



Ulster Human Rights Watch Legacy Consultation Submission

**NIO Consultation :
Addressing the Legacy of
Northern Ireland's Past**

Submitted: 04 October 2018

**Truth and Justice for
Victims and Survivors of Terrorism**

Executive Summary

1. In her foreword to the Consultation Paper 'Addressing the Legacy of Northern Ireland's Past', the Rt. Hon Karen Bradley MP, Secretary of State for Northern Ireland, stated:

"While I believe the Stormont House Agreement institutions are the best way forward, this consultation also welcomes views from those who might have other ideas, either about how the institutions should work, or about alternatives to the institutions themselves."

2. The Ulster Human Rights Watch has analysed the proposals reached by political consensus to establish four new bodies to address the past. Rather than providing a significant improvement on current arrangements as suggested, these proposals will have an adverse and detrimental impact on the victims of terrorism, both civilians and former members of the armed forces and police officers. It is strongly believed, among the victims of terrorism we represent, that these proposals will undermine the due process of law and will provide the means by which those who have engaged in terrorism and their sympathisers could justify terrorism and rewrite the history of the terrorist campaign in Northern Ireland. If implemented these proposals will alienate victims of terrorism including former members of the security forces.
3. The **Historical Investigations Unit (HIU)** would carry out criminal investigations and non-criminal misconduct investigations against former police officers, thus equating investigations into terrorist activities with investigations into police misconduct. The HIU will only consider a limited number of cases related to deaths only. All cases of serious injury will remain within the remit of the Legacy Investigation Branch and the Office of the Police Ombudsman for Northern Ireland. The HIU will investigate the activities of the police firstly by way of a criminal investigation and secondly by way of a misconduct investigation, while terrorists would only be investigated once for criminal activities.
4. The **Independent Commission on Information Retrieval (ICIR)** will seek and receive information that victims' families will not be able to verify, since its activities will be shrouded in secrecy. Confessions made by terrorists would not be available to be used in court. A de facto amnesty would be immediately granted to any terrorist who confesses to his crime, since he would not be able to be prosecuted on the basis of this evidence. There will be no legal remedy available to challenge the information released by the ICIR.

5. The **Oral History Archive** (OHA) will offer the possibility to terrorists and their sympathisers to tell stories glorifying their terrorist activities, justifying their actions and vilifying the security forces. They will be given the opportunity to provide narratives that will help to rewrite the history of the Northern Ireland Troubles while being protected from legal action in defamation.
6. Finally, the **Implementation and Reconciliation Group** (IRG) will be given the task after five years to ensure the delivery of a final report, the academic report, on the basis of all reports received from the legacy institutions (HIU, ICIR, OHA and the Coroner's Service), and other limited specified material. The academic report will likely be a reflection of what would have been provided by the legacy institutions justifying terrorism and rewriting the history of the terrorist campaign in Northern Ireland.
7. These four institutions, which appear designed to favour those who have engaged in terrorism and their sympathisers, will inevitably have the adverse impact of marginalising victims of terrorism, including former members of the armed forces and police officers.
8. For these reasons, as suggested by the Secretary of State for Northern Ireland, the Ulster Human Rights Watch puts forward **a positive alternative** to the proposed institutions.

This alternative is based on **fundamental principles** which provide a framework for the development of the legacy institutions.

The **Historical Investigations Unit** (HIU) should be established to carry out criminal investigations in relation to deaths and also serious injury cases related to the terrorist campaign in Northern Ireland.

The **Office of the Police Ombudsman for Northern Ireland** (OPONI) should continue to have power to investigate allegations of non-criminal misconduct of police officers during the Troubles concerning deaths and serious injury cases.

The **Intelligence Retrieval Commission** (IRC) should be established to confidentially provide families with the names of those dead terrorists who were responsible for the murder of their loved ones on the basis of intelligence records.

The **Legacy of the Past Record** (LPR) should be created within PRONI to gather authentic stories and experiences of the Troubles while maintaining the

availability of legal action in defamation against the Deputy Keeper of the Records.

The **Committee for Peace and Freedom** (CPF) would have the function of developing government policies to counter terrorism and educational programmes in order to prevent and successfully oppose terrorism and radicalisation developing in Northern Ireland and the Republic of Ireland in the future.

Question 1: Current System for Addressing the Past

Do you consider that maintaining the current system for dealing with the issues of the past through legacy inquests, PSNI and OPONI investigations is the right approach, or do you think there is a need for reform?

9. The system for dealing with issues of the past through various institutions, such as the PSNI, OPONI, the Coroners Service, etc., having their particular remit and area of expertise is the right approach. The main institutions currently dealing with the past in Northern Ireland and fulfilling their particular functions are outlined below:
 - The PSNI Legacy Investigation Branch (LIB) is part of the Chief Constable's statutory obligation to deal with the past in Northern Ireland. The LIB is entrusted with a caseload made up of more than 3200 cases of homicides that occurred in Northern Ireland between 1 January 1969 and 1 March 2004. The LIB reviews these cases and where credible evidence exists, they investigate them further. The cases are managed and progressed by detectives using a Case Sequencing Model which takes a number of factors into consideration. The delay in the review and investigation of historical cases *is due to a lack of funding*.
 - The Office of Police Ombudsman for Northern Ireland (OPONI) Historical Investigations Directorate (HID) considers matters in which members of the RUC may have been responsible for deaths or serious criminality in the past and in particular between 1968 and 1998. The Directorate receives complaints of a grave and exceptional nature from members of the public about police conduct during this period, including allegations of police involvement in murder, attempted murder, as well as conspiracy and incitement to murder. At the present moment the Police Ombudsman carries a caseload of over 400 cases. The greatest impediment for advancing the investigation of cases is the fact that the Directorate *is severely underfunded*.

