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Note Verbale No. 255

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to submit its' response to communication OL GBR 10/2022, further to the letter dated 12 July 2022 from the Special Rapporteur on the promotion of truth, justice reparation and guarantees of non-recurrence and the Special Rapporteur on extrajudicial, summary or arbitrary executions.

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, 22 August 2023.

Special Procedures Branch
Office of the High Commissioner for Human Rights



UK Mission
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United Kingdom of Great Britain and Northern Ireland

Response to Special Procedure communication OL GBR 10/2022 of 12 July 2022 from the Special Rapporteur on the promotion of truth, justice reparation and guarantees of non-recurrence and the Special Rapporteur on extrajudicial, summary or arbitrary executions.

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned analysis.

The UK Government recognises the value and importance of the Special Rapporteurs' ongoing mission and objectives on the promotion of human rights-compliant approaches to transitional justice and welcomes the opportunity provided by the Special Rapporteurs to provide a response to its communication regarding the United Kingdom Government's Northern Ireland Troubles (Legacy and Reconciliation) Bill - currently before Parliament. The legislation completed its initial passage in the House of Lords on 4 July. The Bill that was returned to the House of Commons included two non-government amendments that were voted through by members of the House of Lords. The amendments made by the House of Lords were considered by the House of Commons on 18 July. The UK Government did not accept either amendment, but tabled two further amendments in lieu in the House of Commons. These amendments are detailed within this letter. The Bill will return to the House of Lords on 5 September. The UK Government expects the legislation to become law shortly thereafter.

The UK Government respectfully disagrees with the Special Rapporteur's assessment that the Bill is *"inconsistent with the United Kingdom's obligations to investigate the serious human rights violations committed during the Northern Ireland Troubles, and to provide access to truth and remedy for victims."*

As set out in the UK Government's Command Paper of July 2021, the current system for addressing the legacy of Northern Ireland's past - focused primarily on criminal justice outcomes - requires urgent reform. The current lengthy, adversarial and complex legalistic processes are delivering neither justice, nor information, in the vast majority of cases, while placing a heavy burden on the criminal justice system and preventing the Police Service of Northern Ireland from devoting its attention to present day policing. It is a difficult but unavoidable reality that the prospect of successful prosecutions is vanishingly small due both to the passage of time and the high standard of proof required to secure a prosecution. It is vitally important to recognise the wider context in which we are operating, with measures taken as part of the Belfast (Good Friday) Agreement that irreversibly changed the fundamental premise of the criminal justice model for Troubles-related offences - including the early release of prisoners and restricting prison time to just two years for even the most heinous Troubles-related offences, an amnesty for those involved in the secret decommissioning of paramilitary weapons and immunity from prosecution for those who provided information about the location of the bodies of people who were murdered and secretly buried. In the context of such measures - none of which have been found to contravene the UK's international human rights obligations - and the defective nature of the current system, the Government's legislation seeks to implement a system that can provide more families with more information, accountability, and acknowledgement than is achieved via current mechanisms - while this is still possible.

The UK Government has been consistent in its view that a primary focus on criminal justice outcomes does not offer the most effective route to information recovery, nor does it foster understanding, acknowledgment and reconciliation. However, we also appreciate that this is challenging for many people and organisations, and, through extensive engagement, have listened carefully to these challenges. The UK Government was clear when it published the Command Paper in July 2021 that its proposals would form the basis of a comprehensive period of engagement with a range of stakeholders that would precede the introduction of any legislation. The UK Government has listened to the concerns expressed throughout this process, including by the political parties in Northern Ireland, the Irish Government, victims and their representatives, veterans, individuals and organisations from across civil society - and indeed from the Special Rapporteurs. That is why the Bill reflects significant changes from the Command Paper proposals, including removing any automatic access to immunity for those involved in Troubles-related incidents and allowing inquests to continue until May 2024. That is also why the UK Government has, during the legislative process, tabled a significant number of substantive amendments, reflecting the significant engagement that has taken place on the Bill, including with victims and survivors.

The Northern Ireland Troubles (Legacy and Reconciliation) Bill is focused on effective and timely information recovery, providing answers and accountability to families and survivors, and aiding reconciliation, to help society move forward. The Bill provides for an independent information recovery body - the Independent Commission for Reconciliation and Information Recovery (ICRIR) - which will offer immunity from prosecution to individuals on a case-by-case basis, in exchange for providing truthful information about their role, creating a genuine incentive to come forward with information. Those who do not cooperate with the Commission's inquiries regarding their role in Troubles-related events will rightly remain liable to prosecution, should sufficient evidence exist or come to light. This conditional immunity scheme will enhance the ICRIR's robust investigative work, consistent with the UK's international obligations, providing answers and accountability to many more families than is the case under the current system. As outlined further in our response to Question 2, we are confident that this new framework is legally robust and complies with our international obligations.

