

The failure to arrive at a deal on the past has dealt a severe blow to tens of thousands of people bereaved, injured, and impacted by decades of conflict. Paradoxically, in the longer term, it might well deliver an even bigger blow to criminal justice and political institutions. Surely this is an incentive for those within these same institutions to immediately revisit and resolve it.

The final days of negotiations coincided with the conclusion of a country visit to the North by the UN Special Rapporteur on Truth, Justice, Reparations & Non-Recurrence, Mr. Pablo De Greiff. He met bereaved families, the injured, NGO's, political parties, both governments and a range of institutions with responsibility for investigations and legacy issues. He will report to the UN Human Rights Committee next year.

At the end of his extensive visit he issued a six-page press statement, the day after the talks ended. It is essential reading for anyone interested in these issues.

He writes on preliminary recommendations;

*“Any future arrangements for truth-disclosure and for justice will need to take on board the fact that none of the stakeholders can assume the position of neutral arbiters of ‘the troubles’ and therefore will have to incorporate procedures to guarantee both the reality and appearance of independence and impartiality. This will also involve means for adjudicating issues concerning disclosure in a way that is credible to all. Although everyone must acknowledge the significance of national security concerns, it must also be acknowledged that particularly in the days we are living in, it is easy to use ‘national security’ as a blanket term.”*

This week Sinn Féin made public an options paper, which they presented in a bid to break the deadlock around ‘national security’.

The paper, whilst recognizing the legitimacy of ‘national security’ for any government, set out proposals allowing for a panel of three judges, one appointed by each government and the third an international appointment by both governments, to adjudicate on ‘national security’ matters should the need arise between the Director of the Historical Investigations Unit (HIU) and a British Secretary for the North. The overall objective was to ensure all families received maximum information in reports.

Disappointingly the British government rejected the proposals and reverted to ‘national security’.

Blanket ‘national security’ is not a tenable option for the British government. They need to go beyond the ‘easy’ position. The issue of ‘national security’ needs to be defined within the context of the conflict here and not from behind bogus positions.

Rightly key to the Sinn Féin paper was that the British government could not use ‘national security’ to cover criminal acts of agents and their handlers.

The strongest condemnation of the British government position thus far has come from Irish government Minister Charlie Flanagan who, in an interview with the *Irish news*, issued a scathing attack on the British use of the 'smothering' blanket of 'national security'. Effectively this position ensured there would be no deal on the past. However, he did tell TDs in Leinster House that 'many of the building blocks were in place for the establishment of new legacy institutions.'

Next week the UK are before the Committee of Ministers (CoM) in Strasbourg where they must outline how they will independently investigate killings compliant with their human rights obligations. The HIU as proposed initially might have met the standards set by Europe ending ongoing monitoring by the CoM of the UK which RFJ have worked closely with in ensuring families get a proper process. However, with the introduction of a veto on 'national security' scrutiny and reporting will likely continue. This is a highly embarrassing position for the UK.

Into this frame will step the EU Human Rights Commissioner, Nils Muižnieks, to conduct a visit to the North in the coming weeks. In November 2104 he criticised the British government for failing to address past violations citing there was 'virtual impunity for state actors.' Since then nothing has changed.

Whilst there is deep anger and disappointment, to put it mildly, from families at the failure to agree legislation there needs to be an energized drive to complete and agree this one outstanding issue.

So far there hasn't been much evidence of this in comparison to the drive to resolve other matters. Families feel that politicians believe it isn't worth creating a crisis over.

Families no longer want to hear excuses; they want to know when fresh talks will begin and they want this to happen before the holiday break.

Both governments and the parties need to convene talks on this issue otherwise all talk, from all sides about the importance of those killed and injured, is absolutely meaningless.

The British government must move from its current position and reflect on the comments of the UN Special Rapporteur. This is not insurmountable.