



**The Commission for  
Victims & Survivors**

**The Commission for Victims and Survivors  
Northern Ireland response to the  
Office of the High Commissioner for Human Rights  
call for inputs - follow up to country visits to  
Tunisia, Uruguay, Spain, Burundi, the United  
Kingdom of Great Britain and Northern Ireland, and  
Sri Lanka.**

January 2021

## Background

1. The Commission for Victims and Survivors for Northern Ireland (the Commission) was established in June 2008 under the Victims and Survivors (Northern Ireland) Order 2006, as amended by the Commission for Victims and Survivors Act (2008).
2. The Commission is a Non-Departmental Public Body of the Executive Office (TEO). The principal aim of the Commission is to promote awareness of the interests of victims and survivors of the Northern Ireland Troubles/Conflict. It has a number of statutory duties that include:
  - *Promoting an awareness of matters relating to the interests of victims and survivors and of the need to safeguard those interests;*
  - *Keeping under review the adequacy and effectiveness of law and practice affecting the interests of victims and survivors;*
  - *Keeping under review the adequacy and effectiveness of services provided for the victims and survivors by bodies or persons;*
  - *Advising the Secretary of State, the Executive Committee of the Assembly and any Body or person providing services for victims and survivors on matters concerning the interests of victims and survivors;*
  - *Ensuring that the views of victims and survivors are sought concerning the exercise of the Commission's functions; and*
  - *Making arrangements for a forum for consultation and discussion with victims and survivors.*<sup>1</sup>
3. In November 2009, the Office of First and deputy First Minister (now TEO) introduced a ten-year strategy for victims and survivors. This Strategy provides a comprehensive approach for taking forward work on a range of issues relating to victims and survivors.
4. The Strategy acknowledges the uniqueness of our circumstances and need for a victim and survivor-centred approach:
  - *The pain and suffering which has occurred;*
  - *The long-term impact of violence on victims and survivors;*
  - *That victims and survivors are individuals and therefore there is no single approach which will suit everyone; and*

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<sup>1</sup> The functions of the Commission relate to those set out in the Victims and Survivors (Northern Ireland) Order 2006 as amended by the Commission for Victims and Survivors Act (Northern Ireland) 2008.

- *The need for victims and survivors to be invited to play a part in building a more peaceful future, but that as people who have suffered most they should feel safe, should be treated with dignity and should move at their own pace.*<sup>2</sup>
5. The Strategy's aim is to put in place arrangements to ensure that the voice of victims and survivors is represented and acted upon at a governmental and policy level and shape the landscape for service delivery.
  6. Following advice from the Commission in November 2019, the Strategy was extended to ensure the continuation of service delivery and facilitate the development of a new strategy.<sup>3</sup>

## **Contextual understanding**

7. It is recognised that many years of violence have created a society where much work needs to be done to deal with the legacy issues that remain. This is most evidenced when engaging with victims and survivors and those whose lives are still disproportionately affected by conflict-related incidents.
8. The Commission recognises that victims and survivors are a diverse group, and that many have unmet needs that must be considered when attending to the legacy of the past. The Commission also recognises the scale of the task to be undertaken in order to address legacy-related matters.
9. The lasting impact of the Troubles/Conflict on society has been profound:
  - *In 2017, 26% of the Northern Ireland population who had been surveyed said either they or a family member continue to be affected by a conflict-related incident<sup>4</sup>;*
  - *Between 1966 and 2006, 3,720 conflict-related deaths occurred leaving these families mourning the loss of a loved one<sup>5</sup>;*
  - *40,000 people have been left injured<sup>6</sup>; and*

<sup>2</sup> Office of the First Minister and deputy First Minister (2009) *Victims and Survivors Strategy*, The Stationery Office, p.2.

<sup>3</sup> CVSNI (2019a) *Extension to the Strategy for Victims and Survivors (2009-19) and Programme Funding, Policy Advice Paper*, CVSNI.

<sup>4</sup> NISRA (2017) *Commission for Victims and Survivors Module of the September 2017 Northern Ireland Omnibus Survey*, NISRA.

<sup>5</sup> McKitterick et al (2007) *Lost Lives*, Mainstream Publishing.

<sup>6</sup> Smyth et al (1999) *The Cost of the Troubles Study – Final Report*, INCORE: 37.

- *Approximately 213,000 experience a range of conflict-related mental health problems.*<sup>7</sup>

10. Behind each statistic are individuals and families affected by conflict-related bereavement, physical and/or psychological injury or by providing care to a loved one.

11. It has been well documented that Northern Ireland is emerging from over forty years of conflict. The Troubles/Conflict has had a significant impact on society and its people and as a result, today we see evidence of high levels of trauma and associated poor mental health with many victims indicating negative coping strategies that have service delivery implications for a range of statutory service providers and government departments.<sup>8</sup>

12. Twenty three years after the Belfast (Good Friday) Agreement, society continues to be divided along sectarian lines with its negative impact on economic, social and political development. By April 2018, a total of 156 people had died in what the Police Service of Northern Ireland refer to as 'security-related deaths' in the period since the Belfast (Good Friday) Agreement was signed.<sup>9</sup>

13. The 2019 5<sup>th</sup> Northern Ireland Peace Monitoring Report indicated the reported extent within communities of ongoing violent and armed activities, including summary justice.<sup>10</sup> The report provided an important insight into how society continues to be impacted by the legacy of the Troubles/Conflict. Indeed, the Northern Ireland-related threat level continues to be 'severe'.<sup>11</sup>

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<sup>7</sup> CVSNI (2015) *Towards a Better Future: The Trans-generational Impact of the Troubles on Mental Health*, CVSNI.

<sup>8</sup> Ibid.

<sup>9</sup> Nolan, P. "The cruel peace: killings in Northern Ireland since the Good Friday Agreement," *The Detail*, April 23, 2018.