The information recovery process conducted by the ICRIR will give many more families who request it access to information. The findings of these reviews will be made publicly available as far as possible (taking into account national security concerns and the views of family members where appropriate), helping everyone in Northern Ireland and beyond to have a clearer understanding about the events of the past. Alongside these family reports, a 'historical record' comprising all other Troubles-related deaths (i.e. where a review has not been undertaken by the ICRIR) will also be published. While this historical record is not intended as a mechanism to discharge the UK Government's procedural obligations, this will help ensure that a full and comprehensive picture of the Troubles - including each and every death - is publicly available. A range of academic and memorialisation measures will help ensure the proper contextualisation of this information, so that lessons of the past are remembered and the dark events of the Troubles are never allowed to happen again. This includes the major oral history and independent academic research initiatives set out in the Bill itself, but also non-legislative measures including a major digitisation project and other measures to make the state documentary record more accessible to the public - in keeping with the UK Government's broader commitment to disclosure and transparency. These measures will allow for a fuller examination of the Troubles than has ever been possible before - including the role of terrorist organisations, the actions of the state and the context in which both operated.

Taken together, the UK Government believes the measures provided for by the Northern Ireland Troubles (Legacy and Reconciliation) Bill represent a comprehensive approach in the transitional justice process, incorporating the '*full range of judicial and non-judicial measures*', consistent with Human Rights Council Resolution 45/10. The legislation will shift the focus towards a suite of ambitious

information recovery and memorialisation processes, while keeping the prospect of criminal justice outcomes - however remote - open in certain circumstances. As outlined in further detail below, the Government is confident that these measures - centred on the ICIR - will provide an effective mechanism to fulfil the State's international obligations, including the European Convention on Human Rights.

2. Please indicate how the Northern Ireland Troubles (Legacy and Reconciliation) Bill introduced in the Parliament on 17th May 2022 complies with international norms and standards in the field of truth, justice, reparation, memorialisation and guarantees of non-recurrence, as described in this letter.

'Closure, barring and restrictions of criminal investigations, criminal enforcement proceedings, civil actions, coronial inquests and police complaints'

We believe that any approach to addressing the legacy of Northern Ireland's past must balance the pursuit of criminal justice outcomes with the interests of families in obtaining answers about what happened to their loved ones. The UK Government has a responsibility to be realistic about what can best be delivered for families over a quarter of a century after the Belfast (Good Friday) Agreement, and to establish the best practical solution that can deliver better outcomes for as many people most affected by the Troubles as possible, while helping society to look forward.

It is accepted that the chances of prosecution for the vast majority of historic cases is increasingly unlikely. Two-thirds of outstanding cases are now over 40 years old, with the quality of both physical evidence and memory severely diminished. Some of the most significant and resource-intensive investigations in recent times have been unable to satisfy the standard of proof required to secure a successful prosecution. As a result, families very rarely, if ever, obtain the outcomes they seek from the current mechanisms for addressing the past.

However, it is not simply the case that successful prosecutions are rare; the lengthy pursuit of criminal justice outcomes can significantly undermine information recovery processes. A common concern raised in the Government's 2018 legacy consultation, *'Addressing the Legacy of Northern Ireland's Past'*, was that many would not contribute potentially vital information to any information recovery process, while the threat of prosecution remained. On this basis, the current focus on criminal justice outcomes hinders the ability of the State to ensure that victims and their families *'know the full extent of the truth about past events concerning the perpetuation of heinous crimes and about the circumstances and reasons that led to the perpetration*

of those crimes' (Principle 2, Updated Set Of Principles). Independent polling by the Institute of Irish Studies¹, would suggest that there is public acceptance of this uncomfortable truth - with 46.9% of respondents agreeing (compared to 20.7% disagreeing) that providing immunity from prosecution may be the only way truth can be provided to families.

The UK Government has always been clear that an investigative process consistent with our international obligations would form a key part of any legislation. This legislation delivers on that commitment, through the creation of a comprehensive and independent new information recovery body - the Independent Commission for Reconciliation and Information Recovery (ICRIR) - with full powers to access information and find out what happened, including where there remain unanswered questions about allegations of wrongdoings by representatives of the state. The ICRIR will provide an effective investigative process to obtain information without families having to go through a lengthy court process or seek legal aid in order to find out what happened to their loved one. As described further below, the Northern Ireland Troubles (Legacy and Reconciliation) Bill includes various measures to ensure that the ICRIR is equipped with the necessary powers to conduct thorough investigations into deaths and cases of very serious injury that give rise to investigative obligations under Article 2 and Article 3. All ICRIR reviews, when initiated, will be capable of leading to prosecutions, should sufficient evidence of a criminal offence exist. An individual's liability to prosecution is only removed on the basis of a formal process whereby they have applied for immunity (discussed further below). The Bill also does not in any way impact the ability of a Secretary of State to call a public inquiry into events of the Troubles, and judicial reviews of any type can still be brought, as they are now (including against any decisions made by the ICRIR).

The aim of the Bill is to bring to an end to adversarial processes that cannot be said to aid reconciliation, and are increasingly less likely to deliver outcomes for families. The UK Government believes that once the ICRIR is established, there should be one process for investigating the past that is available equally to all families of those who died during the Troubles. To bring about a system that is truly focused on efficiently recovering information, it would be counter-productive to allow a number of concurrent processes to run alongside the work of the ICRIR. However, transitioning to a new system based on information recovery by an independent body will be a gradual process, hence the decision by the UK Government to allow some ongoing processes to continue. As a result of amendments tabled by the UK Government,

¹ University of Liverpool, Institute of Irish Studies, 4th Attitudinal Survey - July 2022
https://www.liverpool.ac.uk/media/livacuk/humanitiesampsocialsciences/documents/Institute_of_Irish_Studies_UoL_Irish_News_Poll_July_2022.pdf

ongoing criminal investigations and inquests, the consideration of prosecution decisions, and the publication of reports, will now continue until 1 May 2024. This will ensure a smooth transition between the ending of the current mechanisms and the new ICRIR taking on full responsibility for dealing with legacy cases.

