

Northern Ireland Affairs Committee

Oral evidence: [Addressing the Legacy of Northern Ireland's Past: The UK Government's New Proposals](#), HC 284

Tuesday 7 June 2022

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Members present: Simon Hoare (Chair); Scott Benton; Mr Gregory Campbell; Stephen Farry; Mary Kelly Foy; Sir Robert Goodwill; Claire Hanna; Ian Paisley; Bob Stewart.

Joint Committee on Human Rights member also present: Joanna Cherry.

Questions 372 - 415

Witnesses

I: Alyson Kilpatrick, Chief Commissioner, Northern Ireland Human Rights Commission; Dr Hannah Russell, Senior Policy and Research Officer, Northern Ireland Human Rights Commission.



Examination of witnesses

Witnesses: Alyson Kilpatrick and Dr Hannah Russell.

Q372 **Chair:** Good morning, colleagues, and good morning to our witnesses. We have two panels this morning on what is going to have to be, by its definition, I suppose, a quick and forensic inquiry and sessions into the Government's proposals on their recently published legacy and reconciliation Bill. All colleagues are very welcome this morning, but I am particularly pleased to welcome our colleague from the Joint Committee on Human Rights, Joanna Cherry QC MP, who is guesting. It sounds like a rather peculiar talk show where you are guest editor or something. Joanna, you are very welcome.

While I am doing introductory remarks, on behalf of the Committee I congratulate you, Sir Robert, on your election as the chair of the EFRA Committee. We are, of course, delighted that you are continuing to stay on NIAC, bringing your wide range of expertise and experience. Congratulations on behalf of all of us.

Let us now turn to our first panel, Alyson Kilpatrick and Dr Hannah Russell from the Northern Ireland Human Rights Commission. Ladies, you are very welcome. Thank you for joining us this morning. I wondered whether I could kick off the questioning by asking either both of you or one of you—Alyson this may be a question more appropriately dealt with by you in the first instance—to give us a general overview with regard to the commission's response to the Government's proposals, in bullet point, headline terms. Could you also give us some information with regard to how the Government engaged and consulted with your commission in the development of their latest proposals?

Alyson Kilpatrick: I will address both those in turn. I should start, however, for the sake of openness, by telling you that I had a former role as an independent adviser to the Northern Ireland Policing Board and conducted numerous human rights reviews of police investigations, including Kenova, which is referenced in much of this debate. I did not want you to be unaware of that. However, as chief commissioner since September, we have approached this very objectively and tried to be constructive. I start by making that clear, I hope.

Q373 **Chair:** We are grateful to you for that. You are here as the chief commissioner of the commission. It is in that capacity that we will be asking you questions, but we are grateful to you for that scene setting.

Alyson Kilpatrick: Let me take engagement first, if I may, because that affects what I will then say about our response. I have occupied this role, as I said, since September last. I have to confess to being disappointed at the level of engagement with the commission on human rights issues generally, but on this issue in particular. It was always apparent that this was going to raise very significant human rights issues and concern among the community. The body set up to advise and oversee human rights in Northern Ireland was not consulted or asked for advice, so that



is disappointing and worrying. That was the way that we looked at this Bill to start with, like any other stakeholder. The Northern Ireland commission was set up as part of the Good Friday agreement for a very specific purpose.

Q374 **Chair:** Could I pause you so that we can contextualise that? Historically, has the NIO consulted the commission prior to introducing legislation or proposals, with its obligations under the European Convention on Human Rights? Is this a normal practice not to engage you, or is this a strange thing?

Alyson Kilpatrick: I am going to let Hannah talk about previous experience, because she was here longer and responsible for the submission in August 2018. From my limited experience, I can tell you that, on other issues, the NIO has been a little more open to engagement with the commission. On this issue, given its significance and what the commission had said in its response in August 2018, which was, essentially, the opposite to what has been put forward in this Bill, I would have expected the commission to have been consulted and asked for advice.

I was told in April of this year, and I have referred to this previously when speaking on the issue, that there was a way of thinking in relation to this. What I took from it was that a conditional immunity was a possibility. When I saw the Bill I was surprised, both by the timing and by the content of it. Perhaps I will leave it at that, but it certainly was not a consultation and it was barely a discussion. It was really an update that actually ended up making me think there was an awful lot more time and we would be talking about different issues, not a complete shutting off of other criminal and civil proceedings. I will let Hannah talk about previously.