<sup>10</sup> Gray, A., Hamilton, J., Kelly, G., Lynn, B., Melaugh, M., Robinson, G. (2019) *Peace Monitoring Report No 5*, Community Relations Council.

<sup>11</sup> This level indicates that "an attack is highly likely". Source: <https://www.gov.uk/terrorism-national-emergency> [Accessed 6 January 2021].

## **Addressing the legacy of the past: our policy position**

14. It has been almost universally accepted that the current system is not able to address the legacy of Northern Ireland's past; therefore, it is necessary to introduce new mechanisms that would deliver better outcomes for victims and survivors. It is also very clear that in the context of the high levels of disillusionment and low levels of trust which exist across the different political constituencies that any approach must be balanced, transparent and operate within the rule of the law.
15. In March 2015, members of the Victims and Survivors Forum agreed a series of principles that reflected their views and aspirations for the legacy proposals contained in the Stormont House Agreement. These were refreshed by the Victims and Survivors Forum in June 2017 to recognise and include existing organisations and processes.<sup>12</sup> Detailed below are the five principles that are required to deliver effective and appropriate truth, justice, acknowledgement and reparation processes:
- Co-design and collaboration;
  - Victim-centred and victim-led;
  - Inclusive;
  - Independent and impartial; and
  - Fit for purpose.
16. These principles are used by the Commission when reviewing the adequacy and effectiveness of law, practice and services. It is the Commission's view that these principles provide an approach for ensuring that any new legacy mechanisms can command support and confidence.
17. The Commission welcomed the UK Government's consultation on Addressing the Legacy of Northern Ireland's Past in May 2018. The Commission responded to the consultation following a period of extensive engagement with individual victims and survivors, service deliverers and wider civic society.<sup>13</sup> With the closing of the consultation, and the then continued absence of a Northern Ireland

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<sup>12</sup> CVSNI (2017) *Key Guiding Principles for Existing and Proposed Organisations and Processes Dealing with the Past*, CVSNI.

<sup>13</sup> CVSNI (2018) *CVSNI Response to the NIO's Consultation on Addressing the Legacy of Northern Ireland's Past*, CVSNI.

Executive, the Commission felt it appropriate to issue advice to the Secretary of State for Northern Ireland. This advice included commentary and recommendations on the proposed mechanisms contained in the Northern Ireland Office's consultation and other legacy-related matters.<sup>14</sup>

18. The recommendations in the Commission's advice paper were made after extensive engagement with the Victims and Survivors Forum, individual victims and survivors, strategic partners, elected representatives, policymakers, organisations funded to deliver services and wider civic society. The Commission's engagement process was carried out across Northern Ireland, Great Britain and the Republic of Ireland.

## **What we advised Government**

19. Previous advice by the Commission on dealing with the legacy of the past, submitted in 2014, highlighted four key areas that need to be addressed:

- Truth;
- Justice;
- Acknowledgement; and
- Reparation.<sup>15</sup>

20. The Commission's 2019 advice paper sought to build further on these key areas, with specific reference to the proposals the UK Government consulted on in 2018. The advice paper set out the Commission's views in relation to the four proposed mechanisms with recommendations for Government on what measures should be implemented to ensure they meet the needs of victims and survivors. The Commission's advice also provided comments for consideration by the Irish Government on how to ensure the needs of victims and survivors are met in the Republic of Ireland.

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<sup>14</sup> CVSNI (2019b) *Addressing the Legacy of Northern Ireland's Past, Advice Paper*, CVSNI.

<sup>15</sup> CVSNI (2014a) *Advice on Dealing with the Past: A Victim-Centred Approach*, 27 March 2014, CVSNI.

21. The Commission advised the UK Government that the proposals offer the best opportunity to address the legacy of the past at present, adding there are significant changes that need to take place to make sure they meet with the Victims and Survivors Forum's five principles.

22. The Commission made a total of 47 recommendations to the UK Government:

- Historical Investigations Unit (16);
- Independent Commission for Information Retrieval (9);
- Oral History Archive (8);
- Implementation and Reconciliation Group (5);
- Matters outside the consultation's scope (5);
- Impact on existing services (2); and
- Accessing services outside Northern Ireland (2).

23. The Commission's recommendations were detailed and provided solutions to ensure that the proposed mechanisms would effectively meet the needs of victims and survivors. The Commission's recommendations can be read in Annex A.

### **The UK Government's new legacy proposals**

24. The Commission welcomed the UK Government's commitment to implement the legacy elements of the Stormont House Agreement within 100 days as part of the agreement to re-establish the Northern Ireland Executive.<sup>16</sup>

25. It was the Commission's view that this commitment represented an opportunity to take forward a range of mechanisms to deliver truth, justice and acknowledgement processes for victims and survivors.

26. The Commission is concerned that the Secretary of State for Northern Ireland's written Ministerial statement of 18 March 2020 appears to signal a change of

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<sup>16</sup> Northern Ireland Office (2020) *New Decade, New Approach*, The Stationery Office: 48.

direction from the legacy mechanisms which the UK Government consulted on in 2018.<sup>17</sup>

27. The approach appears to abandon the structures contained in the Stormont House Agreement in favour of a process wherein the bulk of outstanding conflict-related investigations would be accelerated. The Commission would be concerned that this approach may result in yet more legal challenges, hurt, frustration and distrust.
28. On 24 June 2020 the then Commissioner for Victims and Survivors, Judith Thompson, accompanied by members of the Victims and Survivors Forum, highlighted concerns during an evidence session to the Northern Ireland Affairs Committee.<sup>18</sup>
29. Following oral evidence sessions and written submissions, the Northern Ireland Affairs Committee published an interim report on their inquiry into the Government's new proposals.<sup>19</sup> The interim report highlighted that the written Ministerial statement was not informed by meaningful consultation with victims' groups, Northern Ireland political parties or the Irish Government. It highlighted the *"lack of information provided by the Government made it difficult to scrutinise the proposals properly. In hindsight, the Government may have been unwise to make a commitment to a 100-day deadline in New Decade, New Approach, which it was subsequently unable to fulfil."*<sup>20</sup> The report added that *"Too many key questions remain regarding how the proposed new institution would operate and function. It is deeply worrying that since 18 March, when the Government announced its new legacy proposals, it has been unable to provide any further policy detail. While covid-19 has presented a challenge across government, policy development has continued across Whitehall, and the Northern Ireland*

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<sup>17</sup> Secretary of State for Northern Ireland, Addressing Northern Ireland Legacy Issues: Written statement - HLWS163 (18 March 2020) <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Lords/2020-03-18/HLWS163/> [accessed 23 December 2020].