The ICRIR will be led by a Chief Commissioner of high judicial standing, who will be supported by a legislative requirement of full disclosure by state bodies, and will have the power to compel witnesses to comply with its reviews and to make findings - made public via a report - in a manner similar to an inquest. The Secretary of State for Northern Ireland announced on 11 May that the [REDACTED] is to be appointed Chief Commissioner of the ICRIR.

Rather than 'preclude... information recovery', the UK Government's view is that the Bill - including the ICRIR's investigative powers, supported by a conditional immunity scheme and commitment to state disclosure - will maximise the opportunity of providing families - and wider society - with information regarding the events of the Troubles. This will facilitate, and even enhance, the possibility of prosecutorial outcomes in cases where a person does not cooperate with the ICRIR's inquiries, but at the same time placing a primary emphasis on the delivery of effective information recovery mechanisms.

As stated above, this new framework is in line with other challenging but necessary decisions taken since the Belfast (Good Friday) Agreement, which have restricted or changed the criminal justice model in order to facilitate information recovery, reconciliation and non-recurrence in Northern Ireland. This includes the Northern Ireland (Sentences) Act 1998, which provided for the early release of prisoners, and restricted the prison sentence of anyone later convicted for Troubles-related offences to just two years; the Northern Ireland Arms Decommissioning Act 1997, which created an 'amnesty period' for the process of secretly decommissioning paramilitary weapons; and a limited immunity from prosecution for individuals who share information with the Independent Commission for the Location of Victims Remains. None of these measures have been subject to successful challenge on human rights grounds.

'Reviews of Troubles-related violations'

The UK Government notes the Special Rapporteurs' particular concern with the ICRIR 'conducting reviews rather than investigations'. The term 'review' in the Bill is broad, and encompasses a full, police-equivalent criminal investigation with attendant coercive investigative measures – capable of satisfying the Article 2 & 3

procedural obligation. However, it is right that the ICRIR also has the flexibility to determine how it can best fulfil the needs of victims and survivors in terms of the provision of information in each specific case, particularly where there is no extant procedural obligation. For example, this might include a less onerous process that seeks to obtain answers to a limited number of questions from the family in an as efficient way as possible. While this is still the case, the Government has listened to the concerns about the term 'review' expressed by stakeholders, and as a result tabled a number of amendments to strengthen and provide reassurance in this area, as summarised below:

- The independent Commissioner for Investigations will determine whether a criminal investigation should form part of any review which has been requested.
- expressly confirming that the Commissioner for Investigations, when exercising operational control over the conduct of reviews and other functions, must comply with obligations imposed by the Human Rights Act 1998.
- placing a duty on the Commission to publish a statement outlining how each review was conducted as part of its final report, thus enhancing the transparency of its work.
- clarify that the Commissioner for investigation's duties looking into all the circumstances of a death or serious injury apply regardless of whether a criminal investigation forms part of a review
- place a duty on the Chief Commissioner to, where possible, provide answers to questions posed as part of a request for a review.

The ICRIR will have all the necessary powers to conduct effective investigations as part of any review, and to identify individuals. The Commissioner for Investigations will have all the powers and privileges of a police constable, as will any other ICRIR officer designated by the Commissioner for Investigations. This means the ICRIR will have access to the same powers and investigative measures as the police when investigating criminal offences. For example, ICRIR officers will be able to arrest and detain suspects for the purposes of questioning, obtain search warrants or other court orders requiring the production of evidence, and obtain samples for forensic testing. In addition, the Commissioner for Investigations will have the power to compel evidence from witnesses, including oral or written testimony or physical evidence and documents (subject to safeguards to protect the right against self-incrimination) and impose a financial penalty of up to £5000 if this is not done.. These powers are similar to those that the Chair of a Public Inquiry might have. This is a power that police constables do **not** have, and demonstrates our commitment to giving the ICRIR a fulsome suite of robust powers that will facilitate the information recovery process, meet our Convention obligations.

As with the police, use of these powers is discretionary, however the ICRIR, as a public authority, will be under a statutory duty (under the Human Rights Act) to exercise its functions' compatibility with Convention rights. In practice, this means the ICRIR, during the course of a review, will be under a legal duty to exercise its powers where it is necessary to meet the requirements of the Article 2 or 3 procedural (investigative) obligation in any particular case. As stated above, all reviews, when initiated, will be capable of leading to prosecutions, should sufficient evidence of a criminal offence exist.

The ICRIR will be further supported by an unprecedented legal requirement of full disclosure from UK Government departments, security services and arm's length bodies, to make sure it can gather all the evidence it needs to establish what happened in each case. This means that relevant authorities will have to hand over all material that may reasonably be required by the ICRIR for the purposes of its investigations, and the ICRIR will have full and unrestricted access to all of this material. As described further below, any decisions by the Secretary of State to restrict the release of material into the public domain on national security grounds will be subject to oversight by the independent courts - the ICRIR will have complete authority to use sensitive material to carry out its investigations, with no restrictions.

