



General Assembly

Distr.: General
18 November 2016

English only

Human Rights Council

Thirty-fourth session

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on his mission to the United Kingdom of Great Britain and Northern Ireland: comments by the State

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the comments by the State on the report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff.

GE.16-20390(E)



* 1 6 2 0 3 9 0 *

Please recycle



Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on his mission to the United Kingdom of Great Britain and Northern Ireland: comments by the State*

1. The UK Government would like to acknowledge the opportunity provided by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (SR) to comment on his report on his mission to the UK. The UK has also, separately taken the opportunity to correct a small number of factual inaccuracies in the draft report.
2. We note the SR's observations on the many areas of good progress including the institutional reform that has taken place in Northern Ireland in recent decades with the formation of the Police Service of Northern Ireland and the Office of the Police Ombudsman and the devolution of policing and justice to the Northern Ireland Executive.
3. We recognise also, that there is further work to be done. The UK Government is committed to addressing the legacy of the past in Northern Ireland in a manner that is balanced, proportionate, transparent, fair and equitable. The measures proposed by the Stormont House Agreement will help address the legacy of the past, to reduce its impact on the present and build a stronger, more prosperous Northern Ireland. Consensus on the final detail of the proposed mechanisms has not yet been achieved but intensive work is ongoing between the UK Government and the Northern Ireland Executive parties to resolve the outstanding issues.
4. However, there are a number of issues the UK feels need to be commented on in the SR's report. The UK Government is particularly concerned to note that throughout his report, most notably at paragraphs 6 and 55, the SR fails sufficiently to differentiate between the actions of illegal terrorist groups and UK security forces. The UK Government emphatically does not accept the equivalence inferred, whether intentionally or not, by the SR between terrorist organisations and the security forces that served Northern Ireland in extremely difficult circumstances upholding democracy and the rule of law. The UK Government has shown that where the State has done things wrong it is prepared to face up to and account for this. Everyone is subject to the rule of law and where there is evidence of wrongdoing it will be pursued. The fact is however that in the vast majority of cases involving the state that were reviewed by the HET or those that the Ombudsman has investigated, no criminal conduct has been determined. The overwhelming majority of those who served in the security forces in Northern Ireland did so with bravery and distinction, upholding democracy and the rule of law. Without their commitment the peace process would never have happened. To suggest that criminal conduct by the police and our Armed Forces was somehow rife or endemic is, in the view of the UK Government, a distortion that is not justified by the facts.
5. In responding to this report, the UK Government notes the SR's continued interest and engagement on this complex and sensitive issue. The Government acknowledges the recommendations contained in his report and notes that progress towards many of the recommendations can be best achieved through the full implementation of the Stormont House Agreement.
6. Our specific response to some of the key areas of the report is set out below.
7. Paragraphs 6 – 12

* Reproduced as received.

The UK Government does not accept any equivalence between terrorists and state security forces as this section appears to infer (see paragraph 4 of this response).

Since the Belfast Agreement was reached in 1998, subsequent political agreements, such as St Andrews and Hillsborough made substantial progress in other areas but failed to address the question of legacy until the Stormont House Agreement was reached in December 2014.

Paragraphs 21 – 55 of the Stormont House Agreement establish a new way forward for seeking to address the legacy of the past in Northern Ireland. This includes commitments to undertake further work on a pension for severely physically injured victims, to establish a Mental Trauma Service and to create four new bodies:

- **The Historical Investigations Unit (HIU)** – an independent body to take over outstanding investigations into Troubles-related deaths from the PSNI and Police Ombudsman;
- **The Independent Commission on Information Retrieval** – an independent, international body, separate from the criminal justice system, to seek information about Troubles-related deaths on behalf of families;
- **An Oral History Archive** to collect narratives related to the Troubles;
- The Implementation and Reconciliation Group to promote reconciliation.

Further political talks took place in the autumn of 2015. Over the course of these political negotiations, substantial areas of common ground were developed on the legacy institutions, including on a range of issues where progress has previously proved impossible. Unfortunately, although a great deal of progress was also made during the negotiations on dealing with Northern Ireland's past, it was not possible to achieve final agreement on those matters at that time.