<sup>18</sup> Northern Ireland Affairs Committee Oral evidence: Addressing the Legacy of Northern Ireland's past: The UK Government's New Proposals, HC 329 (24 June 2020) <https://committees.parliament.uk/oralevidence/573/pdf/> [accessed 23 December 2020].

<sup>19</sup> House of Commons Northern Ireland Affairs Committee. Addressing the Legacy of Northern Ireland's Past: the Government's New Proposals (Interim Report) Third Report of Session 2019–21 Report (21 October 2020) <https://committees.parliament.uk/publications/3186/documents/29458/default/> [accessed 23 December 2020].

<sup>20</sup> Ibid: 8.

*Office has digital platforms to facilitate its work. The information lacuna is especially regrettable given the sensitivity of the issues and the period since many of the events occurred. Delay and uncertainty perpetuate an unacceptable situation that has already gone on too long.”<sup>21</sup>*

30. On the 18 January 2021, the Northern Ireland Affairs Committee published the UK Government’s response to its report.<sup>22</sup> In its response, the UK Government stated that *“the current system for releasing Troubles-related information is not working, and the divisive cycle of reinvestigations and civil action as a primary route for truth recovery is failing to obtain answers for a majority of victims and families. As highlighted in some of the written submissions to the Committee, this focus on investigations is also hindering wider reconciliation in Northern Ireland.”<sup>23</sup>*

31. The UK Government’s response added that *“these are important, sensitive, and highly complex issues—which is why they remain largely unresolved despite more than 20 years of extensive public discourse and debate. Despite the real challenges this brings, the Government remains determined to make progress on legacy issues, and has always been clear that it will engage with the Irish Government, the Northern Ireland parties, and civic society, including victims groups, as part of this process.”<sup>24</sup>*

32. The response also stated that the Government *“wants to work towards a way forward which can command the broad consensus necessary for the effective delivery and implementation of any legislation.”*, adding that *“The Government remains equally committed to working collaboratively with the Committee and, as we intensify engagement with key stakeholders going into the new year, I look forward to further constructive dialogue with you and your colleagues in the coming months - including sharing further details on the Government’s proposals in due course.”<sup>25</sup>*

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<sup>21</sup> Ibid.

<sup>22</sup> House of Commons Northern Ireland Affairs Committee. Addressing the Legacy of Northern Ireland's Past: the Government's New Proposals (Interim Report) Third Report of Session 2019–21 Report, Appendix: Government Response (18 January 2021) <https://committees.parliament.uk/publications/4320/documents/43831/default/> [accessed 19 January 2021].

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

33. Keeping victims and survivors informed, and those who represent them, is crucial for any process to work. The Commission welcomes the UK Government's commitment to intensifying engagement and commitment to sharing further details on its proposals. As explained in the Commission's written submission to the Northern Ireland Affairs Committee inquiry, there is a concern that victims and survivors may now be faced with legislation being rushed through to suit a Westminster-based agenda that does little for victims and survivors.<sup>26</sup> It remains the Commission's view that engagement needs to be initiated as a matter of urgency.

### **Victims' Payments Scheme (the Troubles Permanent Disablement Payment Scheme)**

34. The Commission has been a long standing advocate for the provision of a payment scheme for individuals severely injured as a consequence of their experience of the Troubles/Conflict.

35. The Commission has provided two pieces of advice to government, in June 2014 and May 2019, on the provision of a pension or payment arrangement to individuals who have sustained severe physical and psychological injuries linked to the Troubles/Conflict.<sup>27</sup> The Commissioner for Victims and Survivor's advice paper submitted to the Secretary of State for Northern Ireland in 2019 contained a series of recommendations on various elements of the operation of a pension arrangement for victims and survivors. These included research-informed proposals in the areas of qualifying criteria related to psychological injury, assessment, delivery mechanisms as well as other considerations including backdating and date parameters for the scheme.

36. With the then absence of a Northern Ireland Executive, the Commission welcomed the opportunity to provide a response to the UK Government's consultation in November 2019. The Commission's response highlighted a

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<sup>26</sup> CVSNI (2020a) *Commission for Victims and Survivors Response to the Northern Ireland Affairs Committee Inquiry on Addressing the Legacy of Northern Ireland's Past: the UK Government's New Proposals, May 2020*, CVSNI: 8.

