



Ulster Human Rights Watch Submission to the Northern Ireland Affairs Committee

Inquiry into the Consultation on the Stormont House Agreement

Submitted: 13 June 2018

Truth and Justice for
Victims and Survivors of Terrorism

1. How well do the proposals for the Historical Investigations Unit, the Independent Commission on Information Retrieval and the Oral History Archive meet the needs of victims and survivors?

'The Troubles' is a euphemism commonly used to refer to the campaign of terrorism in Northern Ireland, which caused scores of innocent people, both civilians and members of the security forces, to be murdered and injured, and as a result made victims and survivors of terrorism. The needs of these victims and survivors should have been paramount in order to provide appropriate remedies to address them. Unfortunately, to this day this has not been the case. The Victims and Survivors (Northern Ireland) Order 2006 provides an 'interpretation' of who a victim and survivor is, based on the criterion of 'conflict-related incident'. As a result the terminology 'victims and survivors' has been applied to perpetrators of acts of terrorism as well as to victims and survivors of terrorism.

Addressing the needs of victims and survivors of terrorism requires that a definition of who these victims and survivors are and the rights that are theirs be provided. To that end UHRW has provided a definition of a victim of terrorism as someone who has been killed or injured as a result of a terrorist act and was never engaged in any form of terrorist activity (Annex 1). UHRW has also produced a Bill of Rights for Victims of Terrorism (Annex 2).

The proposals for the Historical Investigations Unit (HIU), the Independent Commission on Information Retrieval (ICIR) and the Oral History Archive (OHA) do not address the specific needs of victims and survivors of terrorism because the particular circumstances of Northern Ireland, i.e. the campaign of terrorism and the necessary fight against terrorism by the security forces for the protection of democracy and human rights, continues to be ignored.

The remit of the Historical Investigations Unit (HIU) should not include cases that are being brought for non-criminal misconduct against the police, which should continue to be dealt with by the Historic Investigation Directorate of the Police Ombudsman for Northern Ireland. The conduct of those who were at the forefront of the fight against terrorism should not be investigated by the same body that carries out investigations against crimes perpetrated by those engaged in acts of terrorism.

There should be a separate investigation body dedicated to investigating all crimes related to the terrorist activities of those engaged in acts of terrorism and/or associated with terrorist organisations, with increased use of intelligence so as to provide victims and survivors of terrorism and their families with thorough information in relation to terrorist incidents that resulted in murders and serious injuries.

The Independent Commission on Information Retrieval (ICIR) may gather and release information, but there is currently no mechanism provided to check the veracity of the information received from those engaged in terrorist activities. If the information received happens to be true, it cannot be used to prosecute and convict those who committed terrorist acts. It is therefore doubtful whether this body will be of any help to members of the security forces, who will have no reason to engage with this body, since the police and the army kept records of their activities that can be easily accessed.

The Oral History Archive (OHA) may facilitate a re-writing of history by members of the public and lobby groups who would wish to provide a justification for past terrorist activi-

ties. It may open the door for terrorist-related organisations or their supporters who may seek to undermine the reputation of the RUC and the armed forces, who were deployed in order to defend democracy and human rights in the United Kingdom.

2. Do the proposals address concerns about current arrangements for the investigation of Troubles-related deaths?

The overwhelming majority of deaths related to the Troubles occurred as a result of acts of terrorism. The concerns about the current arrangements are that they do not recognise victims and survivors of terrorist acts as victims and survivors of terrorism.

The families of those who were murdered by terrorists have been deprived of information concerning the death of their loved ones and in numerous cases justice has never been done. On the contrary, it appears that the families of those who were involved in terrorist activities and who died while being apprehended by the security forces have been provided with more effective support when challenging the use of force by the security forces before the courts in the United Kingdom and also before the European Court of Human Rights in Strasbourg.

3. How effectively do the proposals for the Implementation and Reconciliation Group provide for the promotion of reconciliation in Northern Ireland?

To be genuine and effective, reconciliation must be based on the acknowledgement of wrong-doing by those who killed, maimed and injured innocent civilians and members of the security forces who were performing their duties. The campaign of terrorism was an attack on democracy, human rights and fundamental freedoms by those who engaged in terrorist activity. They can only be reconciled with their innocent victims if there is an acknowledgement on their part that their actions were in breach of the law, morally unacceptable and unjustifiable. It is therefore unlikely that the Implementation and Reconciliation Group would generate meaningful reconciliation, since it does not appear that its core principles acknowledge that terrorism is incompatible with democracy and respect for human rights.

4. To what extent do the proposals reflect a broad political consensus, and are fair, equitable, and proportionate?

Under the present legislation victims and survivors of terrorism are treated on an equal footing with the perpetrators of acts of terrorism. The legislation disproportionately favours perpetrators and their families, who can efficiently take a case against members of the security forces by making use of the records that have been made and kept by the police and the Army during the terrorist campaign. The proposals do not remedy this disparity of treatment between victims of terrorism and perpetrators because they do not contain any significant changes that will enable victims and survivors of terrorism to have greater access to information and a better prospect of seeing justice done, while continuing to favour perpetrators of terrorism.

