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S.45/93 September, 1999

MEMORANDUM FOR THE GOVERNMENT

Report of the Victims Commission: Inquiries into the Dublin/Monaghan bombings and the case of Séamus Ludlow

Decision sought

1. The Minister for Justice, Equality and Law Reform requests Government approval for a decision in principle to appoint a former Supreme Court or High Court Judge to enquire privately into the Dublin/Monaghan bombings and the case of Séamus Ludlow along the lines recommended in the recently published Report of the Victims Commission.

Dublin/Monaghan bombings -background

2. The bombings which took place in Dublin and Monaghan on Friday 17 May, 1974 were among the most appalling outrages in the history of this island. Not only did the bombings result in thirty-three lives being lost and more than 240 persons requiring hospital treatment but a great many more lives - of friends and of relatives - were scarred forever.

3. No-one has been made amenable for these bombings as there has been insufficient evidence to charge anyone with the offences. This has been the source of particular pain to the relatives of victims of the bombings. Various allegations have been made over the years relating to the bombings and the criminal investigation into them. The Victims Commission (former Tánaiste John Wilson) in his report said: "My information on what happened comes, in the main, from reportage which suggests, among other things, that the Garda investigation had identified the probable culprits very quickly but that it then ran into difficulties. This reportage also suggests that the Garda did not receive all appropriate co-operation from the RUC, that the Irish Government did not press the British Government on this point, and that agents of a friendly Government may have had a hand in planning and executing the crime. Some of the reportage presents evidence, which, on the face of it, seems very plausible, to support some of these allegations".

Dublin/Monaghan bombings - Recommendation of the Victims Commission

4. The Victims Commission recommended that

"...the Government choose a former Supreme Court Judge to enquire privately into:

(i) The facts, circumstances, and causes of the bombings.

(ii) the nature, extent and adequacy of the Garda investigation including the adequacy of co-operation with authorities in Northern Ireland and the adequacy of the handling of the scientific analyses of forensic evidence.

(iii) The reasons why no prosecutions took place including whether and, if so, by whom and to what extent the investigation was impeded.

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(iv) Any other matter connected with or relevant to the establishment of the truth.

I must recommend that the Judge be provided with any necessary manpower and resources needed.

As one of his/her tasks s/he should examine Garda files to see if there is anything relevant to the case which [the Justice for the Forgotten Group] is taking to the European Court of Human Rights. Relevant material should be made available to either the court or the group's legal team, as the Judge considers appropriate. The Judge will publish a report of his/her findings. If the Judge sees fit s/he may recommend any further action which s/he thinks might lead to the uncovering of more information. S/he may also think it fit to forward files to the DPP or the European Court of Human Rights. I appreciate that such an inquiry may need to be given statutory powers but I recommend that it be established in the first instance on a non-statutory basis, carrying out such inquiries as it can, and that the drafting and enactment of any necessary legislation should take place in parallel at the Judge's request".

Expectation of relatives

5. The Justice for the Forgotten Group have campaigned for a *public* inquiry but obviously the Victims Commission was unpersuaded by its arguments. The Group have publicly strongly rejected the Commission recommendation and have said that they will not co-operate with any private inquiry which may be established. Should the Government decide to have an enquiry along the lines proposed in the Commission Report this decision will, of course, be strongly criticised by the Group. In this context the minister thinks it especially important to bear in mind that the Commission recommend that "If the Judge sees fit s/he may recommend any further action which s/he thinks might lead to the uncovering of more information". In an effort to meet the concerns expressed by the group of relatives pressing for a public inquiry, the minister can see merit in including specifically in the terms of reference of the Judge appointed to enquire into the matter privately a requirement that he or she should consider whether a public enquiry of the kind sought by the relatives would be likely to be effective in addressing the issues involved.

6. The Commission in its report does not explain why it opted for a private rather than a public inquiry. However, in media interviews at the time of publication of the Report Mr. Wilson made a number of points related to the issue: there was a danger that a public inquiry could turn into a "media circus"; as well as the feelings of those relatives campaigning for a public inquiry the Commission had to have regard to the feelings of other relatives that a public inquiry would needlessly re-open old wounds with no satisfactory outcome; and that he felt the type of inquiry he had recommended stood the best chance of addressing the questions that need to be answered.

7. While the Minister fully appreciates why a public inquiry is being sought by some of the relatives, he believes that, having specifically requested the Victims Commission to address the "needs and concerns of victims and the families of victims of major outrages including those of the Dublin, Monaghan and Dundalk bombings", substantial considerations would have to arise as to why the recommendation should be rejected.

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8. Whatever the difficulties facing a private inquiry, the Minister believes that the chances of a (public) Tribunal of Inquiry successfully addressing the issues in question are very low. Firstly, the people who carried out the bombing if still alive are almost certainly residing outside the jurisdiction and could not be made amenable to the Tribunal. Secondly, the allegations at issue are so serious that it is virtually inconceivable that anyone with any involvement in either carrying out the bombing or investigating it would be expected to go into the Tribunal without extensive legal representation and a quest for the truth is likely to become bogged down in everyone taking whatever steps open to them to protect their own interests.

9. There are other considerations - in addition to those mentioned publicly by Mr. Wilson - which would have ~~to be taken~~ into account in deciding to establish a public inquiry. The Garda Síochána would be understandably concerned that information given to them in confidence could come into the public domain. More fundamentally, in the Minister's view, it would be wrong in principle that suspicions or unproven allegations that a person was involved in an act of mass murder should be brought into the public domain. As well as being manifestly unfair, such disclosure could have implications for the safety of any person so named. (There is a parallel here with the approach of the Director of Public Prosecutions taking the view that to explain decisions not to prosecute a particular individual would inevitably involve unfairness to the individual in question). The Minister, of course, recognises that Tribunals of Inquiry have in practice involved themselves with matters which might ultimately represent the commission of offences but it seems to him that the enormity of the allegations at issue here warrant special consideration. It is also the case that in the extremely unlikely event that anyone came to the Tribunal admitting involvement in the bombings that evidence, under the law, could not be used in a criminal prosecution - a situation that would certainly lead to public outrage.