<sup>27</sup> CVSNI (2014b) *A Pension for people severely injured in the Troubles Commission Advice Paper, 11th June 2014*, CVSNI. CVSNI (2019c) *Victims and Survivors Pension Arrangement (VASPA) Advice Paper, May 2019*, CVSNI.

number of significant issues that the Commission believed needed to be considered in the development of the legislation underpinning the proposed scheme.<sup>28</sup>

37. The Commission's response highlighted that the Commissioner's advice paper was clear that there should be no arbitrary cut-off date in the administration of a new scheme, recommending that any individual who applied to the scheme with a conflict-related injury should be assessed and if they qualify should receive an award regardless of when the injury took place, post 1966. This policy position is reflective of the fact that the lives of many individuals and families have been devastated by ongoing paramilitary activity since the signing of the 1998 Belfast (Good Friday) Agreement.<sup>29</sup>

38. The Commission also highlighted the need to provide clarity and evidence related to the decision to only make awards to 'secondary victims' who demonstrate close proximity of relationship to a primary victim and were 'physically present at the incident at the time or in its immediate aftermath' and sustained 'a diagnosable psychiatric injury by shock caused by direct perception.'<sup>30</sup>

39. It is the Commission's position that many bereaved individuals, including widows/widowers, developed life-long trauma-related mental health conditions directly linked to the violent loss of their spouse or loved one. In many instances, these individuals may not have directly witnessed or experienced the conflict-related incident. Nevertheless, the deep anguish, loss and enduring pain connected to the bereavement, as well as exposure to subsequent non-conflict-related traumatic events continue to represent significant risk factors to enduring mental health problems. Experiencing these severe traumatic events has resulted in individuals including bereaved widows/widowers developing lifelong conflict-related mental disorders including PTSD, clinical depression, complex grief, anxiety and substance dependency. Some of these individuals many in

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<sup>28</sup> CVSNI (2019d) *Commission for Victims and Survivors response to the Northern Ireland Office Consultation on the Victims Payment Scheme November 2019*, CVSNI.

<sup>29</sup> Ibid: 4.

<sup>30</sup> Ibid.

their older years will have been in the routine care of consultant psychiatrists and psychologists for decades. In these instances these individuals who experienced conflict-related bereavement are living with permanent mental disorders that regularly restrict their capacity to work and/or undertake daily tasks.<sup>31</sup>

40. The Commissioner's policy advice had recommended that the scheme should ensure that qualifying individuals should be able to avail of the scheme regardless of where they live. This was in recognition that many individuals sustained serious conflict-related injuries across the UK, the Republic of Ireland and beyond. Responding to the consultation, the Commission acknowledged the Government's proposal to 'open the scheme to victims injured in the UK and ordinarily resident in the UK currently or at the time of the injury.' The Commission stated that it is also important to recognise that individuals sustained serious physical and psychological injuries during incidents that occurred in the Republic of Ireland and in parts of mainland Europe. The Commission welcomed the proposal that these individuals who were ordinarily resident in the UK at the time of these incidents are eligible to apply to the scheme.<sup>32</sup> However, the Commission continues to raise the need for a similar scheme in the Republic of Ireland with the Irish Government, however, at this stage the Irish Government have not committed to passing any similar legislation.

41. Under the current proposals, the Government will seek to adjust awards taking into account previous compensation over a certain threshold. While the Government has acknowledged that historic compensation for Troubles-related injuries were not always considered satisfactory, the Commission remains concerned that the adjustment of awards based on assessment of previous (often derisory) compensation awards could represent a significant barrier for many deciding to access the scheme. The disclosure of previous compensation awards from conflict-related incidents many of which occurred in the 1970s and 1980s and evidencing how those awards were allocated will be potentially invasive and difficult for many victims and survivors. The Commission has

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<sup>31</sup> Ibid: 5.

<sup>32</sup> Ibid.

consistently highlighted the need to approach the issue of previous compensation in a fair and equitable manner. It is the Commission's view that it is also important to consider the inequities associated with historic compensation awards and reflect these considerations in the setting of thresholds for the new scheme.

42. The Commissioner's policy advice paper recommended that a full communication strategy and action plan needs to be developed to support the implementation of the new scheme. A carefully planned and thoughtful communication strategy informed by all relevant stakeholders will be important to manage expectations among potential applicants relating to the purpose of the scheme, level of payable benefit, qualifying criteria, previous compensation, assessment processes, appeals mechanism and who the beneficiaries will be.
  
43. The Commissioner's advice also highlighted the importance of building feedback from applicants and recipients into the process of implementing the scheme. The paper recommended the initiation of a one year review of the scheme so that learning from the feedback of victims, survivors and carers and wider stakeholders is considered and integrated into the future administration of the scheme. The Commission also recommended the establishment of an independent research and evaluation process that can advise on all medical aspects of the scheme and related matters.<sup>33</sup>
  
44. It has been widely publicised that delays regarding the implementation of the scheme has caused concern. The Commission therefore welcomed the formal designation of the Department of Justice on 24 August 2020, enabling the commencement of work to put in place administrative preparations for establishing the scheme. The £2.5m funding commitment by the Northern Ireland Executive this financial year has allowed for development work for the new scheme to be progressed, with the Justice Minister advising it is her intention that the scheme will open for applications in early March 2021. The

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<sup>33</sup> Ibid: 11.

Minister has also highlighted that it is not possible to be specific about when payments to victims and survivors might commence.<sup>34</sup>

45. Although the Westminster regulations came into force on 29 May 2020, the critical issue of longer term funding for the scheme remains outstanding. The Justice Minister has communicated the view that the *“UK Government has an obligation to make the necessary funding available and has committed to working with the Secretary of State, Treasury and the Executive to ensure that it is put in place.”*<sup>35</sup> The financial sustainability of the scheme remains a key concern for the Commission and we welcome the Justice Minister’s efforts to initiate conversations on budgetary matters.

## **Support outside Northern Ireland**

46. Whilst the vast majority of conflict-related incidents took place in Northern Ireland, there were a number of incidents in other locations, particularly in Great Britain and the Republic of Ireland. Further, there are a number of individual victims and survivors residing outside Northern Ireland who have been impacted by the Troubles/Conflict.

