

Summary

- The UK government's Command Paper, which outlined a new method of 'dealing with the past' in Northern Ireland, indicates that South Africa's Truth and Reconciliation Commission (TRC) is a source of inspiration for implementing an amnesty for all Troubles-related offences and a new information recovery mechanism. The Command Paper also outlines plans for an oral history archive.
- RSI's position is that the government's proposals draws too strongly from the South African transitional justice experience, without creating a holistic and context-sensitive approach.
- The South African TRC had many successes, although many of these have been overstated and in fact many victims and their families are still yet to receive justice. In any case, the government's proposal for a blanket amnesty and insertion of a carve-out for information relating to issues of national security, will limit the mooted mechanisms' ability to achieve the limited levels of success seen in South Africa.

Context

1. In a July 2021 Command Paper titled '*Addressing the Legacy of Northern Ireland's Past*', the UK government announced new plans for 'dealing with the past' in Northern Ireland.¹ This appears to have been inspired by the South African TRC, by prioritising information recovery and by limiting the amount of criminal prosecutions for conflict-related offences.² The Secretary of State for Northern Ireland, Brandon Lewis, confirmed in an interview with the Sunday Times that the 'principles' of the South African process should guide future plans for Northern Ireland.³
2. The South African process, often, is portrayed as the paragon of post-conflict justice – termed 'romanticisation' by commentators⁴ – but this briefing will show that: a) this process should not be cut and pasted into other contexts; b) the government's proposals will remain incapable of reaching the levels of success seen in South Africa; and c) the positives of the South African TRC are often overstated, whereas victims and their families to date still feel as if justice has not been done.

The South African transitional justice experience

3. Following the change in government in South Africa, the TRC was established in 1995 to provide truth, justice, accountability and reconciliation by making public details of human rights abuses and other serious crimes that occurred in the conflict between the apartheid regime and its opponents.⁵ As part of the negotiated peace settlement, a conditional amnesty was drawn into the agreement, to ensure the stable transfer of power or to ensure the cessation of ongoing conflict – globally, many amnesties in the post-conflict context have been used for this purpose.⁶

¹ Northern Ireland Office, '[Addressing the Legacy of Northern Ireland's Past](#)', CP 498 (July 2021).

² Command Paper, pp. 11-13.

³ Caroline Wheeler, '[Justice system is holding back peace, argues Brandon Lewis](#)' (*The Sunday Times*, 29 August 2021) accessed 22 September 2021; Christopher Leebody, '[Current approach to Troubles legacy a 'blockage' to progress, argues Secretary of State Brandon Lewis](#)' (*Belfast Telegraph*, 29 August 2021) accessed 22 September 2021.

⁴ For example, see Nomathamsanqa Masiko-Mpaka, '[Policy Brief: Traditional Transitional Justice Mechanisms – Lessons from Africa](#)' (*Centre for the Study of Violence and Reconciliation*, January 2020), pp. 4, 10.

⁵ Desmond Tutu, '[South African History: Truth and Reconciliation Commission, South Africa](#)' (*Britannica*) accessed 22 September 2021.

⁶ Tricia D. Olsen, Leigh A. Payne and Andrew G. Reiter, 'Conclusion: Amnesty in the Age of Accountability', in Francesca Lessa and Leigh A. Payne (eds.), *Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives* (CUP: Cambridge, 2012), pp. 336-345.

Why the South African experience should not be transposed to the Northern Ireland context

Transitional justice must be holistic and context-sensitive

4. The UK government has labelled the amnesty as a ‘move away from criminal justice outcomes’ and shift towards ‘restorative justice’, a means of bringing together victims, their families and perpetrators for the former to receive apologies and information regarding specific human rights violations or criminal offences.⁷ Although this can be beneficial for the individuals involved, and for society as a whole, restorative justice should not exclude other forms of justice, for example retributive (or criminal) approaches.⁸ In practice, this may lead to alienation of impacted communities and contribute to broader divisions within society, something which many victims and families in Northern Ireland have already expressed concern about.⁹

5. Rather than prioritise one form of justice to the exclusion of others, a holistic approach must be taken, which considers the particular context of the conflict and the views of the victims and their families. Failing to do so risks imposing a system that does not create lasting peace nor reconcile communities, but rather exposes and exacerbates existing societal divisions.¹⁰

The government’s proposals do not align with South Africa’s use of amnesty, and would practically not cause those with evidence to come forward

