



NORTHERN
I R E L A N D
HUMAN
RIGHTS
COMMISSION

Committee Against Torture
Human Rights Treaties Division
Office of the United Nations High Commissioner for Human Rights
UNOG-OHCHR
CH-1211 Geneva 10
Switzerland

Re: Follow-up regarding Concluding Observations adopted by the Committee Against Torture on the 5th periodic report of the UK

9 July, 2014

Dear Mr. Grossman,

I am writing in relation to the follow-up information provided by the UK Government in response to the Concluding Observations adopted by the Committee Against Torture on the 5th periodic report of the United Kingdom of Great Britain and Northern Ireland. The three UK NHRIs will provide a comprehensive response to the UK Government's submission in September, however, in light of significant ongoing developments regarding Transitional Justice in Northern Ireland, this letter outlines a number of gaps in the information provided in the Government's submission.

First, the response is limited to "the full investigation of all deaths by lethal force that occurred during the 'Troubles'", thus excluding crimes which did not result in death. (para 25)

Second, the Government response relies on inquests as "an integral part of the system in place to ensure that deaths are properly investigated" (para 26) but does not mention important ongoing issues:

- Two European Court of Human Rights (ECtHR) judgments in 2013 found that there had been an excessive delay in the inquests held to investigate the deaths, and that such delays remain a

serious and extensive problem in 'legacy-inquests' in Northern Ireland.¹ In June 2014, the Committee of Ministers of the Council of Europe, in examining follow up to these and other similar cases against the United Kingdom noted efforts to address delay and improve case management but considered that "further measures may be needed to address the causes of the excessive delay in inquest proceedings..."²

- Northern Ireland's Senior Coroner, John Leckey, has raised concerns regarding delays in relation to legacy inquests.³ In 2014, Mr. Leckey has written to the Northern Ireland Secretary of State and to the Northern Ireland Minister for Justice to raise concerns in relation to delays and resourcing.⁴ Mr. Leckey stated that: "A failure to address this issue in a timely and proportionate manner undoubtedly would result in deep dissatisfaction, the UK government being potentially in breach of its own international obligations."⁵

Third, the Government states that the Office of the Police Ombudsman for Northern Ireland (OPONI) "is tasked with investigating complaints by the public into the conduct of police officers, including any matters arising from HET investigations which raise concerns of possible police criminality." (para 29) In this regard, the Committee should be aware that:

- The Police Ombudsman, in June 2014, has taken legal action against the Police Service of Northern Ireland (PSNI) "for its refusal to provide his investigators with information... despite repeated requests over past months, the PSNI has on more than 100 occasions either refused

¹ *McCaughey and Others v UK*, Application No. 43098/09, 16 July 2013; *Collette and Michael Hemsworth v UK*, Application No. 58559/09, 16 July 2013.

² Committee of Ministers, 1201st Meeting, 5 June 2014, Decisions, Para 5. Available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH\(2014\)1201/25&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH(2014)1201/25&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383). See also, Committee of Ministers, Council of Europe, Information Documents: *McKerr against the United Kingdom (and seven similar cases) group*, 27 May 2014, CM/Inf/DH(2014)16rev. Available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf/DH\(2014\)16&Ver=rev&Language=lanEnglish&Site=COE&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf/DH(2014)16&Ver=rev&Language=lanEnglish&Site=COE&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383).

³ Belfast Telegraph, *Inquest Delays 'embarrass' coroner*, 6 February 2014. Available at: <http://www.belfasttelegraph.co.uk/news/local-national/northern-ireland/inquest-delays-embarrass-coroner-29986110.html>

⁴ BBC News Northern Ireland, *'Shoot-to-kill' cases: NI coroner warns government over inquest delays*, 26 June 2014. Available at: <http://www.bbc.co.uk/news/uk-northern-ireland-28042211>. But, note, the former Chief Constable of the PSNI in his personal capacity has stated that in his view: "The coroner's system is not capable of dealing with the sheer volume of inquests being put through it... Irrespective of how much resources are put into this, the system is clogged and there needs to be a far more radical solution to this." <http://www.belfasttelegraph.co.uk/news/local-national/northern-ireland/matt-baggott-coroners-court-is-incapable-of-dealing-with-legacy-troubles-inquests-30388181.html>

⁵ BBC News Northern Ireland, *'Shoot-to-kill' cases: NI coroner warns government over inquest delays*, 26 June 2014. Available at: <http://www.bbc.co.uk/news/uk-northern-ireland-28042211>

to provide information to the Office or has said that it must first explain and justify why the material is wanted.”⁶