47. There were 3,720 conflict-related deaths between June 1966 and November 2006. Of that figure, 267 deaths took place outside Northern Ireland, the majority in Great Britain and the Republic of Ireland.<sup>36</sup>

48. The Commission would also highlight that it is estimated more than 300,000 military personnel served in Northern Ireland as part of Operation BANNER, with numbers peaking to 30,000 in 1972, but declining to 13,000 in 2001 after the Belfast (Good Friday) Agreement in 1998.<sup>37</sup> The majority of those who served during the period from August 1969 to July 2007 were from regiments based in Great Britain. Data available from the Ministry of Defence indicates that a total of 722 service personnel were killed during Operation BANNER. This figure

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<sup>34</sup> <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/minister-letter-groups-representing-victims-and-survivors.pdf> [accessed 23 December 2020].

<sup>35</sup> Ibid.

<sup>36</sup> McKittrick, D. et al (2007).

<sup>37</sup> Armour et al (2018) *Public Attitudes to the UK Armed Forces in Northern Ireland*, Ulster University: 22.

includes 692 Army (including Regular Army, Ulster Defence Regiment, Royal Irish Regiment and Territorial Army), 26 Royal Navy (including Royal Marines) and 4 members of the Royal Air Force.<sup>38</sup> In addition to UK security force personnel, 12 members of An Garda Síochána were killed, together with one member of the Irish Army.<sup>39</sup>

49. The Stormont House Agreement contained a commitment to taking steps to ensure that victims and survivors have access to high quality services, with a specific reference to those who do not live in Northern Ireland.<sup>40</sup> The Commission welcomed this commitment, as it echoed the Commission's policy position that there should be an equitable approach to dealing with victims and survivors, regardless of where they live.
50. In February 2014, the Commission submitted advice to the First and deputy First Ministers on accessing funding and services for victims and survivors outside Northern Ireland. This advice made a number of recommendations, including that groups should be able to apply and be considered under the criteria and competition that applies to all other groups in the application and assessment process and that geographical location is not considered a barrier to applying.<sup>41</sup> This position was echoed in August 2016, when the Commission recommended that organisations from outside the jurisdiction should be eligible to apply to both the Victim Support Programme and PEACE IV Programmes simultaneously.<sup>42</sup>
51. As part of advice to the Secretary of State for Northern Ireland in January 2019, the Commission recommended that the UK Government engages as a matter of priority with relevant stakeholders regarding how best to support individuals living outside Northern Ireland.<sup>43</sup> This position was echoed in advice to the Executive Office in November 2019.<sup>44</sup>

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<sup>38</sup> Ministry of Defence (2018) *UK Armed Forces Deaths: Operational Deaths Post World War II*, MoD.

<sup>39</sup> McKittrick, D. et al (2007).

<sup>40</sup> Northern Ireland Office (2014) *Stormont House Agreement*, The Stationery Office: 6.

<sup>41</sup> CVSNI (2014c) *Accessing Funding and Services for Victims and Survivors Outside of Northern Ireland*. CVSNI.

<sup>42</sup> CVSNI (2016) *Victims and Survivors Delivery Model for 2017-2020, Policy Advice Paper, Commission for Victims and Survivors (August 2016)*, CVSNI.

<sup>43</sup> CVSNI (2019b): 53.

<sup>44</sup> CVSNI (2019a): 29.

52. It remains the Commission's view that this must be a priority issue for all partners and needs to be addressed comprehensively. This position has been raised with the Executive Office, the Northern Ireland Office and the Department of Foreign Affairs and Trade, through engagement and formal advice.
53. Commission engagement with individuals, and their representatives, outside Northern Ireland has consistently indicated there is a sense of isolation and inequality and that awareness levels are very low regarding entitlement, access to support and general assistance. Feedback received by the Commission has highlighted concerns regarding appropriate mental health services, the impact of legacy-related judicial processes and the fact that individuals cannot avail of similar services through organisations. It has also been consistently communicated that there should be input from the UK and Irish governments regarding supporting the needs of victims and survivors outside of Northern Ireland.
54. Interim findings from the PEACE IV-funded Needs Review Project notes that a growing area of concern has been the perceived lack of parity in relation to the understanding of specific needs and the development of service provision for those victims of the Troubles/Conflict outside the jurisdictional realm of Northern Ireland and those that live in the Border Region of Ireland, Great Britain and beyond. Apprehensions regarding the evidenced-based level of need, acknowledgement of need, access to service provision, strengthening of collaborative approaches and resource allocation have been some of the predominant issues identified by key stakeholders. Emerging findings from the project also indicates the need for a parity of acknowledgement and service provision for all victims, irrespective of where they live.<sup>45</sup>
55. During the Commission's engagement with those affected by the Troubles/Conflict across Northern Ireland, Great Britain and the Republic of Ireland, it is clear that their experiences and needs are very much similar. These

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<sup>45</sup> Ibid: 54.

needs must be addressed in an inclusive way and this means that options open to those who live in Northern Ireland should be open to those who live elsewhere.<sup>46</sup>

56. The Commission remains concerned that victims and survivors outside of Northern Ireland continue to experience a different level of service provision. An equitable approach to dealing with health and wellbeing and social support needs, regardless of residency, should be of primary importance.

## **PEACE PLUS**

57. The Commission acknowledges the significant long-term contribution of successive PEACE programmes in supporting the needs of victims and survivors of the Troubles/Conflict.

58. The forthcoming PEACE PLUS programme represents another important opportunity to build on the considerable work delivered through the PEACE IV - Shared Spaces and Services - Victims and Survivors programme.

59. Ongoing work to prepare a new cross-border PEACE programme for the period 2021-2027, with another substantial budget, is highly significant and timely in the context of current PEACE IV-funded activity allied to the wider strategic and political environment affecting the wellbeing of victims and survivors.