Dr Russell: Unfortunately, there has not been much of a difference in terms of the approach that has been taken recently, having discussed with my colleagues as well to make sure that I had been remembering things correctly. In 2018, as you will be aware, the Government released a draft Bill for consultation on a number of the matters that they have proposed in relation to this current Bill, obviously in a very different sphere, but along similar lines.

During that process, it was only at the point that it had been released for public consultation that the NIO got in touch with us and asked for specific advice in relation to the statute of limitations. As far as I am aware, that is the only time that the NIO has specifically reached out to us. I would stress that that was at the point when the public consultation had started.

We provided that advice privately, but, after a period of time, in line with our transparency, we later published that advice. That has formed our response to that 2018 consultation more broadly.



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Q375 **Chair:** You have both given us a very clear message that engagement has not been there. We have an hour for this session. Without saying, "We are where we are", can I say that we have heard what the commission has said of a disappointment with the lack of engagement? The Committee will have noted that. I am keen that we actually cover what we have before us, having established that point. Could one of you give us the overarching response to the proposal that had its Second Reading a week or so ago?

Alyson Kilpatrick: I will start, but I will just add that the absence of engagement is directly relevant to what we tell you about the substance, because of the lack of time for us to consider it. We have had a very long and complicated Bill with a memorandum that we have only had a week or two to look at. We will be doing a very detailed advice once we have had a proper opportunity.

Chair: It comes with that health warning and we hear it.

Alyson Kilpatrick: The overall thrust of this Bill is to channel, essentially, all investigations, prosecutions, civil claims, inquests and police complaints arising out of the Troubles away from the police and other bodies into this one statutory body, the Independent Commission for Reconciliation and Information Recovery. Our concern is that the investigations are being turned into reviews and the reviews are in very limited circumstances. Without taking up your time going through the detail of the Bill, there are only going to be a much smaller number of reviews than there would have been investigations.

The other point of concern is in relation to grants of immunity from prosecution to those responsible for serious Troubles-related crimes. There is no distinction in relation to what crimes a person can be granted immunity for. It can include murder, kidnap, torture, rape et cetera. A person does not have to commit to future good conduct. The grant of immunity cannot be revoked. There are lots of safeguards that could be put into such an amnesty, and I am going to call it an amnesty, because it is a de facto amnesty. In fact, I think that the Government refer in places to conditional grants of immunity and conditional amnesties, so I am going to use the word "amnesty".

It also means that the police will be prevented from investigating. The courts will be prevented from ruling. Prosecutions will be prevented. That is the thrust of the Bill. That is a very substantial interference with the rule of law and with everything that the UK has signed up to. That being the case, it is for the Government, in our view, to show why it is, nonetheless human rights-compliant, because, on its face, it clearly is not. It is clearly in breach of the Human Rights Act.

We have gone through this Bill in real detail, piece by piece and as a whole, to see whether there is anything redeeming in it that could be made compatible or could save this Bill from being found to be incompatible. I am very sorry to say, because I want to be constructive,



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that I certainly cannot see a way in which this Bill can be made compatible when taken as a whole. One cannot simply pick out bits and pieces. You have to see it in the context of the whole Bill, what led up to it and the absence of any democratic accountability, public support or political support for it. For all those reasons, we say that this Bill is not capable of being compatible.

The Government's own memorandum on human rights sets out, to be fair, the law. However, it departs then in relation to analysis of what that law means for this Bill. We would respectfully disagree. We think that there are a lot of jumps being made and a lot of gaps in the analysis in the human rights memorandum. I am very conscious that other lawyers have looked at this and that the Secretary of State has said that it is human rights compliant, but I am afraid that we have found that it is not. We will be detailing that in a very detailed advice, which will go to the Secretary of State and to this Committee if you would like it.

Chair: We would certainly like to see it. Yes, please.

Alyson Kilpatrick: That probably encapsulates where we are.

Q376 **Chair:** You mentioned there in passing that it did not have political or public support. Do you see that as a necessary requirement?