- As a result of a legal interpretation of the Royal Ulster Constabulary (Complaints etc) Regulations 2001, OPONI now considers that it no longer has the remit to re-investigate those deaths directly or indirectly attributable to police operations if a police investigation has already taken place.⁷

Fourth, the Government refers to the 2013 All Party Working Group led by Dr. Richard Haass and Dr. Meghan O’Sullivan (the Haass-O’Sullivan Talks),⁸ which was unable to reach agreement,⁹ and the possibility of continuing discussions on “issues relating to transitional justice”. (para 31) A new round of talks on these issues commenced on 2 July, 2014,¹⁰ however, these talks collapsed on 3 July 2014.¹¹ A statement by Unionist parties in Northern Ireland advised that the “DUP and UUP will end their participation in the now fruitless Leaders talks.”¹²

- The Committee should be aware of an ongoing and relevant issue, which the Government response did not make reference to; the situation regarding the ‘On The Runs’.¹³ The Northern Ireland Secretary of State has appointed Lady Justice Hallett to conduct an independent review of the administrative scheme to deal with ‘on-the-runs’.¹⁴ Lady Justice Hallett’s report will be

⁶ Police Ombudsman for Northern Ireland, *Police Ombudsman Takes Legal Action Against PSNI*, 3 June 2014. Available at:

http://www.policeombudsman.org/modules/press/press.cfm/press_ID/386/action/detail/year/2014/month/7

⁷ See, Committee of Ministers, Council of Europe, Information Documents: *McKerr against the United Kingdom (and seven similar cases) group*, 27 May 2014, CM/Inf/DH(2014)16rev, p. 7.

⁸ Proposed Agreement, 31 December 2013, An Agreement Among the Parties of the Northern Ireland Executive on Parades, Select Commemorations, and Related Protects, Flags and Emblems, and Contending with the Past. Available at: <http://www.northernireland.gov.uk/haass.pdf>

⁹ BBC News Northern Ireland, *Northern Ireland: Richard Haass talks end without deal*, 31 December 2013. Available at: <http://www.bbc.co.uk/news/uk-northern-ireland-25556714>

¹⁰ BBC News Northern Ireland, *Renewed NI talks on flags, parading and the past at Stormont*, 2 July 2014. Available at: <http://www.bbc.co.uk/news/uk-northern-ireland-28112073>

¹¹ Belfast Telegraph, *Future of powersharing at Stormont in doubt: DUP and UUP walk out of peace talks after Ardoyne parade decision*, 3 July 2014. Available at: <http://www.belfasttelegraph.co.uk/news/local-national/northern-ireland/future-of-powersharing-at-stormont-in-doubt-dup-and-uup-walk-out-of-peace-talks-after-ardoyn-parade-decision-30405481.html>; BBC News Northern Ireland, *Peter Robinson: Parade Commission ruling is threat to institutions*, 3 July 2014. Available at: <http://www.bbc.co.uk/news/uk-northern-ireland-28138927>

¹² Belfast Telegraph, *Unionist parties oppose ‘unjust’ Twelfth parade decision: Leaders’ joint statement in full*, 3 July 2014. Available at: <http://www.belfasttelegraph.co.uk/news/politics/unionist-parties-oppose-unjust-twelfth-parade-decision-leaders-joint-statement-in-full-30404369.html>

¹³ *NI Human Rights Commission expresses concern over the government’s handling of On The Run cases*, 27 February 2014. Available at: <http://www.nihrc.org/news/detail/ni-human-rights-commission-expresses-concern-over-the-governments-handling->

¹⁴ Written Statement to Parliament, *Villiers statement to Parliament: On-the-runs scheme*, 11 March 2014. Available at: <https://www.gov.uk/government/speeches/villiers-statement-to-parliament-on-the-runs-scheme>

published on July 17, 2014.¹⁵ In March 2014, the Northern Ireland Affairs Committee of the House of Commons launched an Inquiry into the Administrative scheme for the “on-the-runs”, which also considers additional issues, including use of the Royal Prerogative of Mercy.¹⁶

Fifth, the Government states that in “terms of reparations, there are some funds made available through the Northern Ireland Executive for victims and survivors of the Troubles.” (para 25).

