



# **Northern Ireland Troubles (Legacy and Reconciliation) Bill 2022**

## **Positions and Recommendations**

**August 2022**

## Executive Summary

1. We believe that the Northern Ireland Troubles (Legacy and Reconciliation) Bill is fundamentally flawed, and is not victim and survivor centred. We have decided that, while we are deeply unhappy with the draft legislation, we must seek to make it, even if only marginally, better. The Commissioner's principal aim is to *promote the interests of victims and survivors*. Registering protest is, in our view, not enough to fulfil this aim.

## Recommendations

2. Our recommendations reflect the order of the Bill, and are not in a prioritised order.
  - a) **Provide a definition of 'Troubles-related offence' that is sufficiently broad to encompass the meaning of 'serious physical or mental harm'.**  
Clause 1(6) – broaden definition
  - b) **The potential for a broad range of investigation / review, including use of the ICIR's full police powers, to an Article 2 standard which can achieve confidence from victims and survivors, must be clearly articulated in the Bill.**  
Clause 13(3) Conduct of Reviews – clarify the existing text
  - c) **Include provision for victims and survivors to provide a victim impact statement when reviewing and making representations on the Commissioner's draft report.**  
Clause 15(4)b death; Clause 15(5)(b) other harmful conduct – add the right to provide a victim impact statement
  - d) **The conditions required to gain immunity must be amended to remove reference to the immunity request panel not being required to seek information from a person other than the person requesting it.**  
Clause 20(4) – remove
  - e) **Amendments to the Coroners Act (NI) 1959, to close existing and prohibit new inquests, must be removed.**  
Clause 39 Inquests, investigations and inquiries – remove
  - f) **The Bill must effectively deter non-compliance with a request from the ICIR.**  
Schedule 4 Part 1 – failure to comply with a notice – raise level of penalty

## Resourcing and time scales

3. **Commitment is required by Government that it will adequately resource the ICIR and Memorialisation components of the legislation**, to ensure the legislative intent is met. Furthermore commitment that the implementation will take place in an expedient manner is needed.

## Role of the Irish Government

4. The **lack of input from, or role for, the Irish Government** raises particular concerns as regards those living in border counties and Ireland. While these issues may not be for inclusion in the legislation, it is essential that they are addressed.

## Positions and Recommendations

5. The vision of the Commission for Victims and Survivors is to improve the lives of all victims and survivors of the conflict in Northern Ireland. Our mission is to address the needs of all victims and survivors by ensuring excellent service provision, acknowledging the legacy of the past and building for a better future.
6. In this context, the Northern Ireland Troubles (Legacy and Reconciliation) Bill, if and when it becomes law, will have a significant impact of victims and survivors of the Troubles, and Northern Ireland society more broadly in the short, medium and long terms. In our 2021 population survey<sup>1</sup>, which had over 2000 responses, 24% of respondents defined themselves as victims or survivors<sup>2</sup>. Moreover, 88% felt it was important to address the legacy of the Troubles / Conflict in Northern Ireland.
7. The Government's Troubles legislation is progressing through Parliament at pace. We have raised concerns about the impact of the legislation with Parliamentarians and in the media. These concerns are informed by the views of victims and survivors. We believe that the legislation is fundamentally flawed, and is not victim and survivor centred. Significant concerns have been raised by human rights experts<sup>3</sup> as to whether it is compliant with Article 2 of the European Convention of Human Rights, a cause for concern in itself, and which may result in time-consuming litigation. We have decided that, while we are deeply unhappy with the draft legislation, we must seek to make it, even if only marginally, better. The Commissioner's principal aim is to *promote the interests of victims and survivors*. Registering protest is, in our view, not enough to fulfil this aim.

---

<sup>1</sup> CVSNI (2021) [population-survey-2021-summary-of-main-results.pdf \(cvsni.org\)](https://www.cvsni.org/population-survey-2021-summary-of-main-results.pdf)

<sup>2</sup> Victims or survivors are defined in the Victim and Survivors (NI) Order 2006 as: (a) someone who is or has been physically or psychologically injured as a result of or in consequence of a conflict-related incident; (b) someone who provides a substantial amount of care on a regular basis for an individual mentioned in paragraph (a); or (c) someone who has been bereaved as a result of or in consequence of a conflict-related incident. An individual may be psychologically injured as a result of, or in consequence of, (a) witnessing a conflict-related incident or the consequences of such an incident; or (b) providing medical or other emergency assistance to an individual in connection with a conflict-related incident.

<sup>3</sup> Northern Ireland Human Rights Commission (2022) [Publication - Briefing for the Joint Committee on Human Rights on the NI Troubles \(Legacy and Reconciliation\) Bill | Northern Ireland Human Rights Commission \(nihrc.org\)](https://www.nihrc.org/publication-briefing-for-the-joint-committee-on-human-rights-on-the-ni-troubles-legacy-and-reconciliation-bill/)

Model Bill Team (May 2022) [Model Bill Team Initial Response to Northern Ireland Troubles \(Legacy and Reconciliation\) Bill \(caj.org.uk\)](https://www.caj.org.uk/model-bill-team-initial-response-to-northern-ireland-troubles-legacy-and-reconciliation-bill/)

## Our guiding principles

8. CVS believed that the Stormont House Agreement legacy mechanisms represented the best opportunity to provide individuals and families with processes to address legacy-related matters. In 2019, our Victims and Survivors Forum agreed five principles to deliver effective legacy processes. They were:
  - a) Co-design and collaboration.
  - b) Victim-centred and victim-led.
  - c) Inclusive, including victims and survivors who had been excluded previously from legacy processes, and those outside Northern Ireland.
  - d) Independent and impartial.
  - e) Fit for purpose as regards an appropriate and realistic budget to deliver an efficient service.

