

**Special Rapporteur on the Promotion of Truth, Justice, Reparation and
Guarantees of Non-Recurrence
Follow up report on country visits
Questionnaire
United Kingdom of Great Britain and Northern Ireland**

Recommendations to the Government and relevant State bodies (A/HRC/34/62/Add.1)

At the time of the final report, the new institutional set-up to address the legacy of the Troubles had been outlined in the Stormont House Agreement. It comprised an independent Historical Investigations Unit; an Independent Commission on Information Retrieval; an Oral History Archive; and an Implementation and Reconciliation Group. With regards to these institutions,

- Has the Historical Investigations Unit been granted independence, access to information and adequate funding to avoid problems of earlier mechanisms?
- Has the Implementation and Reconciliation Group been designed, staffed, funded and authorized to address the patterns, themes and structural dimensions of a conflict that cannot be properly understood or addressed as the sum of isolated cases?
- Regarding the Oral History Archive, have issues of its independence and modalities of support to guarantee access and preservation of people’s testimony been resolved?
- Have links been established between the different elements of these institutions, such as their timeline, so that they can work as a coordinated whole?
- Have measures been put in place to ensure that these institutions deliver results necessary for accounting for and redressing the past?

(See: A/HRC/34/62/Add.1 para 115-121)

None of the institutions set out above have been established.

In 2018, the NI Office consulted on introducing a draft Stormont House Agreement Bill, which aimed to implement the Stormont House Agreement institutions outlined. In 2019, the NI Office published a summary of the 17,000 responses to the legacy consultation. This document was to be used to inform the UK Government's next steps, which will be set out “in due course”.¹ The overarching message from the majority of respondents was “the current system needs to be reformed”.² The NI Office accepted it has “an obligation to seek to address the legacy of the past in a way that builds for the future... [and confirmed that the UK] Government remains fully committed to the implementation of the Stormont House Agreement”.³

In 2020, following the re-establishment of the NI Assembly, the New Decade, New Approach document stated that:

¹ NI Office, 'Press Release: Government Publishes Summary of Responses to Legacy Consultation', 5 July 2019.

² NI Office, 'Addressing the Legacy of NI's Past: Analysis of the Consultation Responses' (NIO, 2019), at 4.

³ Ibid.

in moving to a better, more prosperous and shared future the parties recognise the need to address the legacy of the past. To that end, the parties are committed to working together and to doing everything possible to heal wounds and eliminate the issues that divide us.⁴

The UK Government committed to:

within 100 days, publish and introduce legislation in the UK Parliament to implement the Stormont House Agreement, to address NI legacy issues. The [UK] Government will now start an intensive process with the NI parties, and the Irish Government as appropriate, to maintain a broad-based consensus on these issues, recognising that any such UK Parliament legislation should have the consent of the NI Assembly.⁵

The UK Government also committed to provide funding to implement the Stormont House Agreement proposals on legacy. This was supported by the Government of Ireland who affirmed:

its commitment to working with the UK Government to support the establishment of the Stormont House Agreement legacy institutions as a matter of urgency, including by introducing necessary implementing legislation in the Oireachtas, to deal with the legacy of the Troubles and support reconciliation, meeting the legitimate needs and expectations of victims and survivors.⁶

However, on 18 March 2020, the Secretary of State for NI, Brandon Lewis MP, issued a written Ministerial Statement outlining the UK Government's new approach to addressing the legacy of the past in NI. This statement indicates a significant change of approach from the commitments made in New Decade, New Approach and the Stormont House Agreement. In the Secretary of State for NI's view, "it is clear that, while the principles underpinning the draft Bill as consulted on in 2018 remain, significant changes will be needed to obtain a broad consensus for the implementation of any legislation".⁷ His statement continued that:

while there must always be a route to justice, experience suggests that the likelihood of justice in most cases may now be small, and continues to decrease as time passes.

Our view is that we should now therefore centre our attention on providing as much information as possible to families about what happened to their loved ones - while this is still possible.

Our proposals have therefore evolved to remain true to the principles of the Stormont House Agreement, but with a greater emphasis on gathering information for families; moving at a faster pace to retrieve

⁴ NI Office, 'New Decade, New Approach' (NIO, 2020), at 14.

⁵ Ibid, at 48.

⁶ Ibid, at 62.

⁷ NI Office, 'Press Release: UK Government sets out way forward on the legacy of the past in NI', 18 March 2020.

knowledge before it is lost; and doing more to help individuals and society to share and understand the tragic experiences of the past.⁸

The Ministerial statement also sets out that:

the [UK] Government will ensure that the investigations, which are necessary are effective and thorough, but quick, so we are able to move beyond the cycle of investigations that has, to date, undermined attempts to come to terms with the past. Only cases in which there is a realistic prospect of a prosecution as a result of new compelling evidence would proceed to a full police investigation and if necessary, prosecution. Cases which do not reach this threshold, or subsequently are not referred for prosecution, would be closed and no further investigations or prosecutions would be possible - though family reports would still be provided to the victims' loved ones. Such an approach would give all participants the confidence and certainty to fully engage with the information recovery process.⁹

In April 2020, the Commission wrote to the Secretary of State for NI, Brandon Lewis MP, expressing concerns that this new approach by the UK Government is not human rights compliant, particularly regarding Article 2 ECHR.¹⁰

