

Statement from the Operation Kenova Victims Focus Group to accompany the VFG Report reflecting on the response to the UK Government's proposed approach to Legacy in Northern Ireland as outlined in their report; "*Addressing the Legacy of Northern Ireland's Past*". "

Today the Kenova Victims Focus Group (VFG) released its report "*Operation Kenova Victim Focus Group Review*". In issuing its' report, the Victims Focus Group is also releasing this statement expressing serious concerns regarding the potential impact the current UK Government proposals would have on these and other similar investigations. There are key themes emerging from our report which are directly at variance with the assumptions underpinning the Governments proposals, and the voices of the families we have heard, which provide a compelling counter narrative to the Governments assertions about the best way to meet the needs of those who suffered bereavement and harm in Northern Ireland prior to 1998.

The VFG report identifies several inter-related themes that have enabled Kenova to establish legitimacy, build trust with families and thereby carry out effective investigations. These are; the victim centered and human rights approach, independence, procedural fairness, transparency and public accountability. A leadership style which imbeds these principles into the investigation and adequate resourcing are also key.

Firstly, a rights-based approach. The Victims Focus Group are aware that victims have experienced trauma, fear, and isolation and that this can prevent them from being able to access their rights in practice. Key to the Victim's Focus Group's approach are the rights of victims as set out in the Northern Ireland Victim Charter.¹ Also of critical importance to Operation Kenova is Article 2 of The European Convention on Human Rights (ECHR) - The Right to Life.² This Article requires the State to initiate an effective public investigation by an independent official body as well as requiring that these investigations should be independent, effective, prompt, open to public scrutiny and involve the next of kin. These rights are embedded into the Kenova investigations and into the organisational culture. This has been key to building trust and carrying out successful investigations.

Secondly, the leadership of the Officer in Overall Command and his team in engaging with families has remained consistent with the commitment to a victim centred approach. An approach founded upon the fundamental principles of respect, dignity, and equality of all persons. It ensures that victims, survivors, families, and all those impacted by these tragedies are treated with the respect, compassion, and dignity they deserve, and their rights are respected and protected.

¹ <https://www.justice-ni.gov.uk/sites/default/files/publications/doi/victim-charter.pdf>

² https://www.echr.coe.int/documents/convention_eng.pdf

This approach has clearly been central to the success of Kenova, building a focus on families, on fairness, on independence and transparency into the structure, ethos and practice of its investigations.

Thirdly, Operation Kenova has embedded a range of oversight bodies into its structures, policies and practice which demonstrate the transparency and independence of the investigation. This is fundamental to building relationships with families, many of whom have spent years in legal action seeking an independent investigation. The independence of investigations and the involvement of the next of kin are required by Article 2 of the Human Rights act and are central to a victim centred approach. Operation Kenova has embedded independent oversight of compliance with Article 2 and victims rights, this has given investigators the ability to build trust, access new evidence and conduct more effective investigations.

The Victims' Focus Group is very aware of the potential impact that current UK Government proposals would have on these and other legacy investigations.

The Government states that it intends to:

“Introduce a statute of limitations to apply equally to all Troubles-related incidents, bringing an immediate end to the divisive cycle of criminal investigations and prosecutions, which is not working for anyone and has kept Northern Ireland hamstrung by its past.”³

Its stance is predicated on the assertion that investigations cannot deliver results, but we have seen evidence that Kenova's model of investigation can be successful in uncovering new evidence and in delivering new information for families. Our experience in our independent advisory role to the Kenova investigation is showing that legacy investigations are achievable, affordable and can bring new, verifiable, evidence and information for many families who desperately want this.

Kenova has to date delivered 31 files to the Public Prosecution Service for Northern Ireland. The goal of legacy investigations goes beyond conviction and even if the decision of the Public Prosecution Service is not to prosecute this does not mean that families have been failed by the investigation. Kenova shows this in a number of ways; trust, honesty, recognition, being heard, getting the truth and feeling that a genuine effort has been made is the least we owe to families who have been badly failed in the past.

It should also be noted that in the 2019 Report “**Addressing the Legacy of Northern Ireland's Past – Analysis of the Consultation Responses**”.

“The Secretary of State identified four important principles which must be considered to try to find the best way to address the past; first, any way forward must seek to meet the needs of victims and survivors; second, it must promote reconciliation to enable

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1002140/CP_498_Addressing_the_Legacy_of_Northern_Ireland_s_Past.pdf

the people of Northern Ireland to move forward and build a better future; third, the proposals must reflect broad political consensus and be balanced, fair, equitable, and crucially, proportionate; and, finally, the proposals must be consistent with the rule of law.”⁴

This report also finds that;

“The clear majority of all respondents to the consultation argued that a Statute of Limitations or amnesty would not be appropriate for Troubles-related matters - many were clear that victims, survivors and families are entitled to pursue criminal justice outcomes and such a move could risk progress towards reconciliation. There was a strong sense that the new mechanisms must be fair and not favour any particular group.

In its proposals the UK Government asserts that;

“the intense focus on divisive legal processes continues to drive wedges between communities and undermine public confidence in the police as they go about their work today.”

We believe that the opposite has been demonstrated; that the proper access to investigations has given acknowledgement, new information and a better appreciation of the justice system to families and communities. It is these principles which should underpin future efforts, not an attempt to prohibit investigations.

Research also shows that the way in which an investigation interacts with the victims and survivors, families and the public will shape the public’s views of the criminal justice system, as well as other outcomes.

Operation Kenova has shown the key to demonstrating results, in an almost uniquely complex and challenging investigative context, is assuring families of the independence, fairness, and transparency of the investigative process. If the process is not seen as fair by victims and survivors, families, and the public the result will be division not reconciliation. Justice reform was a key part of the NI peace process and a Justice process must continue to be a part of any measures to address the legacy of conflict.

The Government proposals also state that;

“Lengthy, drawn out and complex legal processes stifle the critical information recovery and reconciliation measures that could help many families and frequently lead to years of uncertainty for those under scrutiny.”

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814805/Addressing_the_Legacy_of_the_Past_-_Analysis_of_the_consultation_responses.pdf

Kenova has provided the Director of Public Prosecutions of Northern Ireland (DPP NI) with more than 50,000 pages of evidence relating to a total of 17 murder victims and 12 abductions. More files are due to be submitted by the end of the year. Conversely, the Government's proposal to introduce a statute of limitations to apply equally to all Troubles-related incidents, bringing an immediate end to criminal investigations will undermine the ability of any information recovery process to gather reliable information and achieve its stated objectives.

Communities will continue to look back if they don't feel they have been heard, and their issues genuinely addressed. The absence of a Justice process is much more likely to result in continued disillusionment and lack of trust in authorities – in other words, it risks continuing divisions.

In evidence presented to the Northern Ireland Affairs Committee the Officer in Overall Command of Operation Kenova stated that;

“When families and stakeholders trust a legacy process as being independent and fair, they will provide evidence and information that can lead to cases being solved.”⁵

The Victim Focus Group finds confirmation of these statements in our research and in the achievements of Operation Kenova. An independent and victim centred approach to investigations is key to ensuring the rights and needs of those who suffered bereavement and harm are met.

A prohibition on the prosecution of legacy cases can result in justice being denied to all, in a single sweeping decision. Just as trauma crosses generations so too can anger over injustice. An inability to access justice can jeopardise reconciliation processes for generations and it can diminish confidence in the justice system.

⁵ <https://committees.parliament.uk/committee/120/northern-ireland-affairs-committee/publications/oral-evidence/?page=2>