Alyson Kilpatrick: I do, actually. Politics is not my business. However, in terms of the acceptability or legitimacy of amnesties, if one looks at them in terms of international law and human rights compliance, the democratic basis upon which an amnesty is provided is essential. Without it, there can be no legitimacy, before you get into issues of human rights law.

Even if all politicians were behind this, the commission would still be having to say, reluctantly, "It is not compatible with the law as it stands". However, it is for others to make it compatible with the law. If there is democratic accountability, it is not for us to stand in the way of that. I know you are hearing from representatives of victims' groups and various people later. I am sure that they can speak for the public, but there certainly is no palpable support. In much of the work I have done over the years, there has not been palpable support for this.

Q377 **Chair:** I have no doubt that we, as a Committee, would welcome sight of your detailed submission. As well as providing a critique, do you envisage providing proposed solutions, if you will, to those points of difficulty that you have critiqued, or will you just leave the criticism hanging in the air with somebody else to pick up the ball and find a solution?

Alyson Kilpatrick: No, I hope not. One thing I was determined to do when I came into this role was to not simply criticise or undermine but to offer solutions where solutions could be offered. I started off by saying that I thought it was not going to be possible to remedy this Bill, certainly not without very significant redrafting such that it would change the whole nature of the Bill.



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We will be offering a solution, but it will not be for amendments through the Bill. It will be for a whole new approach. I do not think that I have any difficulty in saying that we would revert to the Stormont House agreement and the Bill upon which we provided advice before, with a few minor alterations. That was the last thing that anyone agreed on.

Q378 Chair: Yes, exactly. Do you think that the current system is working or could be made to work? If one considers the timelapse, if you consider the headroom of resources, in terms of police investigatory time, court time et cetera, and given the history of many of the events that could be discussed and investigated, is the current system working in a way that gives the comfort and satisfaction to those who seek both comfort and satisfaction?

Alyson Kilpatrick: My view is going to be partly subjective, based on meetings I have had with those who have experience, including military families, police and those bereaved. No, not everybody has the comfort they wish and need, but that is not because the system has failed. It is because the use of the system has maybe not been optimal. That could be for a number of reasons.

It has been underresourced. We have heard that from the Lord Chief Justice himself. There has been much delay in relation to discovery and disclosure of information. Even through court orders, there has still been reluctance to disclose information. That also ties into the fear that this is not going to lead to any greater information recovery because that would have happened already.

Using the courts, the rule of law and the institutions that were agreed democratically and are based in law is the best way forward, it seems to me, unless something else can be offered that is also founded in the rule of law. I am troubled by any beginning to this debate that starts with "the system has not worked". Everyone is saying that they have not had good experiences, for a variety of reasons, but the system is not dealing with the legacy of the past. The system is dealing with cases, unsolved—in some cases, murder cases.

The system is doing what it should do, and is doing what it should do rather well. Families have got quite a bit of information and, in some cases, convictions through the courts. It is not the system that is letting them down. If you want to find a way of dealing with the legacy of the past, as in reconciliation and bringing people together, there are other ways to do it, in my view, than trampling on the rule of law. They are separate things. Fix the legal system, which is an appropriate, legitimate system, or find something else that is compatible with the rule of law. You cannot simply set it aside because it has not served everybody.

Q379 Joanna Cherry: Good morning. I have a quick follow-up question there. You said, Alyson, when you were asked about grants of immunity, that there were safeguards that could be there in the Bill but that are not there in the Bill. Can you let us know what kinds of safeguards you



mean?

Alyson Kilpatrick: I hope that I did not mislead. When I said that there could be safeguards, I was directing that to safeguards in an amnesty. I do not think that a safeguard in this Bill is going to cure it, but one could envisage an amnesty that could, potentially, although it is potentially—this really is a departure from all international legal norms—have a number of safeguards. One of those safeguards is that there is a distinction between grave violations of human rights, for which there can never be an amnesty, and other criminality. It has to be in exchange for real truth, real information, acknowledgement of hurt, reparation et cetera.

One thing is that there is a distinction. I have scoured them recently and I have not found any case in any part of the world where they have said that it is okay to grant an amnesty for grave human rights violations. I do not know if Hannah can point to one, but not in South Africa, not in Sierra Leone, not in East Timor.