Following the Ministerial Statement, the House of Commons NI Affairs Committee launched an inquiry into whether the UK Government's proposals deliver for victims, survivors and their families. The Commission highlighted the need for the Stormont House Agreement to be implemented fully and effectively and raised concerns that the UK Government's new direction as set out in the Ministerial statement is not human rights compliant.¹¹ In October 2020, the NI Affairs Committee published an interim report finding the UK Government's proposals were a "unilateral and unhelpful departure from the Stormont House Agreement rather than a positive and progressive evolution" and that the proposed "permanent closure of a case in which a serious crime has been committed raises profound legal, ethical and human rights issues".¹² Additionally, the NI Affairs Committee was "dismayed" by the lack of engagement and consultation by the UK Government with stakeholders, NI parties and the Government of Ireland both before and after publication of the Ministerial statement.¹³ The NI Affairs Committee stated that the UK "Government must, as soon as possible, introduce legislation that is consistent with the six principles of the Stormont House Agreement".¹⁴

In December 2020, the CoE Committee of Ministers "expressed profound concern" at the lack of information within the Ministerial Statement and decided to resume examination of the McKerr cases in March 2021.¹⁵

⁸ Ibid.

⁹ Ibid.

¹⁰ Letter from NI Human Rights Commission to Secretary of State for NI, Brandon Lewis MP, 1 April 2020.

¹¹ NI Human Rights Commission, 'Submission to the NI Affairs Committee Inquiry into Addressing the Legacy of NI's Past: UK Government's New Proposals' (NIHRC, 2020).

¹² House of Commons NI Affairs Committee, 'Addressing the Legacy of NI's Past: The Government's New Proposals (Interim Report)' (NIAC, 2020), at paras 15 and 38.

¹³ Ibid, at 24.

¹⁴ Ibid, at 15.

¹⁵ CM/ResDH(2020)367, 'Interim Resolution: Execution of the Judgments of the ECtHR – McKerr and Other Seven Cases Against the UK', 3 December 2020.

Limit: 1,000 words

Has the shortfall in data on virtually all aspects relating to truth, justice and reparation been addressed? For example, lack of data informing assessments of costs, distribution of efforts and effectiveness in each area of the mandate.

(See: A/HRC/34/62/Add.1 para 123)

The UK Government and Northern Ireland Executive have made a number of broad-sweeping statements on how much the introduction of the institutions set out within the Stormont House Agreement would cost, but to the NI Human Rights Commission's knowledge the shortfall in data to make an informed decision on truth, justice and reparation continues.

Limit: 500 words

Has the proposal made by the Lord Chief Justice of Northern Ireland to improve the efficacy of coroner inquests been supported?

(See: A/HRC/34/62/Add.1 para 124)

Funding for legacy inquests had been delayed for a number of years.¹⁶ In 2019, following a legal challenge,¹⁷ the Department of Justice NI established a new Legacy Inquest Unit within the Coroner's Service under the remit of the Lord Chief Justice. The Legacy Inquest Unit is to complete its work within five years, starting in 2019/2020.

There is a legacy caseload of 52 cases relating to 93 deaths. These are made up of one inquest in which findings have been given and a final legal ruling is awaited, five inquests (the Ballymurphy series) in which findings are awaited, two in which hearings have commenced and are adjourned, and 44 which are pending.¹⁸

A schedule had been set to hear preliminary hearings into all the outstanding cases starting September 2019, with the exception of the nine Stalker and Sampson cases into an alleged Royal Ulster Constabulary shoot-to-kill policy in the 1980s. Mr. Justice O'Hara and Mr. Justice McAlinden have been allocated these nine cases.¹⁹

In 2019, the Lord Chief Justice, Sir Declan Morgan, confirmed that "representatives for the families and the relevant agencies have been asked to provide an update on each case

¹⁶ 'Legacy inquests in NI "can be dealt with in five years"', *BBC News*, 12 February 2016.

¹⁷ *In the Matter of an Application by Brigid Hughes for Judicial Review* [2018] NIQB 30, at para 12.

¹⁸ DH-DD(2020)931, 'CoE Committee of Ministers Communication from the Authorities in the McKerr Group of Cases v UK (Application No 28883/95)', 28 October 2020, at 4.

¹⁹ Judiciary NI, 'Press Release: Statement from the Presiding Coroner Mrs Justice Keegan – Legacy Inquests', 4 May 2020.

in advance of these hearings”.²⁰ The Lord Chief Justice also emphasised that “it is important that all those involved work together to ensure that legacy inquest cases are prepared for hearing expeditiously and that disclosure issues are identified early and, through collaboration and dialogue, that reasonable and proportionate solutions are found”.²¹

The first full hearings were to start in April 2020 and a thematic approach to the hearing schedule was being considered to avoid the potential of missing the bigger picture.²² These initial hearings have been allocated to a Coroner or judge.²³ However, due to COVID-19 all non-urgent court business, including legacy inquests, were adjourned on 20 March 2020. This is subject to ongoing review.²⁴ Work is ongoing, under the presiding Coroner and together with the relevant parties to consider practical solutions to the challenges posed by witnesses giving evidence, the modification of the court estate to allow for hearings and the use of technology.²⁵ However, Mrs. Justice Keegan stated that “It remains the case that the full impact of the Covid-19 pandemic on legacy inquests is not yet known.”²⁶ The UK Government has stated that the delay due to COVID-19 “will have an impact on the timeline for the Five Year Plan, however, because the full impact of the pandemic on legacy inquests is not yet known, the overall impact on the timeline cannot yet be assessed”.²⁷

In October 2020, no legacy inquests had taken place since COVID-19 related measures were introduced, with hearings to be listed going forward “where possible”.²⁸

Limit: 500 words

Has the structural and systemic dimensions of violence and rights violations and abuses been examined? Keeping in mind that, a comprehensive understanding of the past requires instruments that do not treat it merely as a series of unconnected events.