The Special Rapporteurs have raised concern that the ICRIR has 'no power to initiate reviews ex-officio' as a 'limitation to its truth seeking powers'. As noted, the Secretary of State for Northern Ireland, Attorney General for Northern Ireland, Advocate General for Northern Ireland, a coroner, sheriff or procurator fiscal in Scotland or the Lord Advocate under certain conditions will be able to request a review ensuring that the Government is able to fulfil its procedural obligations with regards to the European Convention on Human Rights. However, it is also right that we respect the views of those families who have made clear that they do not want to revisit the past. That is why the ICRIR will primarily be demand-led, taking forward investigations if requested to do so by survivors of serious injury or the families of those who lost their lives. This will also allow the ICRIR to focus its efforts and resources on providing answers for those who want them as quickly as possible.

Likewise, and to the Special Rapporteurs' concern about clause 13(5) - regarding non-duplication - the UK Government is clear that where previous investigations have pursued investigative leads or taken relevant investigative steps, these actions should not be duplicated, unless the Commissioner considers such duplication necessary. This is a proportionate provision that helps ensure that the ICRIR is able to work effectively in securing information for families as efficiently as possible, while ensuring that the ICRIR is able to revisit elements of a previous investigation if, for

example, it considers that previous measures were not sufficient to discharge the State's procedural obligations. The Bill is specifically designed to allow this.

The Special Rapporteurs have also expressed concern that the ICRIR will only receive requests for review until the end of its fifth year of operation. The ICRIR will be able to accept referrals from individuals and families, and requests for immunity, for a period of five years. Following this period, the ICRIR will focus its resources on completing its outstanding investigative caseload, including being able to approach persons of interest and offer immunity in exchange for cooperation with its inquiries. This is a proportionate timescale that is consistent with previous proposals, including the Stormont House Agreement and the Report of the Consultative Group on the Past, and will provide the ICRIR with a clear indication of the timescales and resources required to complete its work. At this stage, it is difficult to anticipate what remaining investigative requirements will exist after the initial five-year period. The review of the ICRIR that must be carried out before the end of its third year of operation will provide an opportunity to consider progress made and to assess how many years will be required, after the five-year period, to complete the ICRIR's caseload.

'Individual Immunity scheme'

The Bill provides for the independent information recovery body - the ICRIR - to offer immunity from prosecution to individuals on a case-by-case basis, in exchange for providing truthful information about their role. This will create a genuine incentive to come forward with information and many non-state actors who have not cooperated with previous investigations will be required for the first time to acknowledge their role in an incident as part of this process. Those who do not cooperate with the ICRIR's inquiries, or refuse to acknowledge their role in Troubles-related events, will remain indefinitely liable to prosecution, should sufficient evidence exist or come to light. This conditional immunity scheme will enhance the ICRIR's robust investigative work, consistent with the UK's international obligations, providing answers and accountability to many more families than is the case under current mechanisms.

All reviews, when initiated, will be capable of leading to prosecutions, should sufficient evidence of a criminal offence exist. As noted above, the ICRIR will have all the necessary powers to conduct criminal investigations as part of any review, and to identify individuals. An individual's liability to prosecution is only removed on the basis of a formal process whereby they have applied for immunity, and the ICRIR is

satisfied that they have provided a truthful account to the best of their knowledge and belief. For individuals who are not granted immunity from prosecution, the ICRIR will consider whether the evidence available following its review is sufficient to refer the cases to the relevant independent prosecutor for consideration. The UK Government recognises that its obligations under Article 2 of the European Convention on Human Rights in principle require (among other things) that investigations be capable of leading to the identification and punishment of those responsible for a death. The ICRIR will be responsible for the discharge of those obligations, where they arise, through its own independent and effective reviews into deaths and incidents resulting in serious injury. Working together with public prosecutors and making use of its full police powers, it will also be able to institute criminal proceedings against individuals who are suspected of being responsible for offences in cases where conditional immunity has not been granted.

It follows that, where immunity is granted, an ICRIR review will not be capable of leading to the prosecution or punishment of the individual concerned. Nevertheless, the Government considers this result to be compatible with its international obligations because the relevant procedural obligations are not absolute. The absence of a prosecution or punishment outcome in individual cases where immunity is granted can be justified on the basis that the conferral of such immunity in a limited and specific way is necessary to ensure the recovery of information about Troubles-related deaths and serious incidents which would not otherwise come to light, such truth recovery being an important part of facilitating reconciliation in Northern Ireland. The Government relies on (among other cases) the judgement of the Grand Chamber of the European Court of Human Rights in *Margus v Croatia*² in support of its position.

There is also precedent in Northern Ireland to our proposed approach of removing the prospect of prosecution for perpetrators of violence, such as disappearances, in favour of information recovery and facilitating reconciliation and non-recurrence. The Independent Commission for the Location of Victims' Remains grants immunity from prosecution to individuals in exchange for information on the location of victims' remains - a model that has proven to be successful in yielding results for victims and their families and contributing to long-term reconciliation in Northern Ireland. Similarly, the Northern Ireland Arms Decommissioning Act 1997 created a scheme to facilitate the decommissioning of paramilitary weapons which ensured that a person could not face prosecution for certain offences in respect of anything done by them in accordance with the scheme. Further, the legislation prevented the use of decommissioned weapons, or evidence relating to them, in criminal proceedings.