The new Prime Minister and the new Secretary of State for Northern Ireland have made it clear that they support the establishment of the bodies identified in the Stormont House Agreement, which is a Government election manifesto commitment. The Secretary of State has been meeting with key stakeholders and intends to continue with these engagements. He has already publically recognised the desire among stakeholders for progress to be made quickly on these issues. The UK Government will continue to work with Northern Ireland parties, victims' groups and other stakeholders to seek a resolution that will allow the Stormont House Agreement bodies to be established.

8. Paragraph 18

It is correct that the focus of investigative mechanisms and procedures has been on Troubles-related deaths. It should however be noted that this is the main, but not exclusive focus and there are ongoing investigations into abductions and non-fatal shootings for instance.

9. Paragraph 20

The UK Government does not accept the SR's assertion that the cited mechanisms fall outside of the criminal justice sphere and into truth recovery on the basis of "prosecutorial successes". Specifically, categorising the Historical Enquiry Team process and the work of the Police Ombudsman as truth mechanisms is not accepted by the UK Government. In the majority of cases, legacy investigations take place into events that occurred more than 30 years ago. The passage of time, even taking into account the advances in modern policing techniques, makes it extremely challenging to gather the required amount of evidence that would secure

prosecutions. Nevertheless, prosecutions for troubles-related crimes can be and are secured. The UK Government recognises that these processes can usefully recover and bring to light additional information for victims, and this is welcome, but it is not the primary purpose of the criminal justice process.

10. Paragraphs 23 – 25

The UK Government believes that costly and open ended public inquiries are not the right way to deal with the legacy of the past. It isn't just about the length and cost of inquiries, though the SR recognises that they are costly. Public inquiries are by no means a guaranteed route in all cases to establishing the truth. And of course it would be impossible for every victim of the troubles to have a public inquiry. So they are by their nature selective, and can provoke divided views in Northern Ireland.

Each request for a public inquiry that is received is carefully considered on its own merits and full reasons are given where the decision has been not to hold such an inquiry. The SR's report makes specific mention of the Finucane case and it should be noted that a non-statutory review by Sir Desmond De Silva was held instead. In the Government's view the De Silva review clearly established the truth of what happened in the Finucane case and the then Prime Minister made a full apology in the House of Commons. The De Silva review, while not a public inquiry, also addressed a number of themes such as the lack of a framework for handling agents in NI, how the RUC handled threat intelligence and the flow of information from members of the security forces to loyalist paramilitaries in the late 80s.

The decision making process for setting up a public inquiry rests with the executive branch of government. This is appropriate not only because of the significant public cost but also the Executive is best placed to balance the public interest.

11. Paragraphs 26 – 29

The UK Government is supportive of the efforts of the Lord Chief Justice to reform the processes and procedures governing the legacy inquest process, and is hopeful that these reforms can lead to a prioritised and sequenced programme of inquests to be held. Such an approach would enable more effective deployment of resources across the outstanding caseload. This could lead to the clearing of the current backlog of open legacy inquests in a much quicker timescale than could otherwise be achieved.

The Secretary of State for Northern Ireland has made clear that proposals for reform of legacy inquests will be carefully considered by the UK Government.

The UK Government takes its responsibilities towards inquests seriously and fully complies with its disclosure obligations. But the Government must also comply with its duty to protect national security and the lives and safety of those who might be at risk through the disclosure of information. The Public Interest Immunity (PII) process only allows for the redaction of information which poses real risk of serious harm to an important public interest. The final decision on PII in inquests lies with the Coroner and not the Government. Only on very rare occasions are documents "heavily redacted", and only where this is justified on the basis of the potential damage to important public interests such as safety and security that would be caused by the disclosure of the information.

12. Paragraphs 33 – 34

The SR notes that, with regard to the Police Ombudsman, "limitations remain, including its inability to compel police testimony or investigate military and security

services”. The UK Government would draw attention to the fact that OPONI has, in relation to investigations into police misconduct, all the powers and privileges of a police constable, including the power to arrest, detain and interview individuals under caution. Furthermore, OPONI was set up to fulfil the specific statutory obligation to independently investigate complaints against the police. Other mechanisms exist to investigate complaints against the military or security services and hence this should not be portrayed as a limitation of OPONI.