(See: A/HRC/34/62/Add.1 para 125)

There has been independent research into the structural and systematic dimensions of violence and rights violations and abuses.²⁹ However, there has been no such work undertaken with the support of the UK Government. At political and community levels, such independent research is also often met with mixed responses, focused on political viewpoints, as opposed to an objective consideration of how such violence arose and how to effectively remedy and prevent in the future.

²⁰ ‘The Lord Chief Justice, Declan Morgan’s, Opening of Term Address 2019’, Royal Courts of Justice, 5 September 2019.

²¹ Ibid.

²² ‘Families assured over timeframe for legacy inquests’, *Belfast Telegraph*, 7 June 2019.

²³ Judiciary NI, ‘Press Release: Statement from the Presiding Coroner Mrs Justice Keegan – Legacy Inquests’, 4 May 2020.

²⁴ Ibid.

²⁵ Judiciary NI, ‘Press Release: Statement from the Presiding Coroner Mrs Justice Keegan – Legacy Inquests’, 30 June 2020.

²⁶ Ibid.

²⁷ DH-DD(2020)931, ‘CoE Committee of Ministers Communication from the Authorities in the McKerr Group of Cases v UK (Application No 28883/95)’, 28 October 2020, at 4.

²⁸ Ibid, at 4.

²⁹ See David McKittrick and David McVea, ‘Making Sense of the Troubles’ (Penguin Books, 2000); Fionnuala Ní Aoláin, ‘The Politics of Force: Conflict Management and State Violence in Northern Ireland’ (The Black Staff Press, 2000).

Any Government-supported examinations have tended to focus on individual events, for example, Bloody Sunday and legal inquests. Through the statement issued by the Secretary of State for Northern Ireland, Brandon Lewis MP, on 18 March 2020³⁰ and the refusal of the UK Government to undertake a public inquiry into Pat Finucane's death, while not ruling it out either or to initiate further investigations into the McKerr group of cases,³¹ the indication is that any examination that has not already been agreed to is unlikely to be undertaken by the current UK Government.

Limit: 500 words

Have truth, justice and reparation initiatives expanded their focus beyond cases leading to death to address violations and abuses such as torture, sexual harm, disappearances and illegal detention?

(See: A/HRC/34/62/Add.1 para 126)

No, there have been no steps to date to expand the focus of truth, justice and reparation initiatives beyond cases leading to death. In terms of the UK Government's intentions, the Ministerial statement does not address the issue of expanding the remit of the Historical Investigations Unit to address allegations of torture, sexual violence, and disappearances committed during 'the Troubles'. There are no plans that the Commission is aware of to address this using other initiatives.

Furthermore, there are 28 cases where individuals have died at the scene of a conflict-related incident, but are not recorded as conflict-related deaths.³² These cases include individuals that died of shock-related injuries, for example a heart attack, when exposed to scenarios such as arriving at a scene where a relative had been shot, being within the vicinity of a bomb attack, or raids and missile attacks on their home.³³ These cases are not recognised as currently falling within the remit of the Stormont House Agreement and its proposed remedies.

Limit: 500 words

Are truth seeking and justice arrangements incorporating procedures to guarantee both the reality and appearance of independence and impartiality? Are they being funded in a reliable way that guarantees independence and effectiveness, and allows for long-term planning?

³⁰ NI Office, 'Press Release: UK Government sets out way forward on the legacy of the past in NI', 18 March 2020.

³¹ 'Pat Finucane: No public inquiry into Belfast lawyer's murder', *BBC News*, 30 November 2020; CM/ResDH(2020)367, 'Interim Resolution: Execution of the Judgments of the ECtHR – McKerr and Other Seven Cases Against the UK', 3 December 2020.

³² Noel McAdam, 'New push to recognise tragic cases of 'forgotten dead' of the Troubles', *Belfast Telegraph*, 18 July 2017; Roundtable discussion with civil society representatives, January 2019.

³³ *Ibid.*

(See: A/HRC/34/62/Add.1 para 127)

As set out in question 3, it appears that efforts are being taken regarding coroners' inquests to guarantee independence, impartiality and reliable funding.

However, as set out in question 4, independence, impartiality and reliable funding are a cause for concern given the UK Government's plans outlined in the March 2020 Ministerial Statement.