60. It is the Commission's view that in designing the new PEACE PLUS programme, strong consideration should be given to the critical role of the Health and Wellbeing Case Manager and Case Worker and Advocacy Support Programme network funded under the PEACE IV programme. These currently funded positions are instrumental in improving the health and wellbeing of victims and their families. Furthermore, as part of their important roles, Health and Wellbeing Case Managers are supporting access to a range of tailored support and services including an important gateway where required into the new Regional

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<sup>46</sup> CVSNI (2020a): 8.

Trauma Network, a key measure contained in the 2014 Stormont House Agreement.<sup>47</sup>

61. In designing and preparing the new programme the Commission has strongly advocated for the continuation of funding activities that have been instrumental in improving the wellbeing of victims and survivors. The Commission supports the continued focus of any programme on supporting the provision of quality health care and broader activities that will promote social and community cohesion. In building a better and shared future for victims and survivors and wider society in Northern Ireland and the border region of Ireland, it is important that there is broader understanding of the trans-generational impact of conflict-related trauma on our population. Equally, part of this broader understanding needs to include the mutual recognition of supporting measures to improve the wellbeing of victims and their families and addressing conflict-legacy issues with the collective ambition of working towards a more peaceful and reconciled society.<sup>48</sup>

## **Impact of COVID-19**

62. The COVID-19 pandemic has reached deep into our lives, affecting people's income, job security and social contacts - factors that are essential to the health and wellbeing of society. Since March 2020, government and service deliverers have reshaped their work in an effort to contain infection and protect the most vulnerable.

63. Many Victims and Survivors Service-funded organisations have adapted well to remote working continuing to deliver a range, if not all, of their services. However, most continue to be unable to undertake the same level of face-to-face engagements. As a result of these changes, there is now an expectation of online connectivity, remote working and growth in digital delivery.

64. New working practices may suit organisations better than their clients and service users and appears to be particularly challenging for those victims and

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<sup>47</sup> CVSNI (2020e) *Commission for Victims and Survivors response to the consultation on the preparation of the PEACE PLUS Programme – European Territorial Cooperation 2021-2027, February 2020*, CVSNI: 6.

<sup>48</sup> Ibid: 8.

survivors whose vulnerabilities were exposed or exacerbated when disconnected from the routines, services, therapeutic interventions and support that organisations provide them with. It is particularly pertinent to the wellbeing of those victims and survivors who had spent time building their confidence and capacity to be able to engage in such services and connect into support services.

65. In addition, enforced isolation, fear of the unknown and awareness of potential fatalities associated with COVID-19 can be expected to have triggered former traumas and added strain to the distress, coping mechanisms and resilience of some victims and survivors. For many in rural areas with poor connectivity, and some older people who are less familiar with technology and social media, digital engagements are unlikely to have provided satisfactory alternatives and may well have set back their ability and readiness to connect with others using non-traditional means. The specific needs of victims in rural as well as urban areas whose isolation has been increased as a result of the COVID-19, may for example, require additional resources to be put into age and gender appropriate online training and communications, including accessible digital and new social media engagement tools.

66. With uncertainties over the immediate future and periods of 'lockdowns', the Commission will continue to engage with stakeholders to discuss the impact on service delivery. Key to this will be insights from service deliverers, who continue to react and adapt to supporting individuals in this changing and restrictive environment.

## **Conclusion**

67. The Commission welcomes the opportunity to submit a response to the Office of the High Commissioner for Human Rights.

68. As highlighted in this response there has been developments since the publication of the Special Rapporteur's report in November 2016. Equally, there remains much work to do in relation to finding an agreed approach to addressing the legacy of our past. The Commission will continue to work with political parties in Northern Ireland and at Westminster and other stakeholders to support

ongoing and future efforts to establish an agreed approach to putting new processes in place.

69. It is evident that there are different views on the proposed legacy mechanisms, which the UK Government consulted on in 2018. However, it is almost universally accepted that the current system cannot address the legacy of Northern Ireland's past.
70. Much of the narrative regarding legacy-related proposals concentrate on ongoing and potential investigatory processes. It is the Commission's view that the purpose of investigations, however, should not be defined narrowly in terms of the number of prosecutions that are envisaged. It is evident from previous and ongoing investigations that new information and evidence can be uncovered and that families who want answers can be better served than they have been, even if the evidence is likely in most cases to be insufficient to secure a conviction.
71. It is the Commission's view that conversations on legacy cannot simply be framed around ongoing investigations or potential processes. There are a range of matters that should inform how we effectively address the legacy of Northern Ireland's past. These include appropriate service provision and how best to support victims and survivors, regardless of where they live. This is best articulated by uncertainties in relation to the implementation of the Victims' Payment Scheme.
72. The critical issues for many families and communities are of access to information about the circumstances leading to the death of a loved one and acknowledgement of harm. During the Commission's engagement with those affected by the Troubles/Conflict across Northern Ireland, Great Britain and the Republic of Ireland, it is clear that their experiences and needs are similar. These needs must be addressed in an inclusive way and this means that options open to those who live in Northern Ireland should be open to those who live elsewhere.

73. The Commission would highlight the value of engaging with victims and survivors and those who support them. To inform the November 2016 report, the Special Rapporteur embarked on an extensive round of engagements with those supporting and representing victims and survivors and those in positions of political, strategic and operational responsibility. If this approach is to be considered again, the Commission be willing to assist the Special Rapporteur's Office with any engagement to inform the follow up report.