UHRW Legacy Consultation Response

- The Legacy Inquest Unit (LIU) within the Coroners Service for Northern Ireland could deal with legacy inquests in Northern Ireland. The LIU is a reformed inquest process proposed by the Lord Chief Justice, who also became the President of the Coroner's Courts in 2016. According to the Lord Chief Justice, legacy inquests could be dealt with within five years *if the necessary funding is provided*. It would be helpful for the Lord Chief Justice to make his plan publicly available so it can be examined alongside the existing proposals for dealing with the past.
 - The Attorney General for Northern Ireland can direct a coroner to hold an inquest into a death, no matter how long it has been since the person died or when a previous inquest has already taken place during the Troubles. The key issue considered by the Attorney General in directing a coroner to hold an inquest is whether he has reason to believe that the deceased person has died in circumstances that, in his opinion, make the holding of an inquest advisable.
 - The Public Record Office for Northern Ireland (PRONI) holds public and private records. It holds many Court and inquest records relating to the Troubles in Northern Ireland. These records can be accessed and released to the public under the Freedom of Information Act 2000 (FOIA) and/or the Court Files Privileged Access Rules (2016).
 - The PSNI Major Investigation Team (MIT) investigates Troubles-related incidents when new evidence emerges and suspects may be identified, arrested and questioned. Once the investigation is complete the file is referred to the Public Prosecution Service who makes the decision as to whether or not to prosecute the suspect(s) and for what offence.
 - The Public Prosecution Service's (PPS) role is to decide whether or not to prosecute people who have committed a criminal offence, including those related to the Troubles, once the investigation has been carried out by the police. It makes the decision concerning the appropriate charges and has the responsibility for prosecuting the defendant when they are brought to court. The test for prosecution must be met if there is sufficient evidence (the Evidential Test) and if it is in the public interest (the Public Interest Test).
 - The Courts in Northern Ireland deal with all criminal and civil cases, including judicial reviews that are related to the Troubles.
10. Each one of these institutions have their own specific functions and responsibilities in relation to dealing with the past. Therefore, Legacy Inquests, PSNI and OPONI investigations should be considered while also

taking into account the other institutions that are part of the overall system for dealing with the past at the present time. Although the system appears complex, information could be made available to the public and particularly victims of terrorism in order to explain how it works and how to access the relevant institution. Improvement of the mechanisms that are already in place for investigating the past is required, including the rules that apply to both the PSNI Legacy Investigation Branch and the Office of the Police Ombudsman for Northern Ireland, and can be achieved within a reasonable period of time. A complicated new system that will only deal with some parts of the legacy of the past is not desirable.

11. Rather than simplifying the existing system, the proposals for dealing with the past will make it more convoluted. The Stormont House Agreement (SHA) proposals create four new bodies for dealing with the past (the Historical Investigations Unit (HIU), the Independent Commission on Information Retrieval (ICIR), the Oral History Archive (OHA) established by the Public Record Office for Northern Ireland, the Implementation and Reconciliation Group (IGR) working alongside the Economic and Social Research Council (ESRC)) in addition to those mentioned above that already exist. These proposals will have a limited impact in suppressing part of the activities of the LIB and the OPONI Historical Investigations Directorate, which will continue to perform their duties in order to address a number of fatal Troubles-related incidents and all non-fatal Troubles-related incidents.

12. There is therefore a need for funding and for reform.

The lack of funding is the main reason for the backlog of cases and delay in processing cases on the part of the LIB, OPONI and the Coroners Service. Adequate funding would enable these institutions to process historical cases much more quickly and efficiently.

In addition to the alternative proposed by the Ulster Human Rights Watch and detailed in response to Question 14, the following reforms could immediately be introduced which would enable progress to be made in dealing with historical cases:

- The release of court records by PRONI under the Court Files Privileged Access Rules (2016) has been made impossible because of the absence of a Minister in Stormont to take decisions. Arrangements could be made by the Secretary of State to remedy this issue.
- The rules applied by the OPONI for carrying out investigations would need to be reviewed so as to comply with the direction provided by the recent judgements rendered by the Courts, such as that delivered by Mr Justice

McCloskey on 21 December 2017 in the matter of an application by Thomas Ronald Hawthorne and Raymond White for judicial review.

Question 2: Stormont House Agreement Proposals - Engagement with Legacy Institutions

Does the proposed approach help to ensure all groups of people can effectively engage with the legacy institutions? If no, please suggest additional measures that would improve this for specific groups:

13. The engagement of victims of terrorism with the legacy institutions is put at risk by the structure and nature of what is proposed. The proposals will do little to assist innocent victims of terrorism who will have limited means to see justice done in their cases. The proposed approach will serve the purpose of those who have been and remain opposed to Northern Ireland being part of the United Kingdom.
14. Terrorists and their sympathisers will be able to use these proposals to further their political aims in the rewriting of the history of Northern Ireland, and in discrediting the security forces so as to justify the recourse to terrorism. The HIU will be used to unveil as much information as possible from the state so as to justify further investigations into the killings of terrorists by the security forces. These new arrangements will enhance the possibility of pursuing cases against members of the security forces, particularly police officers, who could be targeted, both for allegations of criminal offences and non-criminal misconduct. In the meantime terrorists could be pursued for criminal offences only, since terrorists do not abide by any code of conduct. Furthermore, terrorists could only be convicted of criminal offences if proven guilty beyond reasonable doubt while police officers could be accused of non-criminal misconduct if proven responsible on the balance of probability. This will result in putting members of the security forces at a serious disadvantage compared to terrorists.
15. The ICIR will enable terrorists to tell stories that no-one will be able to confirm. The OHA will open the way for terrorists to tell any manner of story, even if it falsely discredits the security forces and the UK government. The IRG will then be able to rewrite the history of the Troubles on the basis of the information received from the HIU, the ICIR and the OHA. Since these new institutions are designed to enable terrorists and their sympathisers to achieve their aim of rewriting history, it is highly unlikely that victims of terrorism will be willing to engage with them.