The UK Government's continued refusal to conduct a public inquiry into Pat Finucane's murder also raises questions of independence and impartiality. In 2015, the Finucane family unsuccessfully challenged in the NI High Court the decision of the then Secretary of State of NI to hold a review into the death rather than a public inquiry of the kind recommended following a judicial review by Judge Peter Cory.³⁴ A further appeal to the NI Court of Appeal in 2017 was unsuccessful.³⁵ In February 2019, the UK Supreme Court unanimously made a declaration that there has not been an Article 2 ECHR compliant inquiry into the death of Patrick Finucane. The UK Supreme Court identified the lack of ability of Sir Desmond De Silva to compel the attendance of witnesses or cross-examine witnesses on the veracity of their evidence as limitations of the De Silva review.³⁶

The UK Supreme Court did not order a public inquiry, noting that:

it is for the State to decide, in light of the incapacity of Sir Desmond de Silva's review and the inquiries which preceded it to meet the procedural requirement of Article 2, what form of investigation, if indeed any is now feasible, is required in order to meet that requirement.³⁷

In October 2020, a representative of the Secretary of State for NI committed to the UK Government providing a decision on whether it would undertake an inquiry into Pat Finucane's death by end of November 2020.³⁸ In November 2020, four political parties (Alliance Party, Green Party, SDLP and Sinn Féin) jointly wrote to the Secretary of State NI, Brandon Lewis MP, calling for him to "act in the public interest" and hold a public inquiry into Pat Finucane's murder.³⁹ On 30 November 2020, the Secretary of State NI confirmed that the UK Government does not intend to hold a public inquiry into Pat Finucane's death at this point in time, stating that "I am not taking the possibility of a public inquiry off the table at this stage, but it is important we allow ongoing Police Service NI and Police Ombudsman NI processes to move forward".⁴⁰ The Police Service NI issued a statement confirming there are currently no new lines of inquiry and it will decide if a further review is necessary. If so, it is highly likely that any review will need

³⁴ *Finucane's (Geraldine) Application* [2015] NIQB 57.

³⁵ 'Finucane family consider legal options after losing appeal for public inquiry', *Belfast Telegraph*, 21 February 2017.

³⁶ *In the Matter of an Application by Geraldine Finucane for Judicial Review (NI)* [2019] UKSC 7.

³⁷ *Ibid*, at para 153.

³⁸ Alan Erwin, 'Pat Finucane public inquiry decision by end of November, pledges Brandon Lewis', *Belfast Telegraph*, 12 October 2020.

³⁹ 'Pat Finucane killing: Parties call for public inquiry', *BBC News*, 23 November 2020.

⁴⁰ 'Pat Finucane: No public inquiry into Belfast lawyer's murder', *BBC News*, 30 November 2020.

to be conducted independently of the Police Service NI due to the “accepted position of State involvement in this matter”.⁴¹ Highlighting the UK Supreme Court judgment, the Finucane family has stated that it will continue to campaign for a full public inquiry.⁴²

Limit: 500 words

In his report, the Special Rapporteur stressed that adjudicating issues concerning disclosure is central to the credibility of truth and justice initiatives. To this end,

- Has the use of “national security” as a blanket term been avoided in order to make transparent past practices that were, retrospectively, illegal under national and international law and of dubious effectiveness in furthering security?
- Has the Government worked with academic and non-governmental experts to devise an approach that makes disclosure practices human rights and constitutionally compliant?

(See: A/HRC/34/62/Add.1 para 128)

In contrast to the proposal for an Independent Commission on Information Retrieval (ICIR) under the Stormont House Agreement, 2014, established by way of a treaty between the Governments of Ireland and the United Kingdom, the recent Ministerial statement on 18 March 2020 proposes that a single “body will oversee and manage both the information recovery and investigative aspects of the legacy system, and provide every family with a report with information concerning the death of their loved one”.⁴³

The previously proposed ICIR provided for the use of the national security as a means to remove or redact information from reports provided to a family in respect of a relevant death. The NI Human Rights Commission had previously advised that an appeal mechanism on the issue of redaction or disclosure of information should be introduced or recourse to the courts in order to challenge such decisions.⁴⁴

The NI Human Rights Commission has raised concerns about this significant departure from the approach initially envisaged in the Stormont House Agreement Bill and that was subject to extensive public consultation. It is unclear how the proposed new mechanism will manage information recovery and how national security exemptions will be engaged.

Regarding the question on national security, the Royal Assent of the Counter-Terrorism and Border Security Act 2019 raised broader concerns. This Act, inter alia, strengthens the legal framework addressing those who show support for proscribed organisations and makes provision enabling persons at ports and borders to be questioned for national security and other related purposes. During the scrutiny of the now Act, a number of

⁴¹ Police Service NI, 'Press Release: Statement from Chief Constable Simon Byrne following the announcement from the Secretary of State on the murder of Pat Finucane', 30 November 2020.

⁴² 'Pat Finucane: No public inquiry into Belfast lawyer's murder', *BBC News*, 30 November 2020.

⁴³ NI Office, 'Press Release: UK Government sets out way forward on the legacy of the past in NI', 18 March 2020.

⁴⁴ NIHRC, Submission to NIO's Consultation on Addressing the Legacy of Northern Ireland's Past (August 2018) paras 4.18, 4.20.

human rights concerns were raised around the lack of a definition of ‘hostile activity’ and moving criminal law into private spaces.⁴⁵

The NI Human Rights Commission is not aware of any Government-supported work with academics and non-governmental experts to devise an approach that makes disclosure practices human rights and constitutionally compliant.

Limit: 500 words

When national security has been served within the limits of the law, is it allowing for adequate means of comprehensive redress in cases of breach of obligations?

