Service (PPS) and the Courts.
- Overall, the existence of the PSNI to review and carry out criminal investigations, PONI to investigate allegations in relation to the conduct of the police and the Coroners Service to deal with legacy inquests is a sensible approach.
- Please do give examples of any problems you may have encountered with the present approach.

## Question 2: Stormont House Agreement Proposals - Engagement with Legacy Institutions

Does the proposed approach help to ensure all groups of people can effectively engage with the legacy institutions?

If no, please suggest additional measures that would improve this for specific groups:

- You may wish to suggest that the proposals are unfair to categories of people such as retired police officers who may themselves be victims of terrorism, since HIU will have access to security forces records while there will be no terrorist records.
- You may wish to suggest that the proposals will be unfair to victims of terrorism since there will be opportunities for terrorists and their sympathisers to recount their exploits while vilifying the security forces using the OHA. Also terrorists will be able to “confess” to their crimes using the ICIR while victims will be unable to verify and challenge the information provided.
- The patterns and themes developed over a period of five years and sent to the IRG may well serve to justify terrorism and rewrite the history of Northern Ireland which may re-traumatise victims of terrorism.
- Please give your own opinions with examples of any other unfairness you see in the

proposals.

Any further comments:

- Do you think another approach is possible that will encourage victims of terrorism to engage with legacy institutions?

### **Question 3: HIU Remit**

Should the HIU's remit also include deaths which took place between the signing of the Belfast Agreement on 10 April 1998 and 31 March 2004?

- This is a technical problem that deaths between these dates are not currently covered in the legacy investigations. Some families of the victims who lost their lives during this period wish to continue to pursue their legal actions independently from the HIU.
- If you think that these families should have the option to have their cases passed on or not to the HIU please give your views.
- If you do not wish to answer this question you can abstain.

Any further comments:

### **Question 4: HIU - Director Assessing Previous Investigations and Deciding Whether Further Investigation is Needed**

Do you think that the process set out above is the right way to assess whether an investigation into a Troubles-related death has taken place or whether investigation is needed?

- The Director of the HIU will have the power to choose which deaths are to be investigated. Do you think that the Director should be given such power? Alternatively should all deaths since 1968 be investigated? Or do you have suggestions as to which deaths should be investigated?

Any further comments:

- Should the HIU also investigate serious injury cases that occurred during the Troubles?

## Question 5: HIU - Disclosure Appeals Mechanism

Do you think that the proposed mechanism to appeal disclosure decisions to a judge provides adequate opportunity to challenge decisions by the UK Government to protect information?

- This deals with the proposals to allow disclosures of national security interests information to the HIU. Do you agree that this should happen? If so do you agree with the proposals of the Northern Ireland Office for this to happen?
- If the Secretary of State decides not to release information because of national security interests, the proposed mechanism will allow these decisions to be challenged. You may wish to consider whether this proposal will serve the purpose of victims of terrorism or of those who wish to undermine security forces, or both.

## Question 6: HIU - Overall View

Does the HIU provide a method to take forward investigations into outstanding Troubles-related deaths in a proportionate, victim centred manner with an appropriate structure and safeguards?

- Do you agree that the investigations of the HIU should be carried out in a 'victim centred' manner considering that the interpretation of a victim according to The Victims and Survivors (NI) Order 2006 equates victims of terrorism with perpetrators of acts of terrorism?
- Do you believe that the procedures of the HIU will be fair to all, with sufficient safeguards for those under investigation, such as retired police officers who may be identified in Reports of the HIU for alleged misconduct, even if there is not sufficient evidence for a criminal prosecution?
- The HIU will have access to all records concerning the security forces actions while there will be no records in relation to terrorist actions. Do you believe their investigations will be balanced and fair?

Any further comments:

- Do you think it is fair and appropriate that a number of investigations will continue to be dealt with by the PSNI and PONI?
- Do you think it is fair and appropriate for the HIU not to investigate serious injury cases?
- Do you think that the cases for which an HET Report was issued should not be investigated save in exceptional circumstances?
- Do you think it is fair and just for the conduct of police officers to be investigated by the same body that will investigate terrorists?

- Do you think it is fair that police officers whose actions are investigated will not be provided with any support, nor their families?
- Do you think it is right for the HIU to produce a report on patterns and themes emerging from 5 years' work by legacy institutions that will be sent to the IRG but which will not be made available to the public?

## **Question 7: Independent Commission on Information Retrieval**

What actions could the ICIR take to support families who seek information about the death of their loved one?

- Do you agree that the ICIR should be an international body set up by the British and Irish Governments?
- Do you agree that exceptional legislation should be introduced to protect terrorists willing to “confess” to their crime from any form of legal action that could otherwise be available to victims?

## **Question 8: Independent Commission on Information Retrieval**

Do you think the ICIR is structured correctly, with the right powers and protections, in a way that would provide victims and survivors with the chance to seek and receive information about the deaths of their loved one?

Any further comments:

- Under the proposals, victims will not be entitled to direct access to any information received by the ICIR. Do you believe this is right?
- Do you think it is right that information received from the ICIR will never be certified as evidence to the same standard as it would be in the criminal justice system?
- Victims will never be able to verify the information received from ICIR. Do you think this is right?
- The Secretary of State will be able to withhold information without any possibility of appeal. Do you think that it is right?
- The ICIR will be unaccountable, meaning that no-one will be able to take a complaint to any court against the conduct of the ICIR and no-one could sue for damages – for instance if they were libelled or treated in any unfair way in any report by the ICIR. Do you think that it is right?

- Do you think it is right for the ICIR to produce a report on patterns and themes that will be sent to the IRG after five years which will not be made available to the public?

