

**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
Justice¹**

Good afternoon, Chairman McGovern, Chairman Smith. I am grateful for the opportunity to testify at this important hearing and for your enduring support for our peace process.

The sweeping, unconditional amnesty for all Troubles-related offences, proposed by the UK government in July,² 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.

¹ Louise Mallinder is a Professor of Law at Queen's University Belfast, School of Law and Legacy Theme Lead in the Senator George J. Mitchell Institute for Global Peace, Security and Justice. In addition to her international research on amnesties, since 2013, Louise has been member of the Model Bill Team, a group of academics and civil society activists from CAJ, which has produced a range of technical briefings and reports designed to inform policymaking and public debates on dealing with the past in Northern Ireland. These reports draw on international human rights law as well as international comparative best practice. The Model Bill Team's response to the UK government's July 2021 Command Paper, together with all other project outputs, can be found at this [website](#)

² Northern Ireland Office, Policy Paper, *Addressing the Legacy of Northern Ireland's Past* (July 2021) <https://www.gov.uk/government/publications/addressing-the-legacy-of-northern-irelands-past>

Since 2003, I have created an extensive database, detailing the scope and legal effects of amnesties granted in response to political crises since 1945.³ This data 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 almost a quarter of century after the 1998 Agreement and despite opposition from almost all quarters of Northern Irish society and the Irish government, cannot be justified as being 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

³ Louise Mallinder (2020), Amnesties, Conflict and Peace Agreement Dataset.
<https://peaceagreements.org/amnesties/>

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.⁴ 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

⁴ ‘Justice system is holding back peace, argues Brandon Lewis’, *The Times* (29 August 2021) <https://www.thetimes.co.uk/article/justice-system-is-holding-back-peace-argues-brandon-lewis-lwrp5lh6n>

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 relating to legacy cases. 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.⁵ 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 with a permanent seat on the UN Security Council and membership of the G7. The UK has long been a strong partner to the United States in the promotion of human rights and democracy. However, if the UK enacts this broad

⁵ See eg Findings in the matter of a series of deaths that occurred in August 1971 at Ballymurphy, West Belfast [2021] NICoroner 6; Police Ombudsman for Northern Ireland, Investigation Into Police Handling of Loyalist Paramilitary Murders and Attempted Murders in South Belfast in the Period 1990-1998 (8 February 2022) <https://www.policeombudsman.org/PONI/files/5c/5ce315c0-ca34-45c3-9dcc-7f4c2d2c4658.pdf>

amnesty, it would send a dangerous signal to other states that they too can legislate for impunity. The UK's legitimacy to be able to promote human rights around the world would also be substantially eroded. These risks 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, I 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 in an inclusive and gender sensitive manner.

In keeping with these recommendations, I very much welcome Chairman Smith's proposal to enact a resolution expressing solidarity with the victims of the Troubles in Northern Ireland, calling on the parties to adhere to the terms of the Good Friday Agreement, and calling on the UK to refrain from enacting an amnesty for conflict-related offences. In addition, I would strongly support the recommendations discussed during the hearing that a congressional delegation visit London and Belfast to encourage politicians and policymakers to move away from the unilateral amnesty proposal and to instead adopt a human rights compliant approach to delivering truth for victims.

Thank you for inviting me to testify and for your support for human rights and the peace process in Northern Ireland.