(See: A/HRC/34/62/Add.1 para 129)

On 24 September 2020, the Covert Human Intelligence (Criminal Conduct) Bill was introduced into the Westminster Parliament. The Bill provides “a statutory power for the security and intelligence agencies, law enforcement agencies and a limited number of other public authorities to authorise Covert Human Intelligence Sources (CHIS) to participate in criminal conduct where it is necessary and proportionate to do so for a limited set of specified purposes”⁴⁶ The Bill has raised concerns as there is no explicit limitation on the types of crimes which could be authorised, leaving it open to serious crimes and human rights abuses not being excluded. NGOs have also raised concerns about the adequacy of the authorisation and oversight mechanisms, falling to the Investigatory Powers Commissioner, and the apparent bar to victims of authorised activity from seeking redress and compensation.⁴⁷

In a case known as the Third Direction challenge, NGOs challenged a policy, which authorised the commission of criminal offences by officials and agents of the Security Service. In its decision in December 2019, the Investigatory Powers Tribunal held, by a majority, that there was an implied power permitting the activities, which were the subject of the challenge. The NI Human Rights Commission understands that this decision is subject to appeal before the Court of Appeal.

Limit: 500 words

On reparations, has the issue concerning pensions for almost 500 seriously injured victims been resolved?

(See: A/HRC/34/62/Add.1 para 130)

⁴⁵ NI Human Rights Commission, ‘Parliamentary Briefing Paper on Counter-Terrorism and Border Security Bill’ (NIHRC, 2018); UK Joint Committee on Human Rights, ‘10 clauses Government Must Change in Counter-Terrorism and Border Security Bill’, 12 October 2018.

⁴⁶ Covert Human Intelligence Sources (Criminal Conduct) Bill, Explanatory Memorandum (23 September 2020) para 1.

⁴⁷ Committee on the Administration of Justice and others, ‘Briefing for second reading of the Covert Human Intelligence Sources (Criminal Conduct) Bill, October 2020.

In January 2020, the Victims' Payments Regulations 2020 were passed, establishing a scheme enabling one or more payments to be made to, or in respect of, a person who has sustained an injury as a result of a 'Troubles-related injury'. The regulations were due to enter into force by 31 May 2020.⁴⁸ However, funding issues and eligibility criteria for the scheme has caused delays.⁴⁹

On eligibility, the Victims' Payments Board is to decide on a case-by-case basis.⁵⁰ Victims' payments are only inappropriate if the person has a relevant conviction or if there are exceptional circumstances. This requires consideration of the harm caused to someone else by the offence for which the applicant has a relevant conviction for, the specific nature of the offence and length of sentence, the age at the time of offence, or the passage of time since that offence and the individual's behaviour since. The UK Government is clear that those injured at their own hand are excluded and has stated that:

it is not appropriate for payments to be made to people who have a serious conviction for an offence that caused serious harm to others. Nor is it appropriate for payments to be made to people who have a recent conviction for a terrorist related offence, whether the offence is serious or not. In the unlikely event that the Board decides to award payments in such cases, despite this guidance being engaged, the [UK] Government will reserve the ability to exercise a power of intervention.⁵¹

In response, the Minister of Justice stresses "it is critical that the Board... can carry out its work independently. Any external intervention has the potential to undermine the operation of the Board and those arrangements are clearly set out in Regulations".⁵²

On funding, in June 2020, the UK Government stated that "all costs for this scheme, including ongoing costs, should be funded by the NI Executive. It is a devolved matter and devolved matters are typically funded by the block grant".⁵³

In August 2020, following a NI High Court judgment,⁵⁴ the Department of Justice was designated to administer the Victims' Payments Scheme. The Department of Finance has committed £2.5 million for the establishment and initial operation of the Scheme, but the Minister of Justice estimates that overall the scheme could cost up to £800 million.⁵⁵ It remains unclear as to where the required funding will come from. In October 2020, work continued by the Department of Justice to open the scheme to applications in early March 2021. This includes the development of an IT system, the deployment and training of staff for administrative preparations, the development of a medical assessment process

⁴⁸ Section 10, Northern Ireland (Executive Formation etc) Act 2019.

⁴⁹ Mark Rainey, 'Concerns that eligibility row is blocking Troubles pension', *News Letter*, 23 May 2020.

⁵⁰ NI Office, 'Guidance on Decision-making for the Victims' Payments Scheme' (NIO, 2020).

⁵¹ NI Office, 'Press Release: Secretary of State issues Victims' Payments Guidance', 14 August 2020.

⁵² NI Assembly Hansard, 'Response to Written Question – Victims' Payments Scheme – Naomi Long MLA – AQO 839/17-22', 6 October 2020.

⁵³ House of Commons Hansard, 'Response to Written Question: Terrorism – NI – Robin Walker MP – 64964', 30 June 2020.

⁵⁴ *In the Matter of an Application for Judicial Review by Mrs Jennifer McNern and The Executive Office and the Secretary of State for NI and the In the Matter of an Application for Judicial Review by Mr Brian Turley and the Executive Office and the Secretary of State for NI and in the Matter of Decisions of the Executive Office and the Secretary of State for NI* [2020] NIQB 57, at para 30(b).