**Ends**

**Commission for Victims and Survivors Northern Ireland  
recommendations contained in *Addressing the Legacy of Northern  
Ireland's Past, Advice Paper (January 2019)***

**Legacy Mechanisms Contained in the NIO's Consultation**

**Historical Investigations Unit (HIU)**

- 1) The Commission recommends that learning from the work of Operation Kenova is considered during the design of the HIU to ensure that victims and survivors are aware of, and able to exercise, their rights;
- 2) The Commission recommends that a Victims and Survivors Steering Group is established and is involved in the process of co-designing and advising on policies and procedures that relate to the rights, needs and interests of victims and survivors;
- 3) The Commission recommends that a well-resourced Family Liaison Unit is established within the HIU and that it should have dedicated officers to provide high quality, empathetic and specifically tailored support for families;
- 4) The Commission recommends that the Family Liaison Unit should develop protocols for engagement and shared understanding of roles and responsibilities between the investigation and existing Victims and Survivors Service funded advocacy services and Department for Justice funded witness support services;
- 5) The Commission recommends that a pathway is created for victims and survivors that will allow access to both advocacy and health and wellbeing support before, during and after engagement with the HIU;
- 6) The Commission recommends the consideration of a joint strategy to be developed that would allow for a sharing of expertise in relation to navigating the criminal justice system, providing support to witnesses and assisting those specifically affected by conflict-related incidents;
- 7) It is the Commission's view that service provision must be nuanced to meet the specific needs of victims and survivors of conflict-related incidents and recommends that there is bespoke and accredited training for HIU Officers;
- 8) The Commission recommends that the HIU must operate in as transparent a manner as possible to demonstrate commitment to developing trust with victims and survivors;
- 9) The Commission has concerns regarding the full disclosure of information into the HIU. If the intention of the HIU is to provide clarity and build confidence, then it is paramount that information is not seen to be withheld by any government or institution. The Commission therefore recommends that a process is developed to ascertain and clarify what the HIU can 'reasonably require' from a relevant authority;

- 10) In order for the HIU to be as inclusive as possible, the Commission recommends that the HIU should include a review of all deaths, including those which have already been subject to a Historical Enquires Team review. On the basis of this, and in consultation with family members, a decision should be made by the HIU Director as to whether a further investigation would enable more or better information for families and/or evidence to be uncovered;
- 11) The Commission recommends that those who died at the scene of an incident should also be eligible to be included in the remit of the HIU. This would provide the families of these individuals with an HIU family report and access to the support mechanisms that will underpin the work of the HIU;
- 12) The Commission believes that victims and survivors should be entitled to access justice regardless of where a death happened. Therefore, it is imperative that both the UK and Irish governments provide the necessary resources to allow all conflict-related deaths to be fully investigated and have parity with investigations that will be undertaken by the HIU. The Commission recommends that either the HIU or a centralised police unit is empowered to investigate conflict-related deaths in Great Britain. This should be coupled with a commitment from the UK Government to adequately fund and resource both investigations and the provision of advocacy and support services to victims and survivors;
- 13) The Commission requests that the Irish Government establish a mechanism whereby Troubles related deaths within the Republic of Ireland are investigated;
- 14) The Commission recommends that the Governments establish separate mechanisms that will provide access to truth and/or justice for victims and survivors who have been injured;
- 15) It is the Commission's view that the allocated funding, of £150 million, will not allow the HIU to fully deliver on all responsibilities. This view has also been echoed by stakeholders with an interest in the HIU's work in order for it to be fit for purpose. The Commission recommends that the Government needs to adequately fund the HIU and other mechanisms; and
- 16) The expansion of the HIU caseload to include cases reviewed by the HET would make the timeframe of five years unachievable. Whilst there are provisions within the legislation to extend, the Commission recommends that the Government provides more time to allow the HIU and other institutions to be established and successfully complete their allocated case load.

#### **Independent Commission for Information Retrieval (ICIR)**

- 17) The Commission recommends that a Victims and Survivors Steering Group should be established to ensure the work the ICIR meets the needs of victims and survivors. In addition, the Commission believes the same structures that we have recommended to support victims and survivors through the HIU should be replicated in the ICIR; this includes a Family Liaison Unit within the ICIR with clear processes for communication with organisations providing support and

advocacy for families. The Commission believes that this should be stipulated in legislation;

- 18) The Commission recommends that ICIR interlocutors should engage with families, to assist them in deciding what questions should be asked regarding the death of their loved one;
- 19) The Commission recommends that a proactive outreach strategy should be developed and delivered to reach out to those individuals who otherwise may not have enough information to make a decision as to whether to engage with the ICIR;
- 20) The Commission recommends that the UK Government establish an appeals process, similar to the HIU process, which will allow victims and survivors to appeal decisions to redact information on national security grounds. The Commission requests that the Irish Government also gives this consideration;
- 21) The Commission recommends that the timeframe for the ICIR is coterminous with the HIU;
- 22) The Commission recognises that the danger of information 'leaking' between the ICIR and the HIU must be removed. At the same time the Commission is concerned that sequencing the HIU and ICIR would effectively remove the option of the ICIR from family members who are ageing and may not feel they have time to wait. The Commission therefore recommends all alternatives are explored;
- 23) One of the key issues to be addressed is the impact of incomplete or incorrect information about the death of a loved one. To minimise the risk of this, the Commission recommends adequate testing of the veracity of information by using other sources;
- 24) The Commission recommends that clarity is provided on how the ICIR would work in relation to the Official Secrets Act (1989) and if this would mean that members of the security forces and ex-security forces personnel would be unable to contribute to the ICIR; and
- 25) The Commission recommends that there is an extension to the proposed timeframe for the ICIR and that this is included in the draft Bill; experience from the Independent Commission for the Location of Victims Remains indicates that this process takes time to deliver results.