² [2014] ECHR 523

In terms of the operation of the conditional immunity scheme in practice, immunity from prosecution can only be granted on the basis of a valid application for immunity, and if the ICRIR is satisfied that an individual has provided a truthful account to the best of their knowledge and belief, and that the account provided contains conduct that would tend to expose the individual to a criminal investigation or prosecution. When assessing an application for immunity, and whether an individual has provided an account that is truthful to the best of their knowledge and belief, the Bill places the ICRIR under a clear obligation to take into account any other relevant information held by it, including both previous information provided by the person seeking immunity, as well as information and evidence obtained from witnesses, including victims and their families, as part of the review process. Decisions whether to grant immunity will be taken by a very experienced panel, led by the Chief Commissioner who will be a judge of high standing and supported by two other individuals with at least 10 years relevant legal experience.

It is only possible for the Commission to grant immunity in respect of conduct disclosed by an individual as part of their application. This means that a person will not be granted 'blanket' immunity in respect of all offences they may have committed during the Troubles. The scope of the grant of immunity is linked to the information they provide - an approach that the UK Government considers to be proportionate. The immunity panel will be chaired by the Chief Commissioner of the ICRIR, and the legislation places an obligation on authorities to provide full disclosure to the ICRIR - a guarantee that has not been provided before in statute. This will help ensure that the ICRIR makes these crucial decisions with the necessary information, and with the appropriate expertise. It remains possible for someone with standing to launch a Judicial Review of a decision to grant immunity and, if the decision is deemed to have been reached illegally, unfairly, or irrationally, it may be overturned.

The UK Government has further strengthened this conditional immunity scheme through legislative amendments, including by placing the ICRIR under a positive duty requiring it to take reasonable steps to secure information relevant to that assessment. This will make the process for granting immunity more robust. Furthermore, the legislation will now create a new offence of wilfully or recklessly misleading the ICRIR when providing information. Individuals who are granted immunity will automatically lose it if they are convicted of such an offence as part of their application for immunity. A grant of immunity must also be revoked if an individual is subsequently convicted of terrorism offences or offences connected to terrorism committed after immunity has been granted.

Another amendment by the UK Government means that the legislation will disapply the Northern Ireland (Sentences) Act 1998 for future convictions. This means that individuals who choose not to engage fully with the ICRIR, are not granted immunity, and who are subsequently convicted of an offence, will not be able to apply for early release and will be liable to serving a full sentence. Lastly, as noted above the UK Government has increased the level of financial penalty for non-compliance with the ICRIR's inquiries, up to £5000.

'Powers vested on the Secretary of State for Northern Ireland'

The UK Government does not share the Special Rapporteurs' assessment of undue or 'significant levels of government control over the establishment and operation of the new legacy mechanisms.' The ICRIR will have full operational independence in all aspects of its work, including the establishment of terms of reference, the appointment of staff, all decisions relating to the conduct of investigations, and all decisions relating to the consideration and granting (or otherwise) of immunity applications. The UK Government is committed to ensuring that the process for establishing the Commission is transparent and inclusive.

Regarding appointments, the appointment of commissioners or chairs by the relevant Secretary of State is common practice for many organisations and processes that operate with absolute operational independence, including both the Northern Ireland Human Rights Commission and the Equalities Commission of Northern Ireland, as well as many independent public inquiries. While the Secretary of State retains the statutory responsibility to make appointments to the board of the ICRIR, the Lord Chief Justice of England and Wales, along with his counterparts in Scotland and Northern Ireland, recommended ██████████ for the role of Chief Commissioner designate - which he accepted. Utilising the expertise of the judiciary to provide an independent recommendation, while different to the usual public appointments process, was the most effective and efficient means to identify the best candidate. It was therefore not formally regulated by the Commissioner for Public Appointments.

This approach of identifying an interim (designate) in advance of the enactment of the legislation establishing a new body is also not uncommon for operationally independent organisations and processes. The Government has been clear that the formal appointment of commissioners - included the Chief Commissioner - will only follow Royal Assent. It was, however, important to identify a designate now to give

the Chief Commissioner ample time to lead on designing the organisation in the run up to it becoming fully operational as soon as is practicable following Royal Assent. This will help victims, survivors and their families get the answers they need with minimal delay. The Chief Commissioner designate will also lead the process to appoint the other commissioners and provide an independent recommendation to the Secretary of State, including for the key role of Commissioner for Investigations - for which he is seeking the broadest possible field of experienced candidates, with the competition subject to fair and open competition, with appointment on merit. As a means of providing greater transparency, we have published information in Parliament on how we expect the appointments process for the various ICRIR Commissioners to take place. These set out fair and objective processes, with independent input, to get the best candidate.

A dedicated secretariat, supporting the preparatory work being undertaken by Sir Declan, has been established as a separate business unit of the Northern Ireland Office. It has a separate budget and does not report to NIO Ministers. Until Royal Assent provides the powers for the new ICRIR, the team will operate independently from the NIO and Ministers in its work, while following corporate policies on Freedom of Information and Data Protection to meet important transparency and data handling requirements.

We note the concerns of the Special Rapporteurs in regard to the ability of the Secretary of State to prohibit the disclosure of information on the grounds of national security interests. As explained above, the Bill will oblige State bodies with potentially relevant information to make full disclosure to the ICRIR.

