



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

## **Positions and Recommendations**

**January 2023**

## Executive Summary

1. This paper, originally developed in August 2022, has been updated to reflect the current position with the Northern Ireland Troubles (Legacy and Reconciliation) Bill as it progresses through the House of Lords. While the Government has tabled a number of amendments, which are welcomed, the Commission retains its calls for the adoption of the six recommendations set out below. We believe that the Northern Ireland Troubles (Legacy and Reconciliation) Bill is fundamentally flawed, and is not victim and survivor centred. We decided that, while we are deeply unhappy with the draft legislation, we recognise Government's desire to implement this Bill and therefore must engage and seek to encourage changes to the Bill. The Commissioner's principal aim is to *promote the interests of victims and survivors* and these recommendations are based on that 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 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
  - 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 ICRIR.**  
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 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. Given the Labour leader's public statement (Friday 13 January) that if they win the next election they will repeal the Bill, it is particularly important to

understand the timetable for the implementation of the ICRIR and the legal implications should the Bill be repealed.

### **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. This paper, originally developed in August 2022, has been updated to reflect the current position with the Northern Ireland Troubles (Legacy and Reconciliation) Bill as it progresses through the House of Lords. The legislation has been subject to delay while progressing through Parliament. We welcome that this has allowed the Government to engage with victims and survivors and their representatives and us on concerns regarding the negative impact the legislation is likely to have. While the Government has tabled a number of amendments, which are welcomed, we do not believe they go far enough and the Commission retains its calls for the adoption of the six recommendations set out below.
6. The vision of the Commission for Victims and Survivors is that victims and survivors are remembered and empowered to shape a future where their voices are heard, and their needs are met within a reconciled society. Our mission is to contribute to reconciliation by ensuring victims and survivors' needs are met, their voices heard and that learning from their experiences contributes to lasting peace for generations to come.
7. 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.
8. The Bill's title is misleading. In our view, it's provisions will not contribute to reconciliation within our society. Legislation can only ever be a component of reconciliation – it requires much more, including political leadership, co-operation, compromise and a shared vision of what is needed to achieve it.
9. 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

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<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> Council of Europe (August 2022) [Submission by the Council of Europe Commissioner for Human Rights under Rule 9.4 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements in the group of cases of McKerr v. the United Kingdom \(coe.int\)](https://www.coe.int/t/Document/Commissioner/202208/20220801_submission_mckerr_v_uk.pdf)

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 decided that, while we are deeply unhappy with the draft legislation, we recognise Government's desire to implement this Bill and therefore must engage and seek to encourage changes to the Bill. The Commissioner's principal aim is to *promote the interests of victims and survivors* and these recommendations are based on that aim.

## Our guiding principles

10. 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

11. **We continue to 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.

12. Our recommendations reflect the order of the Bill, and are not in a prioritised order.

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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 \(nihrc.org\)](#)

Model Bill Team (May 2022) [Model Bill Team Initial Response to Northern Ireland Troubles \(Legacy and Reconciliation\) Bill \(caj.org.uk\)](#)

## 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. We note that the definition is broader than that envisaged in the Stormont House Agreement but within that process other legal routes, civil cases, inquests and criminal prosecutions would have been retained.

- 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 remains 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.

While amendments have been tabled, the criteria to be used to determine whether an investigation is appropriate are unclear.

- 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.

The inclusion of the right to make an impact statement would allow victims and survivors and their family members to put on record the physical, emotional, social and financial impact upon them of the incident(s) under consideration by the ICRIR. Adequate support should be provided to allow provision of the statement, which should be a matter of public record, unless the individual does not want it to be shared beyond the ICRIR.

- 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*

Amendments have been put forward by the Government which would create an offence of providing a false statement to the ICRIR, resulting in the revocation of immunity and the potential for prosecution. We retain our recommendation that Clause 20(4) is removed.

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. Inquests have delivered answers for families. They are a proven, human rights compliant means of information recovery, and a coherent plan exists to process

existing Troubles-related inquests. Given the lack of clarity around when the ICIR will become operational, its resourcing and how it will prioritise existing inquests, it is imperative that this trusted mechanism remains in place. 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 ICIR.**  
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 ICIR for information does not provide an effective deterrent. We welcome that the Government intends to address this concern.

## Resourcing and time scales

13. **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. As noted above, delay has already been incurred. Given the Labour Leader's public statement (Friday 13 January) that if they win the next election they will repeal the Bill, it is particularly important to understand the timetable for the implementation of the ICIR.

*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

14. 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 are not be for inclusion in the legislation, it is essential that they are addressed.