Dr Russell: No, the best practice is to stay in line with the most recent judgment in relation to this from 2014. That is that, in relation to amnesties for grave violations, there should be none. The short answer is “not that I am aware”.

Q380 **Joanna Cherry:** To be clear, that is not just best practice. It is international law and the law of the European Court of Human Rights that you cannot have an amnesty for grave violations of human rights, such as murder, kidnap, rape, torture—the sorts of things you mentioned earlier.

Alyson Kilpatrick: As the law stands, yes. To be very clear and not mislead any further, I would have to accept that there is a remote possibility that the European Court of Human Rights would permit an amnesty in certain circumstances, but they would be very far removed from the circumstances with which this Bill is dealing. The sort of amnesty that would be provided would simply not be permissible on any understanding of European human rights law with this Bill.

Q381 **Bob Stewart:** I have a quick follow-up. A grave breach of human rights is for life. There is no end. Only when a person dies does it sort of disappear. That is my understanding. Is that correct, from your point of view? Does it continue for life?

Alyson Kilpatrick: Yes, it certainly can. There are going to be cases in Northern Ireland, for example of the disappeared. The breach is continuing, because their families have not been told where their loved one is buried, for example. That is a current breach.

Q382 **Claire Hanna:** Thank you to our witnesses. You have referred to the scope of the reviews that the proposed ICRIR will be carrying out. They refer to Troubles-related death and other harmful conduct, which they define as any conduct forming part of the Troubles that caused a person



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to suffer physical or mental harm of any kind, excluding death. Do you believe that that definition is adequate? Does it risk excluding reviews of cases that would concern treatment amounting to a violation of article 3 of the ECHR and the UN convention against torture? If so, what are the implications for compliance with the UK's procedural obligations under those conventions?

Alyson Kilpatrick: It is curious. It is very narrow indeed. It would suggest that a person who has cumulative injuries, but none of which reach the threshold set out in the eight standards, would be unable to apply for a review. I do not know what total blindness or total deafness even is, or how a person proves that.

It distinguishes then between victims, in relation to victims who can apply for, for example, a victims payment, which is defined differently and is much broader than this. It is curious. I do not see the basis for distinguishing in this way. There is a lot of detail I could go into in relation to this provision, but the short answer is that there is no logical or lawful basis for distinguishing on that ground.

Q383 **Mr Campbell:** Welcome to the witnesses. Let us assume that the Bill were to be passed in its current format, or a slightly revised format, and a number of individuals were granted immunity if those certain conditions that the Bill outlines are met. Say a person appears and is potentially going to be charged with an offence from 40 or 50 years ago, and it is determined that they meet the conditions under which they would receive immunity. What is your understanding of the options of any person who would be affected by that, i.e. family or relatives of the person who was murdered, if it was a murder case? Do they just have to see what happens, or do they have any input into the determination of whether the person has met the conditions to be granted immunity?

Alyson Kilpatrick: No. If there were any, and if there could be made to be an input, it is hard to see what real effect that input could have, given that the threshold for immunity is so low. The point you make is probably one of the most troubling aspects from victims' and survivors' points of view. They do not have any opportunity to challenge the assertions made by the person trying to gain immunity, as to whether they are telling the truth, to ask for information to be admitted, or to disagree with the decision. They are told of the decision, but they are not necessarily going to get a full copy of the report.

Hannah has looked at this in some detail. Do you want to comment, Hannah, on that specific provision?

Dr Russell: Around the review itself, in terms of article 2 investigations, there has to be a public scrutiny aspect. That very much has to involve next of kin, family et cetera. It is difficult to speak in terms of the person affected and how that is going to affect them, but, from a legal perspective, there should be some form of accountability in relation to



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that. There is a question mark over what the end result of this is going to be, in terms of the review itself, and how thorough that is going to be.

There is an indication that the family can propose questions, for example, that they would like answers to. In one sense, that is a positive thing, but I also would stress that that does not necessarily mean that it is going to lead to an article 2-compliant result. There can also be differing approaches within families themselves, which is something that we need to reach the right balance with, in terms of article 2 compliance. What a family wants will not necessarily match what is required from human rights law.