16. The suggested measures to redress the discrepancy of treatment between victims of terrorism and perpetrators as well as between terrorists and former members of the security forces are as follows:

- Fundamental principles compliant with common law principles should be approved in order to provide a framework for the development of institutions for investigating the past;
- The interpretation of victims and survivors provided in the Victims and Survivors Order (NI) 2006 should be amended so as to ensure innocent victims of terrorism, including former members of the security forces who were murdered or injured, are not put on an equal footing with perpetrators of acts of terrorism who under this order are equally victims and survivors;
- The conduct of police officers should be investigated by an independent public body dealing exclusively with the police, such as the Office of the Police Ombudsman for Northern Ireland;
- Appropriate support should be provided for members of the security forces when criminal procedures are brought against them or their conduct is being investigated;
- The proposal of having an institution, such as the ICIR, that would retrieve information that can never be tested and confirmed as true should be abandoned;
- No opportunity should be given to those who intend to rewrite the history of the Troubles and justify recourse to terrorism in Northern Ireland by creating a history archive that will be protected against legal action in defamation;

If these measures were implemented it would encourage victims of terrorism, including members of the security forces, to take part in new processes for dealing with the past in Northern Ireland and they could have a major positive contribution for society at large.

Question 3: HIU Remit

Should the HIU's remit also include deaths which took place between the signing of the Belfast Agreement on 10 April 1998 and 31 March 2004?

17. Among those who were made victims of terrorism after the signing of the Belfast Agreement, some have undertaken a number of legal actions they would like to pursue without being entangled in the proposed processes.

These victims should be left with the possibility of opting out from the HIU caseload. However if they choose to have their cases included in the HIU remit they should be free to do so.

Question 4: HIU - Director Assessing Previous Investigations and Deciding Whether Further Investigation is Needed

Do you think that the process set out above is the right way to assess whether an investigation into a Troubles-related death has taken place or whether investigation is needed?

18. The Director of the HIU has operational control over investigations, including the power to decide the extent to which an investigation is needed and the manner in which an investigation is conducted.
19. An investigation may be ordered only when one of the three conditions prescribed in the proposed legislation applies.
20. Condition A requires the existence of new evidence relating to the death and that the Director has reasonable ground for believing it is capable of leading to the identification of a person involved in the death or the punishment of a person for a criminal offence or non-criminal police misconduct. Clause 9 (10) will apply to a person who could be a terrorist, a former member of the army or of the police. It must be noted that terrorists could only be investigated if there is new evidence of a criminal offence while members of the police could be investigated for a criminal offence or for non-criminal police misconduct. It appears that there will be an imbalance between the treatment of terrorists and that of former members of the security forces, which will be aggravated by the fact that terrorists do not keep records of their actions while security forces do.
21. Condition B will apply when the Director has reasonable grounds for believing that a criminal offence relating to a death has been committed and that there are investigative steps that could be taken which would lead to the identification or prosecution of a person who committed the offence. It would appear that this condition will only apply to members of the security forces who used force and whose actions could be investigated with a view to identifying and prosecuting that person. It is highly unlikely that this condition will apply to terrorists, who used violence and whose actions always constitute a criminal offence.
22. Condition C will apply when the Director decides that investigative steps could lead to the identification of a person whose conduct was non-criminal police misconduct in relation to a death, and that he considers that it is appropriate

to investigate the misconduct because of its gravity or exceptional circumstances. There is no doubt that Condition C will apply solely to former members of the police.

23. It seems that the process to assess investigations and to decide whether an investigation is needed disproportionately focuses on the activities of former members of the security forces rather than on the criminal activities of terrorists. Conditions A, B and C will apply to members of the security forces while Condition A may be the only condition that applies to terrorists. The duty of the state in a democratic society is to ensure that criminals and particularly terrorists are identified, prosecuted and convicted, and make sure that the security forces are not tarnished by equating their lawful existence and activities with the illegal activities of terrorists.
24. We suggest that the HIU should only be dealing with criminal offences caused by terrorists and when this has been the case by members of the security forces. Non-criminal police misconduct investigations should not be dealt with by the HIU.
25. Victims of terrorism who were unhappy with the review of their investigation by the HET should have the right to request that their cases are reconsidered and investigated. Since a murder investigation is never closed, all the cases should be kept under review at all times. Depending on whatever new information or evidence comes to light, a reopening of the investigation may be required.

Question 5: HIU - Disclosure Appeals Mechanism

Do you think that the proposed mechanism to appeal disclosure decisions to a judge provides adequate opportunity to challenge decisions by the UK Government to protect information?

26. According to the proposals, disclosure of sensitive information must be allowed by the Secretary of State before it is included into a family report or an interim report.
27. If the disclosure of sensitive information is related to the activities of terrorists, it may help victims of terrorism to understand what was done against their loved ones. However, if the disclosure of sensitive information is related to the activities of the security forces, it may undermine the necessary fight against terrorism. It is the responsibility and duty of the state to counter terrorism, and intelligence in this domain is essential. Therefore the state must ensure that the disclosure of information will not weaken its ability to oppose and overcome terrorism at all times.