While recognising that Stormont House was not supported by all the Northern Ireland political parties, these principles continue to inform our consideration of addressing the legacy of Northern Ireland's past.

## Recommendations

9. **We ask members of the House of Lords to seek to improve the legislation so that it can gain some degree of confidence from across Northern Ireland and more widely. The objective of the House of Lords has to be to ensure that it is more victim and survivor-centred, and will more effectively address the legacy of Northern Ireland's past and promote reconciliation. Drawing on our guiding principles above, we do not believe that the legislation can be remedied in a piecemeal fashion to deliver effectively. However the Commissioner recognises the desire of the Government to implement the Bill, regardless of the views of victims and survivors and therefore we table some opportunities for it to be improved.** These recommendations do not constitute The Commissioner's acceptance of the Bill.
10. Our recommendations reflect the order of the Bill, and are not in a prioritised order.

## Recommended amendments:

- a) **Provide a definition of ‘Troubles-related offence’ that is sufficiently broad to encompass the meaning of ‘serious physical or mental harm’.**

Clause 1(6) – broaden definition

### *Rationale*

The current list of conditions is narrow. A more expansive approach would enable more people to avail of the Independent Commission for Reconciliation and Information Recovery’s (ICRIR) services, whereas a restrictive approach will limit the efficacy of the legislation.

- b) **The potential for a broad range of investigation / review, including use of the ICRIR’s full police powers, to an Article 2 standard which can achieve confidence from victims and survivors, must be clearly articulated in the Bill.**

Clause 13(3) Conduct of Reviews – clarify the existing text

### *Rationale*

The current text within the legislation is unclear as to the nature of investigations to be carried out by the ICRIR, as the words review / investigation are used interchangeably. The meaning of each word is significantly different. It is essential that confidence is built into the work, and that those who wish to use its services understand how it will operate. While some ICRIR cases will be limited in the nature of information sought, others will require the full exercise of police powers. ‘Reviews’ cannot be the extent of the ICRIR’s work if the purpose of the legislation is to be met.

- c) **Include provision for victims and survivors to provide a victim impact statement when reviewing and making representations on the Commissioner’s draft report.**

Clause 15(4)b death; Clause 15(5)(b) other harmful conduct – add the right to provide a victim impact statement

### *Rationale*

Opportunities to remedy the omission of the voice of victims and survivors to date must be built into the design and implementation of the components of the legislation wherever possible. This is one opportunity. Victims and survivors have not been central to the development of the legislation or the proposals within it. This assertion is based on feedback from members of our Victims and Survivors Forum and more widely.

- d) **The conditions required to gain immunity must be amended to remove reference to the immunity request panel not being required to seek information from a person other than the person requesting it.**

Clause 20(4) – remove

*Rationale*

The conditions required to secure a grant of immunity from prosecution (Clause 18) are set at a low standard, that the person seeking immunity's account is deemed to be true 'to the best of their knowledge and belief'. We note that the in forming a view on the truthfulness of the person's account, the panel must take account of other relevant information (Clause 20(2)) including an ICRIR review (investigation) and any previous investigation. However, Clause 20(4) explicitly permits the panel not to seek information from a person other than the person seeking immunity. This clause causes confusion as it suggests, when read in isolation, that it is not necessary for the panel to seek corroborating information. Its removal would allow better analysis of Clause 20 around the issues to be taken into account when determining a request for immunity.

- e) **Amendments to the Coroners Act (NI) 1959, to close existing and prohibit new inquests, must be removed.**

Clause 39 Inquests, investigations and inquiries – remove

*Rationale*

Mechanisms open to all citizens to seek justice and information via criminal prosecutions, civil proceedings and inquests are removed from victims and survivors of the Troubles. Such a step is unprecedented in the United Kingdom. Furthermore, in recent weeks a number of inquests have delivered answers for families. Ideally, all forms of legal redress for justice and information recovery should be available, but it appears that this is unlikely to be achievable.

- f) **The Bill must effectively deter non-compliance with a request from the ICRIR.**

Schedule 4 Part 1 – failure to comply with a notice – raise level of penalty

*Rationale*

The low level of penalty (£1000) for a failure to comply with a request from the ICRIR for information does not provide an effective deterrent.

## Resourcing and time scales

11. **Commitment is required by Government that it will adequately resource the ICRIR and Memorialisation components of the legislation,** to ensure the legislative intent is met. Furthermore, commitment that the implementation will take place in an expedient manner is needed.

### *Rationale*

It is clear that there are widespread concerns around the likely effectiveness of the legislation in addressing the legacy of Northern Ireland's past. Part 4, Memorialising the Troubles, has the potential to contribute to reconciliation and acknowledgement, but only if resourced and delivered efficiently. Commitments around resourcing levels and timescales would demonstrate a willingness to invest in these processes, deliver at pace and could alleviate concerns for some that this is a government attempt to draw a line and forget about victims.

## Role of the Irish Government

12. The **lack of input from, or role for, the Irish Government** raises particular concerns as regards those living in border counties and Ireland. While these issues may not be for inclusion in the legislation, it is essential that they are addressed.