In support of what Alyson has said, there needs to be a lot more thought put into this, in terms of that outcome. Through that, there needs to be meaningful engagement with those affected. South Africa has been put forward in recent weeks as an example of what this Bill proposes to achieve. This is not the same. All you have to look at is how the South African example came to fruition. That was through one year's consultation with civil society and included family members et cetera. Also, what came out of that consultation was listened to. It comes back to the point I was trying to make at the beginning. It is around meaningful consultation and that has not been done in this process.

Q384 Mr Campbell: The point I am trying to get at is this. If we fast forward to post something like the current draft Bill being passed and a person is being assessed as to whether they meet the low bar that Alyson said about achieving immunity from any prosecution, will the members of the family or interested people who are descendants or whatever of the deceased, if it was a murder crime that was committed, know how low the bar was? Will they know what the comment has been that has, we are going to be told, met that low bar? Was there a degree of honesty? Was there a degree of transparency?

How will the wider community and particularly, more importantly, the loved ones of any deceased person assess whether the bar is even lower than what the Government seem to be saying? That is the point that I am trying to get at. Then the wider community can decide—"Is this person deserving of immunity or not?" That is setting aside the fact that you are calling it an amnesty and most of us accept that it is. If the bar is low, we need to know how low that is. Can you say and do anything to get in underneath the bar?

Alyson Kilpatrick: If you take the Bill on its face, there are only three conditions for immunity from prosecution. One is that you ask for it. Anybody can ask for it, whoever they are. One is conduct. You describe conduct that is or includes conduct from a part of the Troubles and it is true to the best of your knowledge and belief. You can have provided that account in other criminal proceedings 20 years or 30 years ago and still apply for immunity and get it. There is no discretion. If you meet the conditions, the requests panel must grant immunity. There is no test for



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public interest. There is no test for taking account of the views of victims and family members, or even wider society.

It is also very important that, when linking this, you will see that you can get specific immunity, but you can also get general immunity. The Government have indicated themselves that the intention is for general immunity. General immunity will cover all sorts of things. We could see a situation where a person may come forward, or may have come forward 20 years ago, to admit to something that falls within a serious offence related to the Troubles and gives an honest account, but they have committed five other murders about which they say nothing. They would get immunity, potentially, from a general prosecution on all those murders. The families would have no input. Society would have no input. The judiciary would have no input.

The family will get to know, but I suspect, reading all of this Bill, including in relation to prohibition of information and disclosure et cetera, that families are going to get very little. They are unlikely to get a full report and the public are certainly not going to have a full report.

The short answer to your question is that it is very unsatisfactory. If you were serious about including families and victims et cetera, this must be reconsidered completely from the ground up. There must be a central place for victims, survivors and wider society in fact to comment, and for people like you on behalf of constituents, presumably. There should be public hearings at which the evidence that is given to back up the request for immunity can be tested. Short of that, it is hard to see how this can be in line with the rule of law.

To copper fasten that, I read this morning that the Bingham Centre for the Rule of Law has conducted a rule of law analysis against this Bill and concluded that it is in breach of the rule of law. This is one of its most significant concerns.

Dr Russell: To add to that, in terms of the public hearing aspect that Alyson highlighted there, that was conducted in South Africa, so coming back to the example that is currently being used. As Alyson has highlighted, there is no clear mechanism for providing the reasons why immunity has or has not been granted. In addition to that, from what we can see, there is no appeals mechanism built into that. The only appeal mechanism seems to be around whether a report is disclosed, not necessarily what is contained within that report.

Q385 **Claire Hanna:** To clarify, in your view, does the definition of a serious or connected offence allow for immunity from prosecution for sexual offences and cover-up of sexual offences?

Alyson Kilpatrick: They are not excluded. There is nothing excluding them. If you read it on its face, everything is included.

Q386 **Chair:** Both the Secretary of State and the Minister of State were,



perfectly properly, closely questioned on this by the shadow NI team on the Floor of the House. They were very clear that they were exempted from it. How can we arrive at two such diametrically opposed interpretations of a Bill?