28. Disclosure of sensitive information should not be used as a means to undermine the United Kingdom or State agents who were carrying out their duties during the Troubles to preserve democracy and protect human rights against acts of terrorism, in particular the right to life. The proposed mechanism to appeal disclosure decisions made by the Secretary of State to prevent the release of sensitive information should be designed to expose the activities of terrorists. Safeguarding measures should be included in order to guarantee that this mechanism will not be used to undermine the security forces and the United Kingdom's ability to fight terrorism.
29. There is a genuine concern that the proposed mechanism will be used to obtain information in order to request the opening of new inquiries that will focus disproportionately on the activities of the security forces at a time when they faced the greatest threat from terrorists.

Question 6: HIU - Overall View

Does the HIU provide a method to take forward investigations into outstanding Troubles-related deaths in a proportionate, victim centred manner with an appropriate structure and safeguards?

30. The main obstacle preventing the HIU from providing a way to take forward investigations into outstanding Troubles-related deaths in a proportionate, victim-centred manner comes as a result of the interpretation of 'victim and survivor' provided in the Victims and Survivors Order (Northern Ireland) 2006. According to this interpretation, a victim can be a genuinely innocent victim of terrorism or the perpetrator of the act of terrorism who murdered or seriously injured others. In order to have a genuinely victim-centred approach, the interpretation of victim and survivor should be removed from the statute book and replaced with a definition of 'victim of terrorism', taking into account the particular circumstances of Northern Ireland.
31. Terrorists who were lawfully killed by the security forces were not murdered. These terrorists must be dissociated from their innocent victims, who may be members of the security forces, whether murdered or seriously injured.
32. The whole investigating system should be designed to serve the interests of victims of terrorism who have the right to expect that the police and judiciary do everything in their power to bring the perpetrators to justice. At the same time, killings of terrorists by security forces should be investigated so as to assess whether or not they were lawfully deprived of their life.

33. The system for investigating the past should not disproportionately concentrate its activities and resources on those who acted on behalf of the State and who defended democracy and human rights against terrorists and their actions. As we have pointed out above, under the proposed system, police officers could be investigated a first time on the ground of criminal allegations and a second time for alleged non-criminal police misconduct, even if they have long since retired. Terrorists will only be investigated on the basis of the criminal offences they have committed but of course will never be investigated for misconduct.
34. The HIU will function contrary to British justice because it deals not only with criminal investigations, but also with reports which will identify perpetrators even where a prosecution cannot be brought, or criticism involving identification of police officers and others in connection with any death. It is contrary to principles of British justice for anyone to be identified in any report with a verdict of guilt unless the guilt is proven in court beyond reasonable doubt. The focus is likely to be on the police rather than the terrorists because HIU will have access to all police and other security force records enabling it to be critical of the security forces, while there will be a complete absence of terrorist records. All the misconduct investigations will focus on the police. There will be no investigation of the conduct of any other professional body involved in dealing with the Troubles, but police officers only.
35. An investigating legal system which favours the enemies of democracy and those who destroy human rights in pursuance of the political aim of a united Ireland is doomed to failure, as it is incapable of achieving truth, justice, acknowledgement and reconciliation.
36. There must be a clear distinction between the investigation of criminal offences and the investigation of alleged police misconduct. Two separate bodies should be dealing with each of these investigations. The HIU could deal with criminal investigations while the Police Ombudsman can continue to deal with non-criminal police misconduct investigations.
37. The proposed system would be confusing because not all investigations dealing with deaths will be transferred by the PSNI (LIB) and OPONI to the HIU, and the HIU will not investigate injury cases which will be left with the PSNI and OPONI. The proposals, as they stand, will make the whole system for investigating the past overly complex and burdensome. Investigations will be dealt with by the HIU for deaths only, while other criminal investigations concerning deaths and injuries will continue to be dealt with by the PSNI (LIB), and police misconduct investigation in cases of deaths and injuries will continue to be dealt with by the Police Ombudsman. It would be much simpler and efficient to transform the LIB into a new body, that may be called the HIU,

but whose remit will include all cases of death and injury during the Troubles, and to maintain the ability of the Police Ombudsman to deal with non-criminal police misconduct investigations in relation to cases of death and injury that occurred during the Troubles.

38. The proposals provide for support and assistance to be given to the members of families whose death is within the HIU's remit. This means that family members of terrorists who were killed will be given disproportionate assistance compared to family members of victims of terrorism since the greater number of investigations carried out by the HIU will focus on the investigation of killings by members of the security forces. Also, the proposals do not include provisions to ensure support is given to members of the security forces (though perhaps elderly and PTSD sufferers) who may be investigated for alleged criminal offences or alleged non-criminal police misconduct. Nor is there any provision to ensure support is given to the members of their families.
39. The Northern Ireland (Sentences) Act 1998 for Troubles-related offences should not be reviewed as proposed. The scheme that was put in place as a result of the Belfast Agreement which granted early release to prisoners after serving two years in prison causes outrage among victims of terrorism and law-abiding citizens. The scheme was a serious mistake and it should not be extended to include crimes that were committed between 1968 and 1973 as suggested.
40. The proposed HIU is likely to generate false expectations as to the possibility of reaching a better outcome since the rules that will regulate the HIU will be substantially the same as those that currently apply to the PSNI and OPONI. It is unlikely that many cases can be brought to court for successful prosecution. The HIU will be unfair and degrading for police officers who may be investigated twice by the same body (criminal and non-criminal misconduct investigations) while terrorists will only be investigated once for criminal activities. Police officers who have long since retired may be hauled into investigations by the HIU, causing great stress and trauma.
41. Annual reports would be produced by the HIU over which victims of terrorism would have no control. These reports are likely to focus on the activities of the security forces because of HIU's access to their records, while terrorists will escape such scrutiny. After five years a report on patterns and themes will be sent directly by the HIU to the Implementation and Reconciliation Group and not made available to the public. It is submitted that all reports should be made available to the public and in particular to victims of terrorism.