#### **Oral History Archive (OHA)**

- 26) It is the Commission's view that the Steering Group should represent the needs and aspirations of victim and survivors. Its composition must reflect not only the expertise that will be required to manage such a project, but also the empathy and understanding of experiences that will be collated. The Commission therefore recommends that victims and survivors are represented on the OHA Steering Group;
- 27) Similar to the HIU and the ICIR, the Commission recommends that a pathway is created for victims and survivors that will allow access to both advocacy and

health and wellbeing support before, during and after engagement with the OHA;

- 28) The Commission recommends that existing community-based oral history/storytelling projects should be involved in the collation process;
- 29) The Commission recommends that both Governments clarify whether any individuals who have signed the Official Secrets Act can give information to the OHA. There is a perception that those who have signed the Official Secrets Act, in both jurisdictions, will be unable to engage and that this may impact on the balance of narratives collected;
- 30) The Commission recommends that the Public Records Office of Northern Ireland produces clear guidance regarding record retention and disposal to provide clarity on how it will manage different types of records;
- 31) The Commission recommends the OHA have the same timeframe as the other proposed legacy mechanisms to allow for consistency in reporting to the Implementation and Reconciliation Group;
- 32) The Commission recommends that the OHA is adequately resourced to allow it to deliver its intended outputs; and
- 33) The Commission believes that there is merit in establishing a factual timeline which would be a helpful tool for those working with victims and survivors and anyone with an interest in legacy matters. Further, the Commission would imagine that such a resource would be utilised as an education tool for informing our children and young people. Whilst the Commission is supportive of the proposal, the purpose is unclear and recommends that clarity is provided regarding the purpose of this timeline and any related research projects.

#### **Implementation and Reconciliation Group (IRG)**

- 34) The Commission recommends that the membership of the IRG should include an individual who can represent the voice of victims and survivors;
- 35) The Commission recommends that clear criteria are developed for the nomination of an individual to the IRG. In addition to this there should be clear guidance on the circumstances in which an individual can or should be removed from their duties as a member of the IRG;
- 36) The Commission recommends that the IRG develops and uses clearly defined parameters to allow for the assessment and evaluation of how the HIU, ICIR and OHA impact on the lives of victims and survivors and promote reconciliation and anti-sectarianism in order to secure public confidence;
- 37) The Commission recommends that accurate timescales need to be developed as to when the IRG will be able to conduct its work. Closer examination of the HIU highlights that the allocated five years will not be enough for the originally planned 1,700 cases to be investigated and this will have an impact on how the IRG will report; and
- 38) The Commission recommends that when the work of the IRG is completed it should be used to inform a new government strategy for building reconciliation,

anti-sectarianism and ending paramilitarism. This strategy should be interdepartmental to ensure that the delivery of other relevant programmes are aligned to its work and will create positive impact.

### **Matters Outside the Consultation's Scope**

- 39) The need to make provision for a pension payment to the severely injured is of paramount importance. Not least because this group of victims and survivors are an ageing population with increasing financial and welfare needs. The Commission would recommend that consultation and legislation be progressed at Westminster (in the absence of the Northern Ireland Assembly) to address this as a matter of priority;
- 40) While important work is ongoing in developing the new Regional Trauma Network, it can only continue to do so and become an effective trauma service if it is appropriately funded. The Commission recommends that while funding has been provided to assist the development of the service, a significant increase in resources will be required in the years ahead to meet expected high demand as legacy mechanisms are implemented;
- 41) The need for advocacy and health and wellbeing support has been a key requirement of any proposals to deal with the past. In anticipation of legacy matters being consulted upon the Victims and Survivors Service secured PEACE IV funding for Advocacy and Wellbeing support in community-based organisations across Northern Ireland, Great Britain and the Republic of Ireland. Given the lead in time for establishing new institutions it is likely that funding for these key support posts will be coming to an end in March 2021 just as the new bodies are being established. The Commission would recommend that funding discussions with both governments takes place to ensure these key posts are sustained throughout the lifetime of the new legacy bodies; and
- 42) Legacy inquests are not an explicit measure within the Stormont House Agreement, however the legal right to have inquest heard in the Coroners Courts is a critical element of addressing legacy of the past. The backlog accrued of 50 outstanding legacy inquests into 94 deaths, some of which date back over 40 years requires urgent attention. The Commission recommends that sufficient resources should be committed to legacy inquests to ensure that victims and survivors are able to exercise their legal right to review the circumstances which lead to the death of a loved one. The Commission believes that it is also an opportunity to develop better information management systems and techniques that could be transferred to the new HIU;
- 43) It is the Commission's view that approaches, such as amnesties and a statute of limitations, would take away opportunities for victims and survivors from all sides to seek the truth, justice or acknowledgement that they feel an investigation would bring. The Commission therefore recommends that alternative approaches to addressing the past, outside of the proposed

mechanisms contained in the Stormont House Agreement, are not considered by Government.

### **Impact on Existing Services**

- 44) The Commission recommends that any new mechanisms build upon the established service provision and networks for services to victims and survivors; and
- 45) The Commission recommends that in the design stages of establishing mechanisms, responsible bodies take account of the resources required to support those engaging in legacy processes. The Commission believes that this can be best achieved through a process of partnership and collaborative working.

### **Accessing Services Outside Northern Ireland**

- 46) The Commission welcomed the arrangements for support services outside of Northern Ireland being facilitated by PEACE IV funding. It needs to be noted that this support is limited and only guaranteed to 2021. Individuals outside of Northern Ireland can access support from the Victims and Survivors Service through the Individual Needs Programme. However, victims groups outside Northern Ireland cannot access funding in a way that is open to groups within Northern Ireland. The Commission views this as an inconsistency in the current policy and recommends this be addressed; and
- 47) The Victims and Survivors (Northern Ireland) Order 2006 contains no legal impediment to engaging and supporting victims and survivors outside Northern Ireland. The Commission understands there are both resource and administrative constraints that need to be considered further. The Commission recommends that the Government engages as a matter of priority with relevant stakeholders regarding how best to progress. The Commission would suggest engagement with the Victims and Survivors Service and the Executive Office in order to discuss practical approaches. Importantly, conversations with appropriate stakeholders in Great Britain are essential, for example with the Victims' Commissioner and those with an interest in delivering support. Equally, with the cross-border nature of the proposed mechanisms, conversations with the Irish Government will be required.