- The Haass-O’Sullivan document, which did not receive final agreement, would have encouraged the Commissioner for Victims and Survivors “to consider two areas of critical concern to victims, survivors, their families, and wider society. The first is the provision of easy-to-access, high quality mental health care. ... Second, we ask the commissioner, as part [of] the same process, to give special consideration to those who lost years of their working life to severe physical or mental injury as a result of the conflict, as has been done in similar situations in other countries. In addition, as these victims age, their need for medical, emotional, financial, and other support may rise, and we believe it is crucial that the assessment take particular note of their circumstances and financial requirements. We would strongly encourage the commissioner to make specific recommendations for policy to the Northern Ireland Executive and OFMDFM in her assessment.”¹⁷ The document noted that “one of the most contentious issues we considered was who should be considered eligible for victims’ services. We found that we were unable to settle this amongst ourselves. Our understandings of the word ‘victim’ in this context were closely tied to our different narratives of the conflict, which are not presently reconcilable.”¹⁸
- The Commission for Victims and Survivors issued *Advice on Dealing with the Past, A Victim Centred Approach*, which includes recommendations regarding reparations, in March 2014.¹⁹

Finally, public comments by some individuals will be of interest to the Committee. In 2013, the Northern Ireland Attorney General stated that there should be “no more inquests and no more prosecutions with respect to Troubles-related deaths.”²⁰ In 2014, the outgoing Chief Constable of the PSNI, Matt Baggott, stated that in his view “the PSNI should no longer be accountable for dealing with issues that pre-date

¹⁵ Northern Ireland Secretary of State, *Arrangements for publication of Lady Justice Hallett’s report on the on-the-runs administrative scheme*, 26 June 2014. Available at: <https://www.gov.uk/government/speeches/arrangements-for-publication-of-lady-justice-halletts-report-on-the-on-the-runs-administrative-scheme>

¹⁶ <http://www.parliament.uk/business/committees/committees-a-z/commons-select/northern-ireland-affairs-committee/news/on-the-runs-inquiry-terms-of-reference/>

¹⁷ Proposed Agreement, 31 December 2013, *An Agreement Among the Parties of the Northern Ireland Executive on Parades, Select Commemorations, and Related Protects, Flags and Emblems, and Contending with the Past*. Available at: <http://www.northernireland.gov.uk/haass.pdf>, p. 21.

¹⁸ *Ibid*, p. 22.

¹⁹ Available at: <http://www.cvsni.org/images/documents/Advice%20on%20Dealing%20with%20the%20Past.pdf>

²⁰ BBC News Northern Ireland, *NI attorney general John Larkin calls for end to Troubles prosecutions*, 20 Nov 2013. Available at: <http://www.bbc.co.uk/news/uk-northern-ireland-24999051>. The Commission at the time expressed concern that the Attorney General made a public statement without any apparent engagement with those most affected. *NIHRC responds to Attorney General’s comments on dealing with the past*, 20 Nov 2013. Available at: <http://www.nihrc.org/news/detail/nihrc-responds-to-attorney-generals-comments-on-dealing-with-the-past>

the Good Friday Agreement [1998] ... We have to create a situation where police resources are focused on the here and now, without taking away from the needs of justice or victims... But that can be done in a different place, under a different authority.”²¹ Asked about his view on this issue, the new Chief Constable, George Hamilton, stated that “I think we need a solution to policing the past so I share that with Matt [Baggott]... I would exercise some caution though [because] the past is actually the present for those who are affected by it... We need to find another way of plotting what we need to do on that and [it] will inevitably be some mechanism that is at least arm’s length removed from the PSNI.”²²

As noted, the Commission will provide a comprehensive submission, with the Equality and Human Rights Commission and the Scottish Human Rights Commission in September 2014. In the interim we are available to provide any additional information and assistance to the Committee.

Yours sincerely,



John Corey
Interim Chair

cc.

Rt Hon. Simon Hughes MP
Minister of State for Justice and Civil Liberties
Ministry of Justice, 102 Petty France, London, SW1H 9AJ

Rt Hon. Peter Robinson MLA and Mr Martin McGuinness MLA
First Minister and deputy First Minister
GD36 Stormont Castle, Stormont Estate, Belfast, BT4 3TT

Mr David Ford MLA
Minister of Justice
Department of Justice, Block B, Castle Buildings, Stormont Estate, Belfast, BT4 3SG

²¹ BBC News Northern Ireland, *PSNI: Matt Baggott urges inquiry curb on Troubles Murders*, 27 June 2014. Available at: <http://www.bbc.co.uk/news/uk-northern-ireland-28049602>

²² Newsletter, *Hamilton agrees with Baggott: Take Troubles cases from PSNI*, 7 July, 2014. Available at: <http://www.newsletter.co.uk/news/regional/new-psni-chief-hamilton-agrees-with-baggott-take-troubles-cases-from-psni-1-6162122>.