Question 7: Independent Commission on Information Retrieval

What actions could the ICIR take to support families who seek information about the death of their loved one?

42. The families would wish to receive reliable information from witnesses who can be identified and questioned about what they know. The Independent Commission on Information Retrieval (ICIR) will never be able to confirm as absolutely true and accurate whatever information they may receive. This body will not be able to deliver satisfactory answers to the victims of terrorism, just as the Independent Commission for the Location of Victim's Remains (ICLVR) was unable to confirm the accuracy and veracity of the information received, until the remains were recovered and forensic examination could determine that they were those of the missing person. The fifth search that started in September 2018, in County Monaghan, for the body of Columba McVeigh who was murdered and secretly buried by the Provisional IRA, demonstrates how unreliable was the information received on four previous occasions. The ICIR, unlike the ICLVR, will offer no possibility for the families of those murdered to verify the information received. Forensic examination, in order to determine the reliability of the information received, will never be available with the ICIR.

43. The ICIR will be a purely voluntary process for terrorists to confess to their crimes although it is unlikely that many will confess. The ICIR will control all confessions and other information divulged to it. Victims will not be entitled to direct access to any of the information. The information will be released only at the discretion of the ICIR and could never be certified to the same standard of evidence that would be expected in the criminal justice system. Information released to the families will be limited and not in any event admissible in court. The names of those responsible for murder or any other crime will not be disclosed. Information may be withheld by the Secretary of State if releasing it would prejudice national security interests.

44. It is likely that the limited and unsatisfactory amount of information released by ICIR to families will leave them disappointed and frustrated. Families will be barred from access to the courts to seek remedy against the ICIR. There will be no legal remedies available in relation to the information released, such as judicial review proceedings or legal actions on the basis of GDPR or FOI legislation.

In view of the above it is unlikely that victims of terrorism would feel encouraged to engage with the ICIR.

Question 8: Independent Commission on Information Retrieval

Do you think the ICIR is structured correctly, with the right powers and protections, in a way that would provide victims and survivors with the chance to seek and receive information about the death of their loved one?

45. The Independent Commission on Information Retrieval (ICIR) will be an international body that will operate with a particular status which will make it totally unaccountable. The proposed legislation would prevent the ICIR from being subjected to judicial review proceedings, and would guarantee that the Freedom of Information Act, the Data Protection Act and National Archives legislation will not apply to it in the United Kingdom and in the Republic of Ireland. As a result, no one will be able to request a review of a decision made by the ICIR to release or not to release information it holds. Someone who has been libelled or unfairly treated in a report produced by the ICIR will be unable to use any remedy in order to seek redress against the injustice they have suffered.
46. The ICIR will operate in total secrecy and will not give the opportunity to the families to test whether the information provided is true and accurate, since there will be no open and contradictory mechanism to test it.
47. Victims of terrorism will have no control over annual reports produced by the ICIR and will never know if the information that was delivered to them is the truth they were looking for. After five years a report on patterns and themes will be sent directly by the ICIR to the Implementation and Reconciliation Group (IRG), and this will not be made available to the public. It is submitted that all reports produced by the ICIR should be made available to the public and in particular to victims of terrorism.

Question 9: Oral History Archive

Do you think that the Oral History Archive proposals provide an appropriate method for people from all backgrounds to share their experiences of the Troubles in order to create a valuable resource for future generations?

48. The Oral History Archive (OHA) proposals raise serious concerns because there are no safeguards in order to prevent those who were engaged in acts of terrorism to brag about and justify what they did in the past. There will be no way of protecting the victims of terrorism from the adverse impact of the release of stories told by terrorists. The situation will be compounded by the protection afforded to all contributors from any defamation proceedings that could otherwise be launched, since there will be no legal action in defamation possible against the Deputy Keeper. It should be noted that this exception will only apply in relation to the OHA, since for any other function carried out by the Deputy Keeper legal action in defamation is possible. This exception also

raises serious concerns as to its compatibility with the Data Protection Act 2018 which implemented the General Data Protection Regulation (GDPR).

49. By law the Northern Ireland Department has the power to give directions to the Deputy Keeper of the Public Record Office of Northern Ireland (PRONI) concerning any aspect of its functions. The proposals introduce an exception in that the Northern Ireland Department will not be able to give any direction in relation to the OHA. Instead, an unaccountable steering group will be created with members appointed by the Deputy Keeper who will provide advice on the organising of the archive.
50. The OHA will provide a means for remorseless terrorists to rewrite the history of the Troubles. It is likely that terrorists and their sympathisers will flood the OHA with accounts glorifying their exploits, vilifying the police and security forces and causing harm and distress to victims of terrorism, including the names of individuals and accounts of incidents that may not be true or accurate. Victims of terrorism will not be able to verify the veracity of the information made available by the OHA to the public.
51. The narratives provided by terrorists will render a counter-service to future generations. Instead of dissuading younger generations from engaging in terrorism, these will have the detrimental effect of radicalising young people within Northern Ireland society, the rest of the United Kingdom, the Republic of Ireland and further afield.

Question 10: Oral History Archive

What steps could be taken to ensure that people who want to share their experiences of the Troubles know about the Archive and are encouraged to record their stories?