⁵⁵ *In the Matter of an Application for Judicial Review by Mrs Jennifer McNern and The Executive Office and the Secretary of State for NI and the In the Matter of an Application for Judicial Review by Mr Brian Turley and the Executive Office and the Secretary of State for NI and in the Matter of Decisions of the Executive Office and the Secretary of State for NI* [2020] NIQB 57, at para 32; 'Executive Office ordered to pay pension court costs', *BBC News*, 28 August 2020.

and the appointment of the Victims' Payments Board. The Minister of Justice has stressed that "not all of those issues fall within the direct control of the Department of Justice" and that the ability for the scheme to open is "subject to funding".⁵⁶

Limit: 500 words

Have discriminatory barriers to reintegrate demobilized persons been eliminated, as recommended by the Fresh Start Panel? (i.e. legislative and other discriminatory barriers that prevent former prisoners from having their full citizenship restored- such as access to employment opportunities, and restrictions on pensions and eligibility for home insurance or bank loans).

(See: A/HRC/34/62/Add.1 para 131)

The recommendations of the Fresh Start Panel have not been completed, although some work has taken place.⁵⁷ The most recent public update on progress, in June 2020, highlights that policy instructions on amending the Fair Employment and Treatment Order 1998 have been drafted for a Ministerial decision, but no further progress is known.⁵⁸ The NI Commission understands the NI Civil Service has implemented the Employers' Guidance and all policies have been amended to adopt this change.⁵⁹ However, implementation of this guidance is not known. In respect of access to visa and insurance, the most recent progress update, the NI Executive identifies that officials have engaged with the US Consulate and the embassies of Australia, Canada and New Zealand in respect of individual cases.⁶⁰ No formal policy changes have been identified.⁶¹

The NI Executive Office's Communities in Transition (CIT) project was established to support initiatives aimed at building capacity in communities in transition. Projects delivered so far include areas such as restorative practice, health and wellbeing, community safety and urban regeneration.⁶² The CIT team is currently working to deliver projects addressing monetary exploitation and providing support and services to both loyalist and republican ex-prisoners in eight geographical areas across Northern Ireland, thought to be under the most influence and coercive control of paramilitary structures. The NI Human Rights Commission understands that the provision of these programmes is currently out for tender.

⁵⁶ NI Assembly Hansard, 'Oral Question: Victims' Payments Scheme – Sinead Bradley MLA – AQO 567/17-22', 7 September 2020; NI Assembly Hansard, 'Oral Question: Victims' Payments Scheme – Gary Middleton MLA – AQO 571/17-22', 7 September 2020; NI Assembly Hansard, 'Oral Question: Victims' Payments Scheme – Rosemary Barton MLA – AQO 572/17-22', 7 September 2020; NI Assembly Hansard, 'Oral Question: Victims' Payments Scheme – Alan Chambers MLA – AQO 574/17-22', 7 September 2020; NI Assembly Hansard, 'Response to Written Question – Victims' Payments Scheme – Naomi Long MLA – AQO 839/17-22', 6 October 2020.

⁵⁷ Department of Justice NI, 'Fresh Start Panel report on the Disbandment of Paramilitary Groups in Northern Ireland', 7 June 2016.

⁵⁸ Department of Justice NI, 'Tackling Paramilitary Activity, Crime and Organised Crime, Executive Action Plan, Update on Delivery' (March 2020) p.38.

⁵⁹ Department of Justice NI, 'Tackling Paramilitary Activity, Crime and Organised Crime, Executive Action Plan, Update on Delivery' (March 2020) p.38.

⁶⁰ Department of Justice NI, 'Tackling Paramilitary Activity, Crime and Organised Crime, Executive Action Plan, Update on Delivery' (March 2020) p.40.

⁶¹ Ibid.

⁶² Department of Justice NI, 'Tackling Paramilitary Activity, Crime and Organised Crime, Executive Action Plan, Update on Delivery' (March 2020) pp.41-43.

In an update from the TEO, the Commission understands that while the Tackling Paramilitary Activity, Criminality and Organised Crime Programme was due to expire in March 2021, there is an intention from the Department of Justice to extend the programme in line with commitments made under the New Decade New Approach agreement.⁶³

Limit: 500 words

Has support to organizations that make an effort building bridges between communities and victims' groups increased?

(See: A/HRC/34/62/Add.1 para 132)

The NI Human Rights Commission is not in a position to comment on this question.

Limit: 500 words

Have civil society organizations in general and non-governmental organizations in particular considered whether continued focus on particular groups of victims should not, decades after the end of the conflict, give way to a focus on all victims, regardless of their affiliation or identity, in order to depoliticize support for victims?

(See: A/HRC/34/62/Add.1 para 133)

The NI Human Rights Commission is not in a position to comment on this question.

Limit: 500 words

Has a general policy supporting memorials been agreed that could raise support for such activities; incentivize the establishment of memorials that would foster mutual understanding, or at least prevent the instrumentalization of memory; complement and stimulate other forms of truth-telling; and guarantee the involvement of and participation by victims in all memorialization activities?

(See: A/HRC/34/62/Add.1 para 134)

The NI Human Rights Commission is not in a position to comment on this question.

Limit: 500 words

⁶³ Update provided by the Executive Office to the NIHRC, 14 January 2021.

Have all stakeholders re-engaged in adopting a bill of rights for Northern Ireland?