Some have suggested that clause 5(1) of the Bill, which states that relevant authorities must make available to the ICRIR such material as the Commissioner for Investigations may reasonably require, would affect the ICRIR's ability to carry out investigations that meet the required Article 2 standards. However, in line with principles of public law, all public authorities and office-holders are required to exercise discretionary powers reasonably, even if the relevant legislation does not say so in terms. It is not unusual for legislation giving a power to require the provision of information to be expressly subject to a requirement of reasonableness, as an alternative to relying on the implied requirement under public law. For example, paragraph 19ZA of Schedule 3 to the Police Reform Act 2002 uses the same "reasonably requires" formulation in the equivalent power of the Director General of the Independent Office for Police Conduct.

In practice, the Commissioner for Investigations will decide, based on the facts of the particular review, what information can reasonably be required of a relevant authority. If there is a dispute, and the relevant authority considers the Commissioner for Investigations has acted unreasonably in imposing the requirement, the matter will ultimately have to be resolved by the courts.

The Secretary of State for Northern Ireland has, however, no role at all in terms of restricting the information which may be provided to or obtained by the ICIR during the course of its reviews, ensuring the Commission's full independence in relation to such matters.

The Bill does give the Secretary of State a role in certain circumstances in relation to the onward disclosure by the ICIR of sensitive information and of protected international information (within the meaning of clause 54 of the Bill). As regards sensitive information (which, as defined, includes all information supplied to the Commission by the intelligence agencies), the Bill confers no power on the Secretary of State (or indeed anyone else) to prohibit onward disclosure to prosecutors and police (see paragraph 3(2) of Schedule 5, when read with clause 26(3)). There is a power to prohibit the disclosure of sensitive information to the world at large, including through the publication of family reports. However, the Secretary of State may only prohibit disclosure if, in his view, it would risk prejudicing, or would prejudice, the national security interests of the UK (see paragraph 4(3) of Schedule 5). The Government believes this power is necessary to protect against the risk of the publication of material which might cause serious damage to national security, and its use to prohibit disclosure of national security sensitive information in a final report will be reviewable by the courts under the mechanism set out in Schedule 5.

This is a proportionate approach, following the model set out in the Stormont House Agreement draft Bill (which itself is consistent with paragraph 37 of the Stormont House Agreement), which contained identical drafting on this point (see Schedule 10, paragraph 3). In the Government's view, it cannot be reasonably argued that, in order to meet the standard of an Article 2 compliant investigation, a public authority must be free to publish information which is harmful to national security. Police investigations, criminal prosecutions, inquests and equivalent processes across the United Kingdom all currently discharge these obligations without publishing such information.

To the Special Rapporteurs' concern about the Secretary of State's powers to make other rules and guidance, Clause 20(3) gives the Secretary of State the power to make rules about the procedure for making and dealing with requests for grants of

immunity from prosecution. Any such rules will be subject to Parliamentary scrutiny via the negative procedure (clause 20(7)). Procedural rules made under this provision will have no bearing on the interpretation of the conditions for granting immunity from prosecution, as set out on the face of the Bill. They will not regulate how the immunity requests panel should apply those conditions in any particular case. Procedural rules, by their nature, are not capable of affecting the substance of decisions on immunity requests. Furthermore, the clause 20(3) power has no bearing on the ability of the ICRIR to carry out Article 2 compliant investigations through its review function.

As a result of a UK Government amendment, the ICRIR will now be under a new duty to produce guidance related to the process of determining a request for immunity. This has replaced a power that formally sat with the Secretary of State for Northern Ireland, therefore allaying concerns around the integrity and independence of the immunity process.

Access to archives and preservation of memory

The UK Government has always been committed to bringing forward measures to ensure the preservation and transmission of memory about serious human rights violations during the Troubles, in line with both the Stormont House Agreement and international standards, such as Principle 3 of the Updated Set of Principles. A core part of the legislation is a major oral history initiative to create opportunities for people from all backgrounds to share their experiences and perspectives related to the Troubles, and to learn about those of others. As well as securing the long-term preservation of, and public access to, oral history records, a core focus of this initiative is to proactively collect and promote the voices of those who have traditionally been under-represented. Through a focus on diversity and individual experiences, this expert-led initiative will guard against the development of revisionist and negationist arguments. This will be further ensured by the independent academic research provided for in Part 4, with oversight from research councils to ensure this important work - making use of new information arising from the ICRIR - is conducted to the highest academic standards. We also note that the Special Rapporteurs have welcomed the plans to establish a memorialisation strategy, which will seek to identify inclusive new initiatives and structures to commemorate the past for all in Northern Ireland, and ensure the lessons of the past are not forgotten.

Every effort has been, and will be made to ensure full compliance with international standards in this field, including through full and effective consultation with, and

participation of, victims. For example, the advisory forum established to provide guidance and oversight of the oral history and memorialisation work in Part 4 must include membership by those representing the views of victims and survivors. The process by which the memorialisation strategy is prepared must also provide opportunities for victims' organisations and other 'interested persons' to contribute. The Bill explicitly requires gendered perspectives be included as part of the academic research measure, in keeping with UNSC Resolution 1325 in relation to the role of women in the prevention and resolution of conflicts, peace negotiations, peace-building, peacekeeping, humanitarian response and in post-conflict reconstruction.