52. On one hand there are victims of terrorism and on the other terrorists and those who condoned their actions or the aim they were pursuing, whether Republicans or Loyalists. The fact of giving terrorists and their supporters an opportunity to tell whatever story they wish and be protected from any defamation action will not encourage victims of terrorism to tell their stories, particularly when they have gone through traumatic experiences and may be suffering from PTSD.
53. The fact that the OHA will produce annual reports over which victims of terrorism would have no control will not encourage them to engage with it. After five years a report on patterns and themes will be sent by the OHA to the Implementation and Reconciliation Group (IRG) that will not be made

available to the public. This will further increase the reluctance of victims of terrorism to record their stories in the proposed archive.

54. The OHA proposals run contrary to the European Commission policy on the fight against terrorism, which is to prevent terrorists and their sympathisers from justifying their actions and to use the testimonies of victims of terrorism to highlight the impact it has had on them personally, their family and their community.

Question 11: Commissioning the Academic Report on Themes and Patterns

Do you think that the ESRC should be engaged to commission the academic work on patterns and themes to ensure independence, impartiality and best practice in academic research?

55. The Implementation and Reconciliation Group (IRG) will commission an academic group to produce a final report, but the academics will be limited to considering the reports received from the HIU, the ICIR, the OHA, and certain specified supplementary material. The academics will be barred from considering any material or evidence relating to the whole scope of the troubles. Even if the academics are genuinely independent, the final report based on the limited reports mentioned above may well be an attempt to justify terrorism and to rewrite the history of Northern Ireland (please see response to question 12 below).
56. The body appointed to analyse what happened in Northern Ireland should be made up of experts in the fight against terrorism. It is accepted that the campaign of terrorism is related to the international status of Northern Ireland as being part of the United Kingdom. The purpose of the research should be to learn lessons from what has happened in Northern Ireland and to assist the United Kingdom and the Republic of Ireland in the fight against terrorism, by providing guidelines to be applied so as to prevent the resurgence of terrorism, while at the same time protecting and promoting human rights with a view to preserving future generations from engaging within terrorist organisations.
57. It is unlikely that the Economic and Social Research Council (ESRC) will have the ability to deal with issues of terrorism at the expert level that is required.

Question 12: Implementation and Reconciliation Group

Do you think the IRG is appropriately structured to allow it to review the work of the legacy institutions, to commission an independent academic report and promote reconciliation?

58. At the end of five years the Implementation and Reconciliation Group (IRG) would receive reports from the HIU, the ICIR, the OHA and the Coroners Service. Over a period of five years there would be around 15 annual reports produced by HIU, ICIR and OHA sent directly to the IRG, which would be used to progressively develop patterns and themes. At the end of each year the IRG would produce an annual report that would be released to the UK and ROI Governments, and the First Minister and deputy First Minister, but not made public. At the end of five years the HIU, ICIR, OHA and the Coroners Service would each produce a report on patterns and themes that would not be made available to the public. We submit that all reports should be made available to the public and in particular to victims of terrorism.
59. For the reasons mentioned in previous answers, it is likely that these various institutions would serve the interests of those who oppose democracy and human rights in Northern Ireland. Their reports would serve as a basis to rewrite the history of Northern Ireland's Troubles and justify the recourse to terrorism, equating security forces with terrorists and undermining the British State.
60. It is clear that the IRG would be made up of politicians, albeit not serving public representatives or people appointed by politicians from either the United Kingdom and Republic of Ireland Governments or political parties in Northern Ireland. The IRG should be made up of persons who have no political involvement and who are not appointed by Government(s) or political parties.
61. A definition of what is meant by reconciliation should also be provided. Reconciliation should be based on clear principles. In a democracy it is never right to engage in terrorism so as to pursue a political aim. Reconciliation can never be achieved when terrorists and their supporters deny having done wrong or justify the wrong they have done. There needs to be a turn-around from those who were engaged in acts of terrorism and only when this happens can there be effective reconciliation with their victims.

Question 13: Stormont House Agreement Proposals - Overall View

Do you think that the package of measures proposed by the Stormont House Agreement provides an appropriately balanced and planned way to move Northern Ireland forward that can command the confidence of the community?

62. The package of measures proposed by the Stormont House Agreement does not provide an appropriately balanced and planned way to move Northern

Ireland forward, as it cannot command the confidence of the community as a whole.

63. The proposed bodies, the HIU, ICIR, OHA, and IRG would favour those who have been engaged in terrorism and their supporters, and could be used as a means of rewriting the history of the Troubles from the viewpoint of terrorists.
64. The analysis of the structure and functions of the HIU demonstrates that it will carry out investigations that will focus mainly on the activities of the security forces. The reports (annual reports and the report on patterns and themes) produced by the HIU will highlight criminal investigations against the security forces and non-criminal misconduct investigations against former police officers. These reports would be sent to the IRG, and serve as a basis to rewrite the history of the Troubles.
65. The ICIR would receive information mainly from terrorists acting under the cover of secrecy, which may be only partially stating the truth, and may also seek to justify their criminal activities. There would be no possibility of checking the veracity of the information received. The reports (annual reports and the report on patterns and themes) issued by the ICIR would be sent to the IRG and would serve, alongside those produced by the HIU, as a basis to rewrite the history of the Troubles.
66. The OHA would receive stories from terrorists and their supporters who would be protected from legal action in defamation. It is unlikely that under these circumstances victims of terrorism would be encouraged to contribute to the archive. The reports (annual reports and the report on patterns and themes) issued by the OHA would be sent to the IRG and provide justification for rewriting the history of the Troubles and back up the reports produced by the HIU and ICIR.
67. On the basis of all the reports produced by the HIU, the ICIR, and the OHA, over a period of at least five years, to which would be added the Coroners' Court Service reports and the reports from the Research Project developed with the OHA, the academic group appointed by the IRG will produce a final report, the academic report, with the assistance of the ESRC. It is very likely that the end result of the proposed mechanism would be disproportionately based on reports which support terrorists and their sympathisers and would tend to provide a justification for engaging in terrorism, while tarnishing the reputation of the security forces, particularly the police.
68. The rewriting of the history of Northern Ireland would do nothing to promote reconciliation but will on the contrary increase distrust, anger and division within Northern Ireland society.