(See: A/HRC/34/62/Add.1 para 135)

The NI Human Rights Commission cannot confirm whether all stakeholders have re-engaged in adopting a Bill of Rights for Northern Ireland. However, the New Decade, New Approach agreement committed to establishing a NI Assembly Ad Hoc Committee on a Bill of Rights, assisted by a panel of five experts appointed jointly by the First Minister and Deputy First Minister.⁶⁴ The expert panel is yet to be established, but is under active consideration by the Executive Office.⁶⁵ However, in March 2020, the Ad Hoc Committee on a Bill of Rights was established. The Commission was one of the first to provide oral evidence to the Ad Hoc Committee on the importance of developing a Bill of Rights for NI.

In August 2020, the Ad Hoc Committee on a Bill of Rights published its forward work plan for September to December 2020, which includes gathering evidence on international experiences, particular circumstances of NI, human rights, Brexit and justiciability and enforcement.⁶⁶ The Ad Hoc Committee is currently undertaking a public consultation on creating a Bill of Rights for NI, which is due to close in January 2020. The Ad Hoc Committee is due to submit its report to the Northern Ireland Assembly in February 2022.

Limit: 500 words

Have policy instruments been enacted to remove exclusionary barriers, reduce inequalities and minimize poverty? Such measures are essential for non-recurrence.

(See: A/HRC/34/62/Add.1 para 136)

In June 2015, the NI High Court ruled that the NI Executive had failed to adopt an identifiable strategy setting out how it proposes to tackle poverty, social exclusion and patterns of deprivation based on objective need in furtherance of its obligation to do so under the NI Act 1998, section 28E.⁶⁷

The New Decade, New Approach agreement renewed the commitment to developing an anti-poverty strategy.⁶⁸ In October 2020, the Department for Communities published an indicative timetable for the development and publication of the anti-poverty strategy.

⁶⁴ NI Office, 'New Decade, New Approach' (NIO, 2020), at para 37.

⁶⁵ Email correspondence between NI Assembly Ad Hoc Committee on a Bill of Rights and NI Human Rights Commission, 21 October 2020.

⁶⁶ Ad Hoc Committee on a Bill of Rights, 'Forward Work Programme: September-December 2020'. Available at: <http://www.niassembly.gov.uk/assembly-business/committees/2017-2022/ad-hoc-committee-on-a-bill-of-rights/forward-work-programme/>

⁶⁷ *Committee on the Administration of Justice and Brian Gormally's Application* [2015] NIQB 59.

⁶⁸ NI Office, 'New Decade, New Approach' (NI Office, 2020), at 9.

Development of this strategy adopts a co-design approach, which includes appointing an Expert Advisory Panel and undertaking ongoing engagement with a Co-Design Group and cross-departmental working group made up of key stakeholders. The Expert Panel has been tasked with gathering evidence to inform the strategy and is due to provide a report to the Department for Communities by the end of December 2020. The Co-Design Group and cross-departmental working group are due to regularly meet from November 2020 until at least finalisation of themes and the action plan in June 2021. The strategy is due to be subject to public consultation in August 2021, followed by its publication in December 2021. The Commission is a member of the Co-Design Group for the anti-poverty strategy.⁶⁹

In March 2019, the current Child Poverty Strategy expired.⁷⁰ The New Decade, New Approach agreement committed to publishing a Child Poverty Strategy.⁷¹ In September 2020, the Minister for Communities, Carál Ní Chuilín MLA, announced that the existing child poverty strategy has been extended to May 2022. This is on the basis there may be scope to take child poverty forward within the wider anti-poverty strategy.⁷²

Additionally, the continuation of social security and tax reforms remain a concern. The Northern Ireland Executive agreed a mitigation package, which has eased the full impact to some degree. In March and June 2020, the Department for Communities extended the social security reform mitigation package through agreement with the Department of Finance under the Budget Act (NI) 2020 and Budget (No 2) Act 2020. The current arrangements are in place until December 2020 and are being kept under review in the absence of amendments to the Welfare Reform (NI) Order 2015.⁷³

In September 2020, the Minister for Communities confirmed her intention to introduce primary legislation to amend as a matter of urgency the Welfare Reform (NI) Order 2015 to provide for an extension of social security mitigation payments for people affected by the bedroom tax.⁷⁴ It is also the Minister for Communities' intention to address the two-child tax credit and bedroom cap in future legislation and regulations.⁷⁵ The Minister for Communities also confirmed that any changes will be developed through co-design.⁷⁶

The NI Human Rights Commission has undertaken a cumulative impact assessment into the impact of these reforms in Northern Ireland and the existing mitigation package, which can be viewed at:

https://www.nihrc.org/uploads/publications/Final_CIA_report_Oct_2019.pdf

Limit: 500 words

⁶⁹ Department for Communities, 'Social Inclusion Strategies'. Available at: <https://www.communities-ni.gov.uk/articles/social-inclusion-strategies>

⁷⁰ NI Executive, 'The Executive's Child Poverty Strategy' (NI Executive, 2016); Department for Communities, 'Press Release: Minister announces extension to Child Poverty Strategy', 11 September 2020.

⁷¹ NI Office, 'New Decade, New Approach' (NIO, 2020), at 27.

⁷² Department for Communities, 'Press Release: Minister announces extension to Child Poverty Strategy', 11 September 2020.