Alyson Kilpatrick: I am not interpreting. I am simply reading. I read the Bill and do not see any reference to exemptions. It includes serious Troubles-related conduct or serious conduct forming part of the Troubles. There is nowhere there that it says that certain crimes will be excepted. I would be very interested to know how they would distinguish what would qualify for an exemption, for example. Does it have to be the primary offending for which you are coming forward? That would be unworkable.

If you have torture, kidnap, murder and disappearing allowed but sexual offences not, they often go together. There certainly are many cases in which they go together. I do not see how it works and cannot read anything there that says that it is exempted. Until I see it, I am taking the Bill at its face value.

Chair: That is clear.

Q387 **Claire Hanna:** The procedural obligations under articles 2 and 3 of the ECHR require that investigations must be independent, effective, reasonably prompt and expeditious, include a sufficient element of public scrutiny, adequately involve next of kin and be initiated by the state, rather than being dependent on being raised by the next of kin. In your view, will the reviews to be conducted by this body meet these requirements?

Alyson Kilpatrick: The reviews simply cannot. It can be difficult sometimes to set up, with any sort of certainty, a model that will definitely comply with the basics of article 2. However, you can say with certainty what is not compliant. You can look at something that is simply incapable of delivering an article 2 investigation. The first and foremost thing is that the investigation must be effective. That is not just human rights law; that is our common law. That is Magna Carta. That is the Police Act. That is everything that has already gone before. Investigations into the taking of life must be effective. All those other things come after.

This Bill ensures that, first, there will not be any investigation, but, secondly, any review will not be sufficiently effective. You do not even need to go on to consider whether it is independent. If you do, the answer is no; it is not independent. Is there public scrutiny? The answer is very clear. No, there is no public scrutiny. Is there involvement of next of kin? Expressly, no, they are excluded from most parts. Is it independent? I said this already, but the Secretary of State largely has control over the appointment, the setting up, the guidance, the regulations and the functioning of this body. Even with the greatest will in the world, I doubt whether anybody would find that an independent mechanism.



I was asked recently whether you could simply replace the word “review” with “investigation” and achieve compliance. My view on that is that the word is irrelevant. It does not matter whether it is called an investigation or a review. What matters is the substance of it, what it can achieve, what it is set up to achieve and what it is capable of producing. Reading this Bill as a whole, it is simply not capable of producing a compliant investigation.

Dr Russell: I am in full support of what Alyson said. Also, I would like to highlight some other aspects of the Bill that confirm what Alyson has said about the distinction between a review, which is initiated by someone, be it the coroner, the Secretary of State or a family member, and this concept of a historical record. There is a distinction there. We are still grappling with what that will actually mean in practice and whether that will further impact compliance with article 2.

Also, the mentioning of duplication is an assumption that the investigations that have gone before have been article 2 compliant and that is not necessarily the case. There is an array of evidence out there from the European Court of Human Rights, the Council of Europe et cetera that has flagged that, so just to raise those points as well.

Q388 **Claire Hanna:** You referred to the rule of law. My party is anxious about the wider erosion of citizen confidence and undermining the good authority of the institutions of law and order, and justice. In the context that nothing is perfect, those reforms have been some of the enduring successes of the peace process. People are concerned about them being put at risk maybe by people who do not know or care very little about the collective effort that brought about the changes and the present day policing and justice arrangements. What is your view on that, about the impact on public confidence in the institutions of law and order, and justice, and on the rule of law?

Alyson Kilpatrick: I went back and reviewed from the Belfast agreement onwards to see what has been said in relation to this. It is striking that, for a number of years, serious attempts were made for human rights compliance, for accountability, for public involvement. All of a sudden, it changes from being driven by what Northern Ireland politicians are asking for on behalf of their constituents and what the public are calling for to something unrecognisable, without proper consultation or engagement. That is fundamentally against the principle of the rule of law.

This Bill separates people out. Not all people are going to be treated equally under the law and that is one of the most basic principles of the rule of law. People raise their eyebrows at me when I go back to Magna Carta, but Magna Carta is still on the statute book. This has gone through to the rules of Magna Carta, so that is troubling in itself. That does not send out a very positive message.



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I looked back at, for example, the Belfast/Good Friday agreement. They talked then about reconciliation, victims of violence et cetera, and talked about looking forward to the work of the new Northern Ireland victims commission, which you are going to hear from. It is saying that this is totally unacceptable. It has said what it thinks and it has been completely ignored. It is there to represent the very people to whom this is addressed.

