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Response to Lord Caine's Amendment of the Northern Ireland (Legacy and Reconciliation) Bill

(19 January 2023)

In September 2022 Ulster Human Rights Watch (UHRW) delivered a submission¹ to Lord Jonathan Caine, Parliamentary under Secretary of State at the NIO, and the Secretary of State for Northern Ireland on the Northern Ireland (Legacy and Reconciliation) Bill and made 13 proposed amendments and 2 recommendations with a view to ensuring the legislation would deliver truth, justice and acknowledgement for victims of terrorism.

Lord Caine has put forward an amendment after Clause 23 that is to be considered by the House of Lords on 24 January 2023, but which is limited to the revocation of immunity granted by the ICIR if a false statement is made in the course of applying for that immunity.

Clearly, the amendment suggested is minimal and does not address the crucial issues and lacunas that were highlighted by UHRW in its submission. This amendment appears to be an attempt to conceal the fact that the Northern Ireland (Legacy and Reconciliation) Bill will not deliver what is required for victims of terrorism, but may be used to undermine and vilify the security forces while facilitating the re-writing of the history of the Troubles.

UHRW proposed amendments that have not been addressed by Lord Caine's amendment

Proposed amendment no. 1

The Bill should be based on the definition of victim of crime that includes victims of terrorism, and which is enshrined in the legislation of the United Kingdom and the Republic of Ireland.

Fundamental issue not addressed by Lord Caine's amendment.

Proposed amendment no. 2

The ICIR should be able to exercise its functions in compliance with the procedural obligation of Article 2 of the European Convention of Human Rights: investigations should be carried out by an independent authority, be capable of leading to the identification of those responsible, take all reasonable steps to secure evidence, avoid any deficiency in the investigation, be based on an exhaustive analysis of all relevant documents, ensures state authorities act of their own motion with promptness and guarantee a sufficient element of public scrutiny.

Fundamental issue not addressed by Lord Caine's amendment.

¹ Ulster Human Rights Watch Submission of the Northern Ireland (Legacy and Reconciliation) Bill, September 2022 (20 pages).

Proposed amendment no. 3

Section 33 of the Bill should be amended to ensure that the investigation of any Troubles-related case may be carried out whenever it is possible to progress the investigation.

Fundamental issue not addressed by Lord Caine's amendment.

Proposed amendment no. 4

Section 38 of the Bill should be repealed so as to allow civil claims to be made whenever this is justified.

Fundamental issue not addressed by Lord Caine's amendment.

Proposed amendment no. 5

Section 39 of the Bill should be amended to allow inquests to progress and for new inquests to be to be carried out when this is required.

Fundamental issue not addressed by Lord Caine's amendment.

Proposed amendment no. 6

Section 14 should be amended so as to ensure that members of the security forces can only be compelled to attend meetings, provide information, written statements or documents if there is sufficient evidence that they were involved in the commission of a criminal offence. Section 14 should be directed against those for whom there is evidence and intelligence that they were involved in terrorist activities.

Fundamental issue not addressed by Lord Caine's amendment, which has the potential to make things worse for former members of the security forces.

Proposed amendment no. 7

The ICRIR should be given access to all materials held by Government agencies: PSNI (RUC SB), MI5, MOD (intelligence as well as court files and PPS files)

Fundamental issue not addressed by Lord Caine's amendment.

Proposed amendment no. 8

The ICRIR should have power to establish whether any forensic opportunities exist to identify perpetrators, seek to identify potential witnesses in order to help find perpetrators, carry out its functions to nationally recognised standards, have the ability to be thorough, objective and pursue cases to their end, without overlooking opportunities, and informs victims and families so as to give them reassurance that no reasonable opportunity has been missed.

Fundamental issue not addressed by Lord Caine's amendment.

Proposed amendment no. 9

Before making a decision on a request for immunity the Immunity Requests Panel must ensure that this will only be granted following a thorough investigation to verify information, statements and documents provided by the person making the request. If the investigation reveals that the person is likely to have committed a serious offence, immunity will not be granted but prosecution would follow.

Fundamental issue not addressed by Lord Caine's amendment.

Proposed amendment no. 10

The Bill should not give any possibility to criticise individuals as long as they have not been convicted after a due process of law. The investigation of crimes alleged to have been committed by members of the security forces during the Troubles must protect the presumption of innocence and the right

to private and family life in compliance with Articles 6 and 8 of the European Convention on Human Rights.

Fundamental issue not addressed by Lord Caine's amendment.

Proposed amendment no. 11

The definition of victim of crime as enshrined in the domestic laws of the United Kingdom and the Republic of Ireland should define the framework within which the oral archive can be created. It would ensure that it will not be used as a means to justify terrorism and re-write the history of the Troubles. Also, contributions by way of historical records should only be made provided there is a process to verify the veracity of what is being said in order to prevent false allegations and defamation. (The Legacy of the Past Record created by the Ulster Human Rights Watch in the Public Record Office of Northern Ireland provides an example of what can be done in this vital area.)

Fundamental issue not addressed by Lord Caine's amendment.

Proposed amendment no. 12

The memorialising strategy must be conducted in compliance with human rights and fundamental freedoms requirements within a democratic society and must therefore exclude any reference to the commemoration of terrorist activities. Safeguards against the memorialisation of terrorism aiming at glorifying and justifying terrorism should be included. The memorialising strategy should be dedicated to supporting victims of terrorism and the prevention of terrorism and radicalisation.

Fundamental issue not addressed by Lord Caine's amendment.

Proposed amendment no. 13

This academic research should not be used as a means of rewriting the history of the Troubles, and undermining or discrediting the security forces, whose duty was to protect the rights and freedoms of law-abiding people against terrorism; or to justify terrorism. The academic research should address the issue of terrorism and the threat it represents for the furtherance of human rights in a democratic society. The research should be done with a view to recommending the implementation of policies and educational programmes for the purpose of combating terrorism and radicalisation and promoting peace and freedom within a democratic society.

Fundamental issue not addressed by Lord Caine's amendment.

Recommendations

Recommendation no. 1

Since the Public Prosecution Service of Northern Ireland operates under the Department of Justice in Northern Ireland, it is a devolved matter that has an essential part in the overall process leading to justice being rendered and its functions must be reviewed so as to make it as efficient as all other prosecution service operating in the rest of the United Kingdom.

Recommendation not addressed by Lord Caine's amendment.

Recommendation no. 2

Institutions equivalent to those that exist or are being proposed to be established for addressing the legacy of the past in the United Kingdom should be implemented in the Republic of Ireland. This could take the form of an organisation similar to the ICRIR, which could be transformed into an International Independent Commission for Reconciliation and Information Recovery (IICRIR). The memorialising of the Troubles work programme should apply in the same way to the Republic of Ireland.

Recommendation not addressed by Lord Caine's amendment.