## Question 9: Oral History Archive

Do you think that the Oral History Archive proposals provide an appropriate method for people from all backgrounds to share their experiences of the Troubles in order to create a valuable resource for future generations?

- Under the proposals, the OHA will accept experiences submitted by any individual, even if they libel or treat others unfairly. Do you agree with this?
- No legal action in defamation will be possible against the Deputy Keeper (PRONI) in relation to the OHA. Do you agree with this?

Any further comments:

- Exceptional legislation will be introduced to facilitate terrorists and their sympathisers recounting their stories although the present legislation allows anyone in Northern Ireland to share his/her experience of the Troubles using the Public Record Office in Northern Ireland (PRONI) under the present legislation. Do you think this is necessary?

## Question 10: Oral History Archive

What steps could be taken to ensure that people who want to share their experiences of the Troubles know about the Archive and are encouraged to record their stories?

- If you support the establishment of the OHA please include any suggestions you may have as to how it could work effectively.
- If you do not agree with the establishment of the OHA please state your objections here.

Any further comments:

- There will be no possibility for families of victims to check the veracity of the information received by OHA. Do you agree with these proposals?
- Do you think it is right for the OHA to produce a report on patterns and themes that will be sent to the IRG after five years which will not be made available to the public?

## Question 11: Commissioning the Academic Report on Themes and Patterns

Do you think that the ESRC should be engaged to commission the academic work on patterns and themes to ensure independence, impartiality and best practice in academic research?

- The idea behind this is that after 5 years each of the institutions set up under the proposals will produce a report on the 'patterns and themes' which they consider to have emerged from the investigations they have carried out and then an academic panel (whose members are unknown) would consider all these reports and issue its own report to the Implementation and Reconciliation Body (IRG). It is also proposed that the Economic and Social Research Council (ESRC) would be involved in the supervision of the academic panel's work.
- Do you agree that the reports produced on 'patterns and themes' should be passed on directly to the IRG but not made available to the public?
- Do you think it would be worthwhile and workable to have such an academic panel?
- Would such an academic panel, whoever it comprises, be likely to produce a fair and unbiased final report?
- Do you have any views on the involvement of the ESRC?
- Are there any other people or bodies, like counter-terrorism experts or organisations, who should be involved in the project?
- The academic panel will be provided with a limited number of documents relating to the Troubles and barred from considering any others. Do you believe this is good practice?

Any further comments:

- Do you think that the academic panel is likely to be genuinely independent?
- Is there a risk that there will be an attempt to re-write the history of Northern Ireland?

## Question 12: Implementation and Reconciliation Group

Do you think the IRG is appropriately structured to allow it to review the work of the legacy institutions, to commission an independent academic report and promote reconciliation?

- The chair of the IRG will be appointed by the First Minister and deputy First Minister



acting jointly. The British Government will appoint one member and the Irish Government one member. There will be three members appointed by the DUP, two by Sinn Fein and one member each by Alliance, SDLP and UUP.

- Do you believe that this is a fair and workable idea?
- Would the IRG so constituted be likely to be able to promote reconciliation?

Any further comments:

## **Question 13: Stormont House Agreement Proposals - Overall View**

Do you think that the package of measures proposed by the Stormont House Agreement provides an appropriately balanced and planned way to move Northern Ireland forward that can command the confidence of the community?

- Please give here your overall view as to whether you consider the proposals are fair and workable?
- Would the IRG, if established, in fact be in a position to promote reconciliation or command the overall confidence of the whole community?

Any further comments:

## **Question 14: Other Views on the Past**

Do you have any views on different ways to address the legacy of Northern Ireland's past, not outlined in this consultation paper?

- As already suggested in the Introduction, this is probably the most important question and you may set out your own views and suggestions as to how the past should be properly and fairly dealt with.
- Please include as much detail as you can on what you would propose.
- Do you think it would be better for the HIU to deal with criminal investigations concerning all historical cases, including deaths and injuries, and for the Police Ombudsman for Northern Ireland to deal separately with all historical cases where there are allegations of police misconduct?
- Do you believe that a new body should be established dedicated to releasing the names of dead terrorists that were involved in major fatality or injury incidents to victims?
- Do you think that PRONI should simply open a 'Legacy of the Past' record defining guidelines for stories and experiences to be made available to the public, without

new legislation?

- Do you believe that a new body made up of a group of academics and counter-terrorism experts should be created to develop policies and educational programmes drawing on the experience of the Troubles, in order to prevent a repeat of terrorism and radicalisation of Northern Ireland society in the future?

## **Question 15: Impact of the Current System**

What are your views on the impact of the current system for addressing the past (as outlined in Part one) for different groups as described by Section 75 of the Northern Ireland Act 1998?

- This is a question inserted by the Northern Ireland Office as they have a statutory duty to promote 'equality'. So if you have any suggestions on the equality of the current systems for dealing with the past please insert them here.
- Otherwise, you do not need to answer this question.

## **Question 16: Impact of the Stormont House Agreement proposals**

What are your views on the impact of the Stormont House Agreement proposals (as outlined in Part two) for different groups as described by Section 75 of the Northern Ireland Act 1998?

- This is a further question inserted by the Northern Ireland Office under their statutory duty to promote 'equality'. So if you have any suggestions on the equality of the proposed systems for dealing with the past please insert them here.
- Otherwise, you do not need to answer this question.

## **Question 17: Opportunity to Promote Equality of Opportunity or Good Relations**

Is there an opportunity to better promote equality of opportunity or good relations?

- Do you consider that the proposals will promote equality and good relations? Please give your reasons.
- You may wish to state that the proposals should include an acknowledgement that terrorism can never be justified in order to open the way for reconciliation within society at large?



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