

Opening Statement to Joint Committee on the Implementation of the Good Friday Agreement

Prof Kieran McEvoy Queen's University Belfast; Daniel Holder Committee on the Administration of Justice (CAJ), 7 July 2022

1. For over a decade the 'Model Bill Team' of academics of the School of Law in Queen's University Belfast and the principal human rights NGO the Committee on the Administration of Justice (CAJ) in Northern Ireland have worked collectively to find human rights compliant solutions to the legal and political challenges regarding dealing with the past in Northern Ireland. Our name is derived from a model implementation bill produced to implement the Stormont House Agreement in a human rights compliant manner, on which we engaged with both Governments and other stake holders. In particular, we have benchmarked legacy proposals against the requirements of the European Convention on Human Rights, the requirements of the Good Friday Agreement and the Stormont House Agreement itself.¹
2. We welcome the opportunity to give evidence to the Committee to which we previously gave evidence in 2018. We have also given evidence to several Committees in the UK Parliament and US Congress and engaged extensively with the UN and Council of Europe human rights mechanisms.
3. Following the UK's unilateral departure from the Stormont House Agreement (2014) which included a now seemingly abandoned bilateral treaty with the Irish government we critiqued the proposed policy set forward in the UK Command Paper of July 2021.² Our comparative analysis identified the proposed amnesty as being broader in scope than that introduced by General Pinochet in Chile. We raised also concerns that the proposed UK policy would shut down all meaningful investigations into the conflict – which have provided 'truth recovery with teeth' - and replace them with a new legacy body that had far more limited powers than any other mechanism that currently exists or was proposed under the SHA.
4. That Command Paper and its successor the Northern Ireland Troubles (Legacy and Reconciliation) (NITLR) Bill were built upon deeply misleading and inaccurate assertions concerning a 'witch-hunt' against British Army veterans. We have previously spelled out why such assertions are in essence 'fake news'.³ UN experts subsequently condemned the proposals as a flagrant breach of the UK's international obligations and the Council of Europe Human Rights Commissioner stated they were not ECHR compliant.
5. Nevertheless, the UK has proceeded to introduce and rush through legislation based on the Command Paper with limited changes. Whilst dressed up in language about reconciliation (notwithstanding the uniform opposition from across the political spectrum to the Bill in Northern Ireland), it is clear -not least from the statements by members of the UK government themselves – that the real driver for the legislation is to curtail investigations into the UK military and to 'take back control' of the narrative of the conflict.

¹ See further <https://www.dealingwiththepastni.com/>

² Model Bill Team (2021) Response to the UK Government Command Paper on Legacy in NI
<https://www.dealingwiththepastni.com/project-outputs/project-reports/model-bill-team-response-to-the-uk-government-command-paper-on-legacy-in-ni>

³ MBT (2020) Prosecutions Imprisonment and the SHA, esp. p.8-16.
<https://www.dealingwiththepastni.com/project-outputs/project-reports/prosecutions-imprisonment-and-the-stormont-house-agreement-a-critical-analysis-of-proposals-on-dealing-with-the-past-in-northern-ireland>

6. In place of the proposed general unconditional amnesty as set out in the Command Paper, the UK government has instead replaced it with a conditional amnesty. However, the bar for eligibility is so low that it is difficult to envisage any applicant not qualifying. For example, the legislation specifies that the granting of immunity is a subjective test – where the person provides an account ‘that is true to the best of their knowledge and belief’ – then an amnesty must be granted.

7. The bill also contains provisions to close down the existing mechanisms and thwart their work and replace independent judicial and investigative processes with mechanisms that are under direct UK Government control. We have previously pointed out the limitations of those existing mechanisms for dealing with the past in Northern Ireland including the inquest system, Police Ombudsman and independent police investigations – not least that they have often been hampered by delay and obfuscation tactics by UK state agencies. However, following a number of high-profile Ombudsman investigations (e.g., into the collusion and the Loughinisland bar killings), coronial inquests (e.g., the Ballymurphy inquest), civil actions (e.g., the Ormeau Road bookies murders) and various police investigations – this legislation appears when it appears that the current processes are actually working too well.

8. There has been no due process over the production of the Northern Ireland Troubles (Legacy and Reconciliation) Bill, the contents of which were not disclosed to the Northern Ireland Human Rights Commission, a core GFA institution, in accordance with its mandate prior to introduction into the UK Parliament.

9. We have concluded that the bill is unworkable, is in breach of the Good Friday Agreement, interferes with the devolved administration of justice in Northern Ireland, contravenes binding international law and that it will not deliver for victims and survivors, many of whom have waited for decades for truth and justice.

10. There are specific legal duties under Articles 2 and 3 of the ECHR that require independent and effective investigations into certain deaths, including those with potential state culpability. There are similar obligations regarding torture and serious injury. This bill has essentially involved a ‘find delete and replace’ exercise on a previous draft Bill published for consultation in 2018 (to implement the SHA) where the word ‘investigation’ has been substituted with the word ‘review’. In addition to shutting down all existing investigative mechanisms, will only – for a time limited period permit ‘reviews’ into certain cases, that in our view will not meet the standards for either independent or effective investigations, rendering the bill domestically unlawful as well as in conflict with the ECHR.

11. The extensive proposals on oral history, memorialisation and academic research appear designed to provide legal and political cover for impunity in the name of reconciliation. Moreover, these processes too are subject to direct interference by the UK government.

12. We consider the bill to be irredeemable and unfixable. It appears that it will nevertheless proceed through the UK Parliament. We recognised the concerns that the Government have clearly raised regarding the UK Bill. If and when the Bill becomes law an option for the State, not least as co-guarantor of the GFA, would be to challenge the UK over the Bill through an inter-state case to the European Court of Human Rights. The Dept of Foreign Affairs have worked tirelessly to steer the UK away from this reckless course of action. Through no fault of the Irish government, those diplomatic efforts have failed. An inter-state challenge would signal just how serious a threat to the Northern Ireland peace process and the international rule of law is represented by this Bill.