Question 14: Other Views on the Past

Do you have any views on different ways to address the legacy of Northern Ireland's past, not outlined in this consultation paper?

69. The alternative to the proposed Stormont House Agreement (SHA) institutions should be based on fundamental principles which provide a framework to develop efficient institutions for dealing with the past. The proposed fundamental principles are as follows:

1. Principle of the right to life for everyone

- Must be respected by all members of society, including terrorists.
- Is enforced by members of the security forces who are accountable of their actions when dealing with terrorists.

2. Principle of the right for an independent and impartial investigation when deprivation of life has occurred

- Deprivation of life by terrorists must lead to a thorough investigation.
- Deprivation of life by members of the security forces must be thoroughly investigated as well.

3. Principle of presumption of innocence

- Anyone is innocent until proven guilty according to law.

4. Principle of the right to an effective remedy

- For all victims of terrorism to have crimes perpetrated against them investigated.
- For members of the security forces to obtain redress when their rights have been violated in the course of an investigation.

5. Principle of the right to private and family life

- For victims of terrorism to have their private and family life respected.
- For retired members of the security forces to have their reputation protected when facing defamatory allegations.

6. Principle of prohibition of discrimination against victims of terrorism

- Victims of terrorism should not be equated with the perpetrators of acts of terrorism.

7. Principle of acknowledgement of the sufferings of victims of terrorism

- The suffering of victims of terrorism should be acknowledged.
- The suffering of former terrorists who turned away from terrorism, show remorse and do not justify terrorism should be acknowledged.

8. Principle of education and prevention by the testimonies of victims of terrorism

- The testimonies of victims of terrorism and those who fought against terrorism should be used to educate future generations and prevent them from engaging in terrorism.

The Historical Investigation Unit (HIU)

70. The Historical Investigation Unit should only be dealing with criminal investigations in relation to the Troubles while the Office of the Police Ombudsman for Northern Ireland should continue to deal with non-criminal misconduct investigations against police officers and the Coroners Service with legacy inquests. The remit of the HIU should extend to deal with the review and investigation of death and injury cases that took place between 1966 and 1998. Families whose loved ones died between 11 April 1998 and 31 March 2004 should have the option to refer their cases for investigation to the HIU.

71. The rules and procedures of the HIU should be made on the basis of the fundamental principles. The HIU should be made easily accessible to victims of terrorism. It should have the power to carry out reviews of previous investigations and to investigate cases when new evidence exists and a new lead of inquiry comes to light. Provisions should be made to enable a chronological review of historical cases and at the same time the re-examination of cases for which the families were not satisfied with the HET report they received.

72. Whenever there would be an issue about possible non-criminal police misconduct that may justify an investigation the HIU should be able to refer the case to the Police Ombudsman for Northern Ireland. The HIU will ensure that appropriate support is provided to all families who lost loved ones as a result of acts of terrorism and also to any former member of the army or police whose actions during the Troubles may be investigated.

73. The procedure for disclosure of security information should be simple while ensuring that national security interests are protected at all times.
74. Appropriate funding should be provided for the HIU so as to be operational as quickly as possible and to be able to deal with the backlog of cases. Annual reports on the work carried out by the HIU should be released to the public. The HIU should not be compelled to produce a report on patterns and themes after five years.

The Office of the Police Ombudsman for Northern Ireland (OPONI)

75. Police officers should be entitled to have their conduct investigated by the Office of the Police Ombudsman for Northern Ireland who was established for the purpose of investigating the actions of the police. The remit of OPONI should cover death and injury cases.
76. OPONI rules, procedures and processes will have to be thoroughly reviewed, taking into consideration the guidance provided by the courts as a result of Judicial Review proceedings, in particular the judgment rendered by Mr Justice McCloskey on 21 December 2017. OPONI rules and procedures must ensure that appropriate support is provided to any former member of the police whose actions during the Troubles are under investigation.
77. The procedure for disclosure of security information must be simplified while ensuring that national security is protected at all times.
78. Funding should be provided for OPONI, as soon as possible, so as to be immediately operational and undertake the investigation of important cases that have been delayed for many years.
79. Annual reports on investigations would continue to be published by OPONI as it is the case at the present time.

Intelligence Retrieval Commission (IRC)

80. In many murder cases for which no-one has been convicted, families still wish to know who was responsible for the murder of their loved ones. The Intelligence Retrieval Commission (IRC) could be established to provide reliable information to family members as to who was involved in the murder of their loved ones. The Commission will retrieve the information requested from intelligence records held by the security forces. The scheme will only apply to dead terrorists.

81. Since all legal actions are extinct against dead persons and data protection applies to living people only, the names of dead people, identified as terrorists, could be released to their victims. The names of terrorist who perpetrated serious incidents, resulting in both murders and injuries, during the Troubles, and who were subsequently killed or died of natural causes, could be disclosed. The details of their actions and their names would be confidentially revealed to members of families who were seriously injured or lost loved ones.
82. An assessment as to the impact the release of such information may have on family members of the dead terrorist will have to be carried out. When information is released to the family members of the victim of terrorism, they would be required to sign a commitment to keep it confidential.

