

**House Foreign Affairs Committee
Tom Lantos Human Rights Commission**

**Hearing on
NORTHERN IRELAND: ACCOUNTABILITY AT RISK**

**February 15, 2022 – 1.00 p.m.
Virtual via Cisco WebEx**

**Statement of Louise Mallinder
Professor of Law and Vice-Chair of the Committee on the Administration of
Justice**

Good afternoon, Chairman McGovern, Chairman Smith and distinguished members of this Commission. Thank you for inviting me to testify at this important hearing.

The sweeping, unconditional amnesty for all Troubles-related offences, proposed by the UK government in July, would be illegal, illegitimate and more expansive in its legal effects than any amnesty enacted in post-conflict societies in recent decades. It would also be contrary to the Stormont House Agreement of 2014, which sets out a framework for a comprehensive approach to addressing Northern Ireland's past.

Since 2003, I have created an extensive database, detailing the scope and legal effects of amnesties granted in response to political crises since 1945. This confirmed that amnesties continue to be used regularly to support peacebuilding. However, such amnesties typically balance the need to prevent further violations with the need to deliver accountability. This is achieved by limiting the scope of the amnesty and imposing conditions on beneficiaries.

The UK government's proposals deviate sharply from international best practice in their motivation, scope, conditions, and legal effects.

Firstly, the decision to impose an amnesty, despite opposition from almost all quarters of Northern Irish society and the Irish government, cannot be justified as necessary to ensure peace. Indeed, in an already unstable political environment, these proposals risk undermining the peace.

Instead, preventing the truth becoming known about UK's involvement in criminality during the conflict is the primary objective of these proposals. This is clear from repeated government statements emphasizing its commitment to 'protecting' British army veterans from what it terms as the 'repeated cycle of investigations', as well as from the sweeping legal effects of the amnesty and the weak investigative powers for the proposed legacy institution.

Secondly, the scope of the amnesty would 'apply equally to all Troubles-related incidents' committed by state forces and paramilitaries. It is worth bearing in mind that only 25% of conflict-related amnesties introduced internationally since 1990 applied to state actors, which indicates how broad this scope is comparatively.

In addition, the command paper does not refer to excluding serious human rights violations such as killings and torture from the amnesty. Instead, any conflict-related offences would be covered. This is highly unusual as amnesties are generally limited to exclude egregious offences or to narrow what can be interpreted as 'conflict-related' crimes.

Thirdly, the command paper suggests that the amnesty would apply automatically and without amnestied persons having to meet any conditions to receive or retain the amnesty. Any subsequent engagement by amnestied persons with information recovery would be voluntary. This approach removes the safeguards for testimony contained in the Stormont House Agreement and creates little incentive for former security force personnel and paramilitaries to provide information. This is particularly problematic given that the unilateral nature of the UK government's approach has undermined trust. It is therefore unsurprising that even Northern Ireland Secretary of State has said he has little expectation of paramilitaries participating in the mechanisms that he proposes. Adopting such an unconditional approach would again

place the UK outside of established international practice given that only 37% of conflict-related amnesties since 1990 have been unconditional.

Fourthly, the intended legal effects of the amnesty are deeply problematic.

The amnesty would immediately end current and future criminal investigations and prosecutions, including for the many cases that have not yet been effectively investigated.

This measure is being pursued even though there is little expectation, even among victims, that criminal investigations today would result in more than a handful of viable prosecutions. In addition, due to the Early Release Scheme, the maximum penalty that could be imposed for a Troubles-related offence is two-years imprisonment.

Despite the difficulties in obtaining convictions, there is widespread support for the possibility of criminal investigations and prosecutions remaining open. This is reflected in the proposals put forward by Eames Bradley, Haass-O'Sullivan and the Stormont House Agreement. This is due to the significance that many victims and stakeholders place on the need for independent investigators to hold full police powers in order to obtain valuable information for families. The huge volume of information generated by Mr Boutcher's work provides an impressive example of the importance of such powers.

The legal effects of the amnesty would also include immediately closing all coronial inquests, civil remedies, and police ombudsman investigations. Such sweeping impunity would be unprecedented on the international stage. Only 6% of conflict-related amnesties since 1990 directly closed down civil remedies, and I could find no amnesty that barred other investigative bodies from examining conflict-related crimes.

The vast bulk of legacy cases are today before the coroners, civil courts and police ombudsman. Examples from recent months reveal how these institutions, using judicial or statutory powers, have been able to obtain evidence of significant collusive behaviors between police and loyalist paramilitaries and to determine the

responsibility of soldiers for killing civilians. These outcomes provide information and acknowledgement to victims, enable victims to access compensation, and make public information that is essential for reconciliation and ensuring public trust in state institutions. Closing down these measures would deny victims' access to effective remedies and undermine the rule of law.

Overall, the UK government intends to introduce an amnesty that is far more sweeping than even Augusto Pinochet enacted in Chile in 1978. Pinochet was an internationally reviled military dictator, but the United Kingdom is a leading democratic state. If the UK enacts this broad amnesty, it would send a dangerous signal to other states that they too can legislate for impunity. This would be damaging not just for us in Northern Ireland but for adherence to human rights law around the world.

Successive US administrations have played a pivotal role in achieving peace in Northern Ireland. And since 1998, the US Congress has consistently supported our peace process, including in last year's Senate Resolution 117. Going forwards, we would encourage the United States government to

- Maintain its position that any future trade agreements with the UK are contingent on Britain respecting the Good Friday Agreement, and to emphasize that the US would view legislation to enact the proposed amnesty as undermining the Agreement's human rights safeguards and criminal justice reforms.
- Continue to urge the British and Irish governments and all political parties to abide by their commitments in the Stormont House Agreement and international human rights law, and to work collectively to address the legacy of the Troubles.

Thank you for inviting me to testify and for your support for human rights and the peace process in Northern Ireland. I look forward to answering your questions.