⁷³ NI Assembly Hansard, 'Oral Questions: Welfare Mitigations Schemes Primary Legislation – Cara Hunter MLA – AQO 594/17-22', 8 September 2020; Email from Cliff Edge Coalition to NI Human Rights Commission, 29 September 2020.

⁷⁴ NI Assembly Hansard, 'Oral Questions: Welfare Mitigations Schemes Primary Legislation – Cara Hunter MLA – AQO 594/17-22', 8 September 2020.

⁷⁵ Ibid.

⁷⁶ Letter from Minister for Communities, Carál Ní Chuilín MLA, to NI Human Rights Commission, 30 June 2020.

Have any further laws, regulations, policies, administrative decisions or other measures affecting the promotion of truth, justice, reparation and guarantees of non-recurrence been implemented following the Special Rapporteur's visit?

The possibility of introducing a statute of limitations for gross human rights violations remains a concern.

In April 2017, the House of Commons Defence Select Committee issued a report on investigation into fatalities in NI involving British military personnel. In the report, the Defence Select Committee recommended “the enactment of a statute of limitations, covering all Troubles-related incidents, up to the signing of the 1998 Belfast Agreement, which involved former members of the Armed Forces”.⁷⁷

Since then there have been numerous calls for the introduction of a statute of limitations to protect from prosecution members of the Armed Forces who served in NI.⁷⁸ The most recent of these came from the current Prime Minister, Boris Johnson.⁷⁹ The Queen's Speech in December 2019 also referenced bringing “forward proposals to tackle vexatious claims that undermine our Armed Forces”.⁸⁰

In July 2019, the majority of respondents to the draft NI (Stormont House Agreement) Bill consultation were of the opinion that a statute of limitations would be inappropriate for ‘Troubles-related’ matters.⁸¹ However, the UK Government's view persists and the NI (Executive Formation etc) Act 2019, sections 3(8) required the Secretary of State for NI to publish a report on protecting veterans of the Armed Forces and other security personnel from repeated investigation for Troubles-related incidents, including creating a presumption of non-prosecution.

On the 18 March 2020, the Overseas Operations (Service Personnel and Veterans) Bill 2019-21 was introduced to the UK Parliament. The Bill aims to create protections for members of the armed forces and the UK Government relating to the legal consequences of events that occur in the course of military operations overseas, by derogation from the ECHR. It seeks to impose a six-year statutory limitation on taking cases against UK service personnel and veterans involved in overseas operations. The Bill currently excludes alleged crimes by UK military personnel within NI, but alongside the 18 March statement raises a question as to the UK Government's commitment to adhering to human rights standards in the broader context, including conflict-related investigations concerning NI. By the start of November 2020, the Bill was progressing through Parliament at pace, reaching the Second Reading stage of the House of Lords.

In the Secretary of State for NI's Ministerial statement on the UK Government's revised approach to proposals for dealing with the legacy of the past in NI, this Bill was referred

⁷⁷ House of Commons Defence Committee, ‘Investigations into Fatalities in NI involving British Military Personnel: Seventh Report of Session 2016–17: HC 1064’, 26 April 2017.

⁷⁸ Ibid; House of Commons Hansard, ‘Oral Questions: Armed Forces Veterans: Historic Allegations’, 9 July 2018; House of Commons Hansard ‘Written Statement: Legal Protections and Support for Armed Forces Personnel and Veterans – Penny Mordaunt MP – HCWS1575’, 21 May 2019.

⁷⁹ Conservatives, ‘Press Release: Conservatives in general election manifesto pledge to end ‘unfair trials’ for NI veterans’, 13 November 2019.

⁸⁰ Gov.UK, ‘Press Release: Queen's Speech December 2019’, 19 December 2019.

⁸¹ NI Office, ‘Addressing the Legacy of NI's Past: Analysis of the Consultation Responses’ (NIO, 2019), at 4.

to as a way “to provide greater certainty for service personnel and veterans who serve in armed conflicts overseas”.⁸²

Additionally, there have been developments in terms of how those defined as terrorism offenders are sentenced. On 26 February 2020, the Terrorism Offenders (Restriction of Early Release) Act 2020 came into force in England, Wales and Scotland. It extends the point at which an offender convicted of terrorist offences or offences with a terrorist connection can be considered for release on licence from half to two-thirds of their sentence. This Act does not apply in NI. However, on 20 May 2020, the Counter-Terrorism and Sentencing Bill, which does extend to NI, was introduced to the UK Parliament. This Bill makes provision for a serious terrorist offence with a minimal custodial term of 14 years; extended licencing and tariffs; increased maximum sentences; and the removal of early release for terrorist prisoners. The Commission provided written and oral evidence to the House of Commons Public Bill Committee tasked with scrutinising this Bill.⁸³ By end of October 2020, the Bill was awaiting the Committee stage at the House of Lords. Notably, the Bill in its current form does not address the definition of terrorism.

Limit: 1000 words

Is there any relevant additional information you would wish to add?

No.

Limit: 1000 words

⁸² NI Office, 'Press Release: UK Government sets out way forward on the legacy of the past in NI', 18 March 2020.

⁸³ NI Human Rights Commission, 'Briefing on the UK Counter-Terrorism and Sentencing Bill' (NIHRC, 2020); Oral Evidence Provided by NI Human Rights Commission to House of Commons Public Bill Committee on the Counter-terrorism and Sentencing Bill, 25 June 2020.