Legacy of the Past Record (LPR)

83. Northern Ireland has gone through the most sustained campaign of terrorism in Western Europe since the end of the Second World War. Those who have personal stories and experiences about what happened during the Troubles should be encouraged and allowed to tell them and make them available to the public through the Public Record Office of Northern Ireland (PRONI).
84. Under Section 5 of the Public Record Act (Northern Ireland) 1923 it is currently possible to create a repositories of personal documents that are safely kept and made accessible to the public by PRONI. A Legacy of the Past Record (LPR) could be created to receive the recording and written testimonies of personal stories and experiences in relation with the Troubles. The LPR will be managed according to rules, guidelines and agreements that will be developed for that purpose by the Deputy Keeper.
85. Stories and experiences could be received by the Deputy Keeper either directly from victims of terrorism affected by the Troubles or from organisations serving victims of terrorism. There will not be any specific legislation introduced to protect the Deputy Keeper from legal action in defamation or otherwise.

Committee for Peace and Freedom (CPF)

86. The exceptional history of Northern Ireland resulting from the prolonged terrorist campaign should be used in a positive way to the benefit of society at large.
87. The government and the main stake-holders should develop policies and educational programmes that could be implemented to combat terrorism and

radicalisation and promote peace and freedom within Northern Ireland society.

88. Drawing from the experience of the Troubles there should be a programme of government aiming at preventing terrorism and radicalisation in Northern Ireland and the Republic of Ireland. A multi-agency approach should make it possible to tackle the existence of paramilitary organisations and allow the community as a whole to move on towards a genuinely peaceful and democratic society.

89. Concomitant with the programme of government, educational programmes should be created to be used in primary schools, vocational and academically oriented secondary schools, colleges of further education, and universities, with a view to prevent a repeat of the past with future generations.

Republic of Ireland (ROI)

90. The Republic of Ireland (ROI) has been closely associated with the preparation of the proposals for dealing with the past in Northern Ireland. With a view to cooperate with the proposed Stormont House Agreement institutions and legacy inquests in Northern Ireland, the ROI has made some limited commitments such as:

- The use of the 2000 European Union Convention on Mutual Assistance in Criminal Matters to respond to request of assistance that has been given effect by the Criminal Justice (Mutual Assistance) Act 2008;
- The establishment of a cooperation agreement between An Garda Síochána and the HIU for information exchange in criminal and non-criminal matters;
- The disclosure of information consistent with its constitutional obligations;
- New legislation to give effect to the international agreement between the UK and the ROI to provide for the establishment of the ICIR;
- New legislation to facilitate cooperation by An Garda Síochána with Coroner's inquests in Northern Ireland;
- New legislation to provide for the protection from defamation and other proceedings for persons making oral contribution to the Oral History Archive.

91. However, apart from these minor legislative changes that have to do with the functioning of institutions set up in Northern Ireland for dealing with the past, the ROI has failed, up to this day, to set up equivalent institutions that would mirror those which exist in Northern Ireland for addressing the legacy of the past.

92. The following measures should be taken by the ROI for addressing the legacy of the past:

- Creation of an equivalent of the HIU for investigating criminal offences and particularly terrorist offences, including murders and serious injuries, that occurred during the Troubles;
- The Garda Síochána Ombudsman Commission (GSOC) should apply similar legislation to that which applies to the Police Ombudsman of Northern Ireland in order to investigate non-criminal misconduct of Gardai Officers during the Troubles;
- The Coroners' Service in the ROI should be prepared to carry out inquests into historical cases when this is required;
- During the Troubles there were many requests for extradition of suspects that were never honoured by the Republic of Ireland and therefore the role of the Republic in their failure to extradite must be thoroughly investigated;
- There should be a body set up for the purpose of shedding light on the level of cooperation between the Republic of Ireland and the United Kingdom during the Troubles and the measures that were taken to prevent people living in the Republic of Ireland from using it as a base to carry out terrorist activities in Northern Ireland;
- The ROI government should ensure that all documentation concerning the past is safe, secure and available in the National Archives of Ireland.

Question 15: Impact of the Current System

What are your views on the impact of the current system for addressing the past (as outlined in Part one) for different groups as described by Section 75 of the Northern Ireland Act 1998?

93. All victims of terrorism whatever their background are not currently treated equally before the law compared with other categories of victims (i.e. in the matter of compensation).

94. The equality currently established between perpetrators of acts of terrorism and the victims of terrorism should be brought to an end in Northern Ireland. The interpretation of victims and survivors as provided for in the Victims and Survivors Order (Northern Ireland) 2006 should be replaced with a definition of a victim of terrorism.

Question 16: Impact of the Stormont House Agreement Proposals

What are your views on the impact of the Stormont House Agreement proposals (as outlined in Part two) for different groups as described by Section 75 of the Northern Ireland Act 1998?

95. The proposals will increase the inequality between victims of terrorism and perpetrators as the proposed bodies will be used to rewrite the history of the Troubles, equating terrorists with members of the security forces.

Question 17: Opportunity to Promote Equality of Opportunity or Good Relations

Is there an opportunity to better promote equality of opportunity or good relations?

96. The proposals will result in helping those involved in terrorism and their supporters to justify using terrorism to achieve their political aims. This will exacerbate tensions within the community in Northern Ireland and will not promote equality for victims of terrorism, nor good relations.

**Ulster Human Rights Watch
The Victoria Suite
Brownlow House
Lurgan
CRAIGAVON
BT67 9BJ**

www.uhrw.org.uk

Company Number: NI43494
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