Noting the Special Rapporteurs' concerns about the Secretary of State's role in Part 4, we would reiterate that the Secretary of State has no involvement or influence over the operation of these initiatives beyond appointing the 'designated persons', and when appointing such persons he or she will be under a duty to have regard to whether the person will act independently of others, if appointed. As highlighted above in relation to the Chief Commissioner, appointment by the Secretary of State is standard practice, both in the UK and international contexts. For example, the Head of the Truth and Reconciliation Commission in South Africa was appointed by that country's president, and the commissioning of historical initiatives by governments in other countries has not compromised the necessary independence of such work, or the outcomes they have produced. To provide further reassurances however, the Government tabled an amendment during the Bill's passage in the House of Lords, requiring the Secretary of State to consult organisations that are experienced in reconciliation and anti-sectarianism, before appointing the delivery organisations in Part 4, and before responding to the memorialisation strategy. There are further requirements on the face of the Bill, requiring the independence of the academics carrying out the research work. More generally, the Government would also point to the less prescriptive nature of the Bill, when compared with the Stormont House Agreement Bill, as evidence of the Government's recognition of the importance of this work being done independently by expert organisations who will be afforded the flexibility to make key operational decisions.

Though outside the Legacy Bill itself, the Government's package of measures to address the legacy of Northern Ireland's past includes a major digitisation project to make official archives more accessible to the public - complementing the Government's broader commitment to disclosure, and in keeping with Principle 5, 14 and 15 of the Updated Set of Principles, relating to the preservation of, and access to, archives concerning violations of human rights. The first tranche of these records

has already been published³, and the Government has committed to releasing more files on a phased basis. Also announced alongside the introduction of the Bill on 17 May 2022, was the Government's intention to commission an 'Official History' relating to the Troubles. This will be conducted by independent historians with access to all relevant material in Government records, and with the purpose of providing an authoritative and in-depth examination of the UK Government's role, and policy towards Northern Ireland during the Troubles. The project will be steered by experts, who will make recommendations on scope and other important details.

Taken together, these measures will ensure that the public, including independent academics and historians, will have access to more information than ever before about the Troubles in Northern Ireland. Complementing and supported by the work of the ICRIIR, this will allow for a fuller examination of the Troubles than previously possible - including the role of terrorist organisations, the actions of the state and the context in which both operated. This will ensure the transmission of collective memory, as well as a balanced history of events and experiences, from which current and future generations in Northern Ireland - and beyond - can draw, helping to build a shared understanding of the past and fostering both reconciliation and non-recurrence.

- 3. Please indicate if effective consultation has taken place with all relevant stakeholders, including victims and civil society, concerning the aims and details of the proposal and whether their views have been effectively taken into consideration. Please indicate what measures are envisaged to ensure victims' full and effective consultation and participation in this regard moving forward.**

a) Consultation with relevant stakeholders

The UK Government has consistently stated its commitment to working with victims and the groups that represent them, as well as all parts of the community in Northern Ireland, in seeking to move forward on addressing the legacy of Northern Ireland's past, recognising the highly complex and sensitive nature of these issues.

³ "Northern Ireland: Pathways to Peace and Reconciliation", <https://www.nationalarchives.gov.uk/northern-ireland-pathways-peace-reconciliation/>

That is why the Government was clear when publishing its legacy proposals in the Command Paper of July 2021 that this would form the basis of an intensive period of engagement with all key stakeholders from across Northern Ireland, Great Britain and Ireland, and beyond. In particular, the Government has acknowledged the importance of engaging with victims and survivors, and their families, as part of this process, with the former Secretary of State for Northern Ireland announcing jointly in a published communique⁴ with the Irish Minister for Foreign Affairs that *'the interests and perspectives of victims and survivors, and all those most directly affected by the Troubles, had to be central'* to any legacy discussions.

In the intervening months, extensive engagement took place at both ministerial and official level, including with the Irish Government; the Northern Ireland parties; representatives of victims and survivors; religious leaders; organisations representing veterans and former service personnel; operational partners including the Police Service of Northern Ireland (PSNI); academics; community groups; and representatives from across civil society. The UK Government's prioritisation of this engagement is evidenced by the fact that, despite a public commitment to introduce legislation by the end of the Autumn 2021, introduction of the Northern Ireland Troubles (Legacy and Reconciliation) Bill was delayed until May 2022 in order to ensure that effective engagement took place with all stakeholder groups, and that this engagement formed a material part of the policy development process.

The Government met a wide range of victims and survivors, and their representatives during this time, who made clear that access to information and accountability through effective investigations is absolutely vital. Another key message from this engagement process was that, while many accepted that the prospects of successful criminal justice outcomes are very low, and agreed with the need to focus primarily on information recovery for families, the possibility of prosecutions should not be removed entirely. Similarly, many veterans and former service personnel expressed concern with the unconditional statute of limitations as proposed in the Command Paper, feeling that it implied a moral equivalence between those who served the State to uphold the law in Northern Ireland and those, on all sides, who sought to destroy it.

The Government carefully considered this feedback, which is why the legislation introduced on 17 May 2022 reflected a number of significant changes from the

⁴ Joint Communiqué of the British-Irish Intergovernmental Conference - 24 June 2021

<https://www.gov.ie/en/press-release/8bb9f-joint-communicue-of-the-british-irish-intergovernmental-conference-24-june-2021/>

proposals contained within the Command Paper. As well as changes allowing civil claims brought before the Bill's introduction to continue and allowing inquests to continue until May 2024, this includes the conditional immunity approach set out above which will shift the focus towards information recovery, while addressing the strongly held views of those who felt that the prospect of criminal justice outcomes - however remote - should remain open in certain circumstances. Drawing parallels with aspects of the Truth and Reconciliation Commission implemented in South Africa, this process will require individuals to acknowledge their involvement in serious Troubles-related offences and to reveal what they know, or otherwise remain liable to the threat of prosecution. The UK Government is convinced that this approach will deliver for those most impacted by the Troubles; providing answers and accountability for many more families than is the case under the current system, while also delivering on our commitments to those who served in Northern Ireland, and helping society in Northern Ireland to look forward.

