

Analysis by TUV of Draft Northern Ireland (Stormont House Agreement) Bill

Part 1

The Bill is flawed from its first clause because there it articulates as a general principle of operation that the perverse definition - which equates victims with victim-makers - will apply, equating the "suffering" of each.

As a "guiding principle" Clause 1 also imposes a statutory obligation that the approach to dealing with the past should be "balanced". What does this mean? Is it a ready made peg for the publicly funded anti-state agitators to demand that even though 90% of the deaths resulted from the actions of terrorists, investigations must not reflect this reality but be 'balanced' as between what they call the various 'actors'.

If balance is intended to reflect that the overwhelming number of deaths came at the hands of terrorism, then it needs to say that.

Part 2 - HIU

HIU can only investigate deaths, not serious injury and generally no death already 'investigated' by the HET.

Clause 9 Director has operational control of investigations. Investigatory functions are only to be exercised in specified circumstances e.g. new evidence. The Director in deciding to investigate will have regard to 5 year window, so, are merits being sacrificed for a timeline?

The question of a crime being committed or a non-criminal police misconduct being committed seem to equally inform the investigative decision. Clause 8; Clause 12(2). Where is the balance here?

The equality of focus on the criminal investigation, which might bring the terrorist to justice, and the police misconduct investigation is, of course, most unequal in two critical regards: a) the police misconduct investigation will be aided by official police records (terrorists keep no records nor live by codes of conduct); b) the threshold for a misconduct charge against a police officer is proof on the balance of probabilities, but a criminal conviction against a terrorist requires proof beyond reasonable doubt! So, either way, holding police officers to account will be much easier and prevalent than holding terrorists to account.

The Director (Clause 15(6)) can override the Chief Constable and compel police disciplinary proceedings. He cannot, of course, override the DPP and require a criminal prosecution of a terrorist.

Clause 19 introduces the perverse possibility that a terrorist injured in an attack which caused a victim's death could request and obtain a copy of a "family report" prepared for the close family of the murdered victim. This is not just absurd, but macabre. Clause 19 requires a provision removing this facility in respect of a perpetrator.

Clause 24 gives the Director the sweeping power to bestow on every investigator the powers and privileges of a police constable. This has the potential to create a second and parallel police force.

Part 3 - ICIR

'Ownership' of the ICIR, like its genesis, lies jointly with the UK and Irish Governments.

Its composition reflects this with its chair jointly appointed, an appointment each by the two governments and two appointments jointly by First Minister and deputy First Minister.

The extent to which the ICIR is a useless, if not a dangerous, creation is illustrated by i) the fact, pursuant to Clause 43, that it must keep secret the name of anyone giving it information and the name of anyone named as a murderer;

ii) the fact, pursuant to Clause 45, that any information provided cannot be used in any legal proceedings, including the prosecution of anyone named as liable for criminal acts, nor can it be shared for intelligence-gathering purposes - the killer can boast of his exploits with immunity - what a contrast with the coronial system, which readily can be a staging post to prosecutions of retired security force personnel;

iii) the fact that there is no mechanism or means to test the veracity of the information provided, leaving the process open to the abuse of misinformation and conspiracy to peddle a narrative justifying the terrorism. There is no criminal offence of providing false information. Moreover, it appears the 'information' can be provided anonymously and via third parties;

iv) the fact, pursuant to Clause 49, that at the end of its work all information gathered by the ICIR must be destroyed.

So, sadly, what the ICIR offers the innocent victim of the IRA, for example, is a version of 'Provo truth' which is just as likely to seek to justify the murder, as part of their programme of rewriting history, as reveal the truth.

The statutory obligation (Clause 42) for the ICIR to provide the Implementation and Reconciliation Group (IRG) with a report on "patterns and themes" identified from its work is wide open to being abused as a vehicle to peddle the agenda of the selective information providers in underpinning their narrative of "collusion". Untested allegations of collusion etc will be freely made by those seeking to justify killings and, then, the ICIR reports such "themes" to the IRG.

Part 4 - The Oral History Archive

The Oral History Archive, like the ICIR, is wide open for abuse by the victim-makers. With a labyrinth of organisations sympathetic to their cause it would be naive to think the opportunities to rewrite history will not be fully exploited by terrorist sympathisers compiling and submitting their spin and accounts to the archive. The powers to restrict such are weak (Clause 52) with no statutory bar on material supporting or justifying terrorism.

Part 5 - IRG

The IRG links right back to the obnoxious equivalence between victims and victim-makers enunciated in the 'general principles' in Clause 1 as Clause 60(4) requires it to act consistent with those general principles. So, the flavour of its 'reconciliation' is obvious, it requires no regret or apology from the victim-makers. Hence the 'independent' academic report, designed to draw upon all the reports from the various bodies established in the legislation, will be infected by the same bias. How far it aids the terrorist rewrite of history will be shaped by the success of such groups in exploiting the opportunities afforded by each of the structures established by the imbalanced Stormont House Agreement.

Conclusion

The minimalist focus in the Draft Northern Ireland (Stormont House Agreement) Bill on bringing terrorists to justice stands in sharp contrast to the multilayered attention to processes open to those same terrorist forces rewriting the history of what they whitewash as 'the conflict'.

Thus, innocent victims of terrorism are unlikely to find much succour in the draft Bill.