5. How can the Government best engage with those affected by the Troubles and ensure they hear their views?

The best way for the Government to engage with those affected by the terrorist campaign is to listen to what victims of terrorism have been requesting for many years, i.e. that a

definition acknowledging who they are be provided in law and that their rights be upheld and promoted. The Government should be committed to supporting victims and survivors of terrorism and introducing appropriate legislation that will define who a victim and survivor of terrorism is while preventing perpetrators of act of terrorism from being treated on an equal footing with their victims. The Government should be prepared to declare what the rights of victims and survivors of terrorism are. The Government should also acknowledge the contribution that members of the security forces, police and army, have made by protecting democracy against terrorism during the Troubles and upholding the human rights of the people living in the British Isles.

6. Are there any areas where the proposals do not adequately reflect the rule of law?

The proposals do not adequately reflect the rule of law because they do not acknowledge the reality of the circumstances that the security forces were confronted with during the terrorist campaign. There is not one reference in the proposals to terrorism and the necessity to prevent and combat terrorist activities during the Troubles.

The proposals are, to some extent, disconnected from the rule of law, since they would give an increased possibility to those who were engaged in terrorist activities and their families to pursue cases against the security forces while at the same time not providing meaningful assistance to victims and survivors of terrorism to see justice done. Proposals that reflect the rule of law should make perpetrators of acts of terrorism accountable for their actions, defend and uphold the rights and fundamental freedoms of victims and survivors of terrorism, while acknowledging the essential role of the security forces in preserving the peace and maintaining order.

7. Are there any areas of the Stormont House Agreement which the proposals fail to address?

There are a number of areas that the proposals fail to address:

- The proposals fail to address the legal interpretation of victims and survivors provided in the Victims and Survivors (Northern Ireland) Order 2006 which equates victims and survivors of terrorism with perpetrators of acts of terrorism;
- The proposals focus on criminal proceedings against former members of the security forces, police and army, but do not assist victims of terrorism in getting justice done against perpetrators of acts of terrorism;
- The proposals do not include the possibility of investigations for those who were injured as a result of acts of terrorism;
- The proposals do not address the needs of those who lost their homes and/or business as a result of terrorist bombings, intimidations and threats;
- The proposals do not address the direct or indirect assistance given to terrorist organisations within the Republic of Ireland and the failure of the State authorities to take appropriate actions to prevent terrorist activities from being carried out from the Republic into Northern Ireland;

- The proposals do not address the pension scheme that should be made available to victims and survivors of terrorism only.

8. Are there areas that have been included that should not have been?

The investigation of non-criminal police misconduct by the same body that will consider the investigation of acts of terrorism should not have been included. This has the effect of downgrading members of the police force and putting them on the same level as those who carried out the most serious and deadly acts of terrorism.

The possibility given to terrorist sympathisers to re-write history by way of the Oral History Archive should not have been included in the proposals.

The possibility of obtaining information by way of the ICIR without there being any means of challenging that information released in order to verify its veracity is misleading and should not have been part of the proposals.

There should not have been an Implementation and Reconciliation Group without laying down the conditions that are required for genuine reconciliation to take place, namely an acknowledgement that terrorism was ethically wrong, that it constitutes a breach of the most fundamental human rights and that it is in all cases unjustifiable.

9. Should the UK Government consider implementing the areas of the Stormont House Agreement which are the responsibility of the Northern Ireland Executive? Such as; pensions for severely injured victims of the Troubles and a Mental Trauma Service?

The UK Government should consider introducing the required legislation to support victims and survivors of terrorism by way of direct rule.

10. Has the Government committed sufficient resources to support the operation of the Stormont House Agreement institutions?

The Government should commit the necessary funding for supporting victims and survivors of terrorism until the work has been completed, beyond the suggested five year deadline if need be.

11. How should these proposals now be taken forward?

The proposals as they stand should not be taken forward but should be entirely reviewed and amended so as to support victims and survivors of terrorism effectively.

12. What should the timing of the proposals be?

Once reviewed, the proposals should be carried out over the time necessary for dealing with the backlog of cases that need to be investigated.

Other Comments?

The approach as to how to deal with the legacy of the past should be entirely reconsidered and reviewed. Adequate proposals should be based on an acknowledgement of the

reality of what happened in Northern Ireland during the period referred to as the Troubles.

The campaign of terrorism was an attempt to change the recognised international constitutional status of Northern Ireland as part of the United Kingdom of Great Britain and Northern Ireland, and this should not be ignored or denied any longer. The victims and survivors of terrorism, who are the overwhelming majority of victims and survivors of the Troubles, should be recognised.

There should be a UK-wide legal definition of a victim and survivor of terrorism, providing entitlement to fundamental rights. On this sound basis a new investigating body could be created while non-criminal police misconduct would remain within the remit of the Police Ombudsman for Northern Ireland. There should not be any public body created that would encourage the re-writing of history or the justification of terrorism.

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Date: 13 June 2018

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Funded by the Victims & Survivors Service through the Victims & Survivors Programme administered on behalf of the First Minister and Deputy First Minister



A project supported by the European Union's PEACE IV Programme, managed by the Special EU Programmes Body (SEUPB)