10. While the Minister is convinced that a private inquiry is the right course to follow and is the only one that has a chance of yielding any results, it has to be acknowledged that the victims' relatives -and their legal teams - appear to be convinced of the merits of holding a public inquiry. Against this background the Minister believes that it will be necessary, in public discussion on the subject, to explain fully why a public inquiry would be the wrong course to follow at this point and specifically reject the notion of a private inquiry being equated with an attempted "cover-up". The main arguments against a public inquiry have already been outlined in this memorandum - probably the most persuasive being that it would amount to a monstrous injustice if, in the process of addressing the very understandable concerns of victims' relatives, other people (and their relatives) who may be totally innocent were now seriously victimised (and put in danger) simply because they once happened to fall into the "suspect" category. The point could also be made publicly that the door is not at this stage being finally shut on a public inquiry and the merits of holding such an inquiry could be considered by the judge appointed to carry out the private inquiry in the light of his or her findings. It will be also case that if the problem arose of the Minister seeing the identity of suspects

Terms of reference of inquiry

11. The minister proposes that the terms of reference of the inquiry would be broadly along the lines recommended by the Victims Commission. However, he would propose that the detailed text of the terms of reference would be settled in consultation with the judge appointed to carry out the inquiry and that these would be the subject of a later memorandum for the Government.

(and those who provided info. will be protected.

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Referred by D/Taoiseach.

Appointment of Judge and secretariat

12. The Victims Commission recommended that the inquiry should be carried out by a "former Supreme Court Judge". In the minister's view, a requirement that the Judge should be a former member of the *Supreme* Court is unduly restrictive and he would propose to consider also - particularly in consultation with the Attorney General - the appointment of former judges of the High Court. The minister would also propose that the secretariat to the Judge should be provided by the Courts Service, so as to distance the inquiry from any perception of Government involvement.

The Ludlow case

13. Séamus Ludlow was murdered on 1 May, 1976. Again, no-one was made amenable in law for his death. His family allege that the Gardaí did not pursue properly the investigation into Mr. Ludlow's death. The Victims Commission Report found that "the allegations about the conduct of certain Gardaí Síochána and about the conduct of the investigation itself, very disturbing". The minister has been pursuing this matter for some time with the Garda Commissioner and on the basis of the information available to the minister he would share the concerns expressed by the Victims Commission in relation to this case. In any event, the Victims Commission recommend that "an enquiry should be conducted into this case along the lines of the enquiry into the Dublin-Monaghan bombing" and the Minister proposes to accept this recommendation.

Other incidents - issues arising

14. The Minister is conscious that a decision to take special measures in relation to the Dublin/Monaghan bombings and the Ludlow case might be criticised by the relatives of other victims of terrorist violence. In particular, the Minister has received representations from relatives of a victim of a bombing in Dundalk to the effect that the Victims Commission had overlooked their requirements. The Victims Commission Report recommended that the Government "on request from the families of victims [of other cases of concern] produce reports on the investigations of murders arising from the conflict over the last 30 years where no one has been made amenable". The Minister would propose to indicate that this recommendation is under consideration at present.

15. It might also be reasonable to expect that the relatives of murder victims, other than those associated with the Northern conflict, might also begin to demand judicial inquiries of one kind or another. They would be unlikely to be persuaded by the argument that unsolved "political" murder is "different" or deserves preferential treatment when it comes to delving into the merits or otherwise of the police investigation. The Minister believes that if that situation were to arise, it would have to be looked at on a case by case basis; in principle there is no simple answer to the proposition that, if one unsolved murder is to be judicially examined, then so should others, irrespective of whether the crime was or was not "politically" motivated.

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Future of interdepartmental group

16. Following a meeting which the Taoiseach had with the Justice for the Forgotten Group last April it was decided to establish an interdepartmental group to examine the papers available relating to the Dublin/Monaghan bombing. If the Government decides to establish an enquiry of the kind recommended by the Victims Commission this would clearly supersede the work of the interdepartmental group and in the circumstances the minister would not envisage any further role for that group - the perception of objectivity is not enhanced by having an interdepartmental group inquiring into matters in which the performance of past Governments and public servants may be at issue.

Press statement

17. The Minister would not propose issuing a press statement about this matter. He understands that Parliamentary Questions have been addressed to the Taoiseach for answer on the day the Dáil resumes and the Minister believes that it would be appropriate in response to those questions for the Taoiseach to announce the Government's decision on the matter.

Staffing and financial implications

18. The Minister would propose to discuss with the judge to be appointed his or her staffing requirements. As already mentioned it is envisaged that the staff would be made available from the Courts Service though, of course, they would have to be replaced for the duration of their assignment. While the Minister is not in a position at this stage to give precise costings he would point out that the costs involved in his proposals would be minuscule in comparison with the likely costs should it be decided to establish a public inquiry into these matters.

Relations, co-operation or common action

19 The Minister's proposals should be viewed against the background of developments in relation to Northern Ireland and, in particular, in the light of both Government's concern to address the needs of victims of the troubles there.

Consultation with other Departments

20. The Tánaiste and Minister for Enterprise and Employment, the Minister for Finance, the Minister for Foreign Affairs and the Attorney General have been consulted and . . . . .

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