As detailed above, the UK Government has also tabled a significant package of substantive amendments that provide greater assurance regarding compliance with our international obligations; enhance the independence of the new Independent Commission for Information Recovery and Reconciliation; provide a greater focus on the interests of victims and families; and strengthen provisions related to the process for granting immunity from prosecution to those who engage meaningfully with the Commission - while keeping open the possibility of prosecution for those who fail to do so. These changes reflect the extensive engagement that has taken place on the Bill, including with victims and survivors, and demonstrates that the UK Government has engaged constructively, and in good faith, with stakeholders, in order to strengthen the Bill to deliver better outcomes for those most affected by the Troubles. Indeed, as noted above some of these amendments explicitly require effective consultation with relevant stakeholders going forward - for example, the Secretary of State must consult with relevant organisations experienced in reconciliation and anti-sectarianism before designating the delivery organisations in Part 4, and before responding to the memorialisation strategy in that part.

The UK Government acknowledges that, even with these changes, the provisions in the Northern Ireland Troubles (Legacy and Reconciliation) Bill remain challenging for many individuals and organisations. This is an extremely complex and sensitive issue that inevitably requires difficult compromise, and finely balanced judgements - as was the case for the Belfast (Good Friday) Agreement itself. It is our responsibility to be honest about the practicalities involved in addressing issues. In order to provide greater information, accountability and acknowledgement to victims, survivors, and families, we must do things differently.

b) Measures to ensure victims' participation

The UK Government agrees that it is vital that victims and survivors have a role in the design, implementation and monitoring of the measures set out in the Northern Ireland Troubles (Legacy and Reconciliation) Bill. Having prioritised engagement with families of victims at an early stage (as outlined above), these mechanisms have and continue to be designed with the primary objective of implementing a process that is able to deliver effective information recovery, acknowledgement, and accountability for victims and survivors.

Taking learning from processes like Operation Kenova and the PSNI's Legacy Investigation Branch, the ICRIR will ensure that families are involved in the investigative processes from the outset and throughout. While the ICRIR will have all the powers it needs to conduct criminal investigations compliant with international obligations as part of a review where that is necessary, it is also vital that the ICRIR's investigative processes can be tailored to specifically address the requirements and requests of the family regarding information recovery, ensuring that such processes can be as efficient as possible in obtaining information, accountability, and acknowledgement for families. The ICRIR is under a duty to provide a copy of each draft report to relevant family members or surviving victims and to give them a reasonable period of time in which to make representations about the contents of the draft. The Bill does not prohibit a family's right to seek legal representation or advice regarding decisions taken by the ICRIR. Individuals who wish to challenge a decision taken by the ICRIR will be able to do so in the administrative courts via judicial review.

Though not explicit in the Bill, we would expect the ICRIR to inform families if an individual has been granted immunity from prosecution for a Troubles-related incident related to their case, and indeed to keep them informed of the review as it progresses. Information regarding the granting of immunity should also be included in the published family reports, including the naming of individuals subject to safeguards around safety to life. We would also expect the ICRIR to include reasons for the granting of immunity in each instance. It is only right that the ICRIR should be able to consider and determine how it may most effectively engage with victims and survivors in practice, and it will be for the Chief Commissioner and the Commissioner for Investigations in particular to ensure that appropriate structures and processes are put in place to take the right approach in each individual case.

The UK Government has also tabled amendments to strengthen our commitment to victims. The ICIR, when exercising its functions, will now be under a duty to have regard to the general interests of persons affected by Troubles-related deaths and serious injury. The Bill also states that, in exercising its functions, the ICIR's principal objective is to promote reconciliation.

The legislation also places the ICIR under a new duty to offer victims and their families the opportunity to submit personal impact statements setting out how they have been affected by a Troubles related death or serious injury. These statements must be published if the person making the statement so wishes, subject to limited exceptions that ensure no individuals are put at risk, and that the Government's duty to keep people safe and secure is upheld.

Part 4 of the Bill, which provides for the oral history and memorialisation initiatives, also affords the organisations designated to take forward these measures a high degree of flexibility on operational matters - recognising the importance of this work being carried out, and being seen to be carried out, independently of political influence. Nonetheless, clauses in this part specifically mandate the participation of victims and survivors, and their families and representatives, and that their views be taken into consideration. For example, clauses specifically require that the memorialisation strategy can only be prepared following consultation with, and contributions from, interested organisations - including from the victims sector. There is also a requirement that any advisory panel brought together to provide oversight of the initiatives in Part 4 must include persons or organisations representing the views of victims and survivors.

The UK Government will continue to consider guidance by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on the design of mechanisms intended to provide acknowledgment for past harms, to ensure that these comply with international standards (A/74/147), and in particular will ensure that the participation and agreement of victims in any such process.

The Government of the United Kingdom remains fully committed to working with the victims' sector, and all parts of the community, to deliver a way forward for victims, survivors and their families, and for the future of Northern Ireland.