13. Paragraphs 36 – 48

The SR refers to an “events-based approach” in this section. The UK Government would draw attention to the Oral History Archive and Implementation and Reconciliation Group, both of which are proposed under the Stormont House Agreement. Both of these bodies would approach their work in a manner beyond “events-based” and in particular one of the IRG’s core functions is receive reports on patterns and themes from the legacy bodies established under the Stormont House Agreement and to commission a report on these from independent academics.

The SR asserts that mechanisms he describes in section IV of his report (public inquiries, inquests, the Historical Enquiries Team, the Office of Police Ombudsman and the Independent Commission for the Location of Victims’ Remains) are dependent on particular decisions made by authorities and implies that these decisions may be directed on the basis of political considerations. The UK Government does not accept this. The agencies and law officers involved in these processes, the PSNI, Police Ombudsman, the Attorney General and the Director of Public Prosecutions, are all robustly independent and free from political interference.

Regarding the “fragmentation” to which the SR refers in paragraph 39 of his report; the HIU will, when established, assume responsibility for investigation of all outstanding investigations into Troubles-related deaths, bringing together the functions of the Historical Enquiries Team and the Police Ombudsman’s Historical Investigations Directorate. Measures will be put in place to ensure the HIU’s independence.

The UK Government notes that the SR does not present any evidence to support his claim of “overuse of national security”. The use of national security protections is not “blanket” as suggested. For instance, a public interest immunity application is highly specific to the case at hand, must be considered and signed by a Government minister after which it is closely scrutinised by a court or coroner, who are manifestly independent of Government.

The SR makes reference to other contexts in which state institutions are required to provide all relevant information, including “sensitive information”. The UK Government would draw attention to the proposed Historical Investigations Unit, and the legislation establishing it which would ensure full disclosure to the HIU from all UK Government departments and agencies. The SR also makes a tenuous link to “witness protection programs” without recognising not only the prohibitive financial costs of such schemes but also the personal cost to those forced to relocate in this way.

The SR draws comparison between the European Convention on Human Rights Article 2 obligations to protect the life of citizens and a “right to truth”. The UK Government acknowledges there is a careful balancing act in Northern Ireland between its obligations to protect the life and safety of individuals, and to carry out a

full and fair investigation into unlawful or suspicious deaths. Measures such as the PII process are designed to effectively manage this balance. The SR also alludes to a “(possible over-)reliance on informers.” This is not elaborated on nor is any evidence provided for this allusion. The UK government does not accept any narrative that providing information to the police and security services is wrong ;by contrast it considers that without intelligence gathering, often through use of human intelligence sources, more people would have died during the Troubles. Furthering this narrative is counter-productive to efforts to keep people safe in the present day by discouraging people from coming forward with information that could help to prosecute dangerous criminals or prevent crime taking place.

The UK Government is clear that its approach to disclosure in the interests of protecting the public interest on the grounds of national security and safety is lawful.

14. Paragraph 55

The UK Government does not accept the equivalence drawn by the SR between terrorists and state security forces (see paragraph [7] of this response). The concepts of self-defence, defence of other citizens and the legitimate and lawful use of reasonable force are all factors in considering prosecution of those charged with protecting the public. There can be no reasonable expectation that prosecutions of security force personnel should follow at a “coincident” rate with that of terrorists.

15. Paragraphs 61 – 78

The UK Government’s approach to the past makes victims the first priority. The Stormont House Agreement states that “further work will be undertaken to seek an acceptable way forward on the proposal for a pension for severely physically injured victims in Northern Ireland”. This is being taken forward by the Northern Ireland Executive.

16. Paragraph 82

The Stormont House Agreement proposes the establishment of the Implementation and Reconciliation Group (IRG). The Stormont House Agreement states at paragraph 53, “In the context of the work of the IRG, the UK and Irish Governments will consider statements of acknowledgement and would expect others to do the same.”

17. Paragraphs 103 – 104

Consensus for a specific Northern Ireland Bill of Rights has so far proven unachievable. The UK Government is willing to consider proposals for a Northern Ireland specific Bill of Rights if sufficient consensus can be reached or take forward this issue in the context of reform of UK human rights legislation.

18. Paragraphs 110 – 136

The UK Government notes that many of the recommendations in the SR’s report would be achieved through the full and faithful implementation of the Stormont House Agreement. The UK Government is committed to full delivery of the Agreement, and continues to work with the NI parties and other stakeholders to build the consensus needed to introduce legislation to establish the new legacy bodies.