6. The primary point of departure from South Africa with the UK’s mooted approach is with the nature of the amnesty itself. In South Africa, perpetrators of criminal offences were persuaded to come forward with evidence of their crimes through the use of a conditional amnesty.¹¹ Instead of persuading such individuals from making public their crimes, the UK’s plan for a blanket amnesty fails to offer any such motivation, a practice that will likely lead to a dearth of information appearing.¹²
7. By leaving open the possibility of criminal justice in circumstances in which, among other conditions, the perpetrator did not come forward with full cooperation or when the crime had no political motive, the TRC ensured that victims would be able to achieve some form of justice in their case. By contrast, the UK’s planned approach will likely leave victims without both knowledge and redress.
8. One further distinction between the UK government’s proposals and the South African TRC is the ‘strength’ of the institutions in their ability to find the truth. As even supporters of the amnesty in South Africa noted at the time, this could only work effectively if the body had extensive powers to force disclosure of facts and evidence by all actors, including representatives of the state.¹³ By contrast, the Command Paper outlines that the state will be able to rely upon ‘national security’ to exempt itself from this disclosure process, even when this evidence supports credible allegations of state involvement in potentially unlawful killings and other human rights abuses.¹⁴ Given current and previous obstructions of criminal and civil proceedings on these grounds, it is predicted that ‘national security’ will be given a broad remit.¹⁵

⁷ Command Paper, pp. 8-11, 19, 22, 24-25; Kerry Clamp and Jonathan Doak, [‘More than Words: Restorative Justice Concepts in Transitional Justice Settings’](#) (2012) 12 International Criminal Law Review 339.

⁸ Ruti G. Teitel, [Transitional Justice](#) (OUP: Oxford, 2000), pp. 223-225.

⁹ For example, see Sandra Peake, [‘The Government may say their process is victims-centred but it is nothing of the sort’](#) (WAVE Trauma Centre, 15 July 2021) accessed 22 September 2021.

¹⁰ Lisa J. Laplante, [‘Outlawing Amnesty: The Return of Criminal Justice in Transitional Justice Schemes’](#) (2009) 50(1) Virginia Journal of International Law 915, p. 934.

¹¹ Rosemary Nagy, [‘Violence, Amnesty and Transitional Law: “Private” Acts and “Public” Truth in South Africa’](#) (2004) 1(1) African Journal of Legal Studies 1, pp. 2-4.

¹² Jeremy Sarkin, ‘Towards an Understanding of How Truth Commissions Can Use Their Amnesty Powers to Enhance Their Impact and Legacy’, in Jeremy Sarkin (ed.), [The Global Impact and Legacy of Truth Commissions](#) (Intersentia: Cambridge, 2019), pp. 220-233.

¹³ Paul van Zyl, [‘Dilemmas of Transitional Justice: The Case of South Africa’s Truth and Reconciliation Commission’](#) (1999) 52(2) Journal of International Affairs.

¹⁴ Command Paper, pp. 13-14.

¹⁵ A practice of obstructing evidence retrieval referred to as a ‘Slow Waltz’ in official parlance; see Police Ombudsman for Northern Ireland, [‘The murders at the Heights Bar in Loughinisland: Police Ombudsman report’](#) (9 June 2016).



The benefits of the South African process are overstated

9. As the government have repeatedly noted, a victim-centred approach to the legacy of the Northern Ireland conflict is essential. In addition to the plethora of victims and families coming forward to stating that they vehemently oppose the government's proposals, a similar experience of a lack of justice was had in the few instances in which the South African TRC approved amnesties.¹⁶ In these instances, the needs of disenfranchised communities were not considered and they therefore felt further marginalised.¹⁷ As is evident from the backlash towards the government's proposals, it is likely that similar divisions and discontent will fester if they are implemented.

10. For all the above reasons, RSI believes that transposing the South African TRC into Northern Ireland in the way the government has suggested is misguided.

To discuss this briefing further, please contact Jacob Smith, Research and Advocacy Officer, at jsmith@rightsandsecurity.org.

¹⁶ James L. Gibson, '[Truth, Justice, and Reconciliation: Judging the Fairness of Amnesty in South Africa](#)' (2002) 46(3) American Journal of Political Science 540, pp. 545-546; Elizabeth Stanley, '[Evaluating the Truth and Reconciliation Commission](#)' (2001) 39(3) Journal of Modern African Studies 525.

¹⁷ David Backer, '[Evaluating Transitional Justice in South Africa From a Victim's Perspective](#)' (2005) 12(2) The Journal of the International Institute.