The Northern Ireland Human Rights Commission is one of the main safeguards in the Good Friday agreement. We were not asked, but we are now saying that this is not compatible with human rights. That is very troubling for somebody who wants to approach this as a rule of law issue. It is very difficult when you say to people, "You should abide by the rule of law" when there appears to be—and I hope that I do not overstate this—a cavalier disregard for certain principles and certainly a reluctance to listen to what the constituents, citizens of Northern Ireland and GB, have said that they need and want.

Claire Hanna: Did you want to add to that, Hannah?

Dr Russell: No, Alyson has covered it very well there.

Q389 **Ian Paisley:** I should declare that I am a member of the Parliamentary Assembly of the Council of Europe, which oversees and holds the European convention. That is one of the questions I want to ask you about. Can I thank you for your evidence so far? It is so crystal clear. It is very helpful, so thank you, Alyson, in particular.

The secretary general to PACE last year, when she made her annual address, said that the judgments of the ECHR are a non-negotiable obligation for its members. If that is the case and if you are correct, and I think that you are correct, in that this proposed legislation breaches law and is a travesty, what do you think PACE, the Council of Europe and the European Convention on Human Rights should do about that? What do you think the council should do about it, in terms of holding it to account?

Alyson Kilpatrick: You have exposed one of the fault lines in this Bill but also in the framework and institutions generally. Somebody could take this to Strasbourg, obviously, and the European court could make a determination. It does not necessarily mean that the Government have to amend the legislation. They should. If they are serious about their commitment and what they signed up to do, they should take the judgments of the European court very seriously. In terms of enforcement action, it is relatively limited. You will see that there are issues that have been before the court for decades and are still waiting for proper resolution. That could happen here.

On top of that, this is even more concerning. This Bill stops a person aggrieved by this Bill's breach of their rights bringing a civil claim to establish the breach of their human right under this Bill. If you put that together with other legislation in relation to judicial review, changing of the Human Rights Act, et cetera, there is going to be nowhere to go,



either generally or in relation to a grievance that somebody thinks has been done to them as a result of an immunity application, for example.

Q390 **Ian Paisley:** Let us look at “nowhere to go”. You have shown that that route is emasculated somewhat. The Belfast agreement mentions Europe on 32 occasions, but it only mentions it in the context of the European Convention on Human Rights. It mentions it in no other terms. When Brexit was challenged, whether it was against the terms of the Belfast agreement, our High Court found that it was not. However, given that the Belfast agreement mentions the ECHR and its role, could this therefore be an actual breach of the Belfast agreement and could it be challenged that way?

Alyson Kilpatrick: It certainly is. I am not one, I hope, for rash or reckless indications, but it is very clear, if one goes back to the Belfast agreement, that the whole basis of the agreement was the protection and vindication of human rights of all. That goes on to say “under the European Convention on Human Rights”. The safeguards were the European convention and any Bill supplementing it. That was not a requirement, but the European Convention on Human Rights could not be legislated incompatibly with. Key decisions were to be run against the ECHR. The Human Rights Commission was to make determinations. It went fundamentally to the agreement.

I agree with you in that Europe and the European convention are very different things, but I do not think that you can read the Belfast/Good Friday agreement and leave out the European convention. It just does not work without it.

Q391 **Ian Paisley:** That may be an avenue that would be open to challenge.

Alyson Kilpatrick: Yes.

Q392 **Ian Paisley:** Thirdly, in terms of a potential avenue of challenge, obviously the Troubles affected three jurisdictions. They affected Ulster, the British mainland and the jurisdiction in the Republic of Ireland. We have heard evidence previously in other investigations about somewhere between 500 and 700 murders that occurred in Northern Ireland along our border with the Republic of Ireland. The people who committed those murders fled to the Republic of Ireland and used that jurisdiction as cover.

This legislation appears to stop dead in its tracks any further investigation even by the Republic of Ireland, because it will not be able to ascertain or access documents and material in Northern Ireland. There will be no cross-pollination in terms of an investigation. Could the Republic of Ireland, if it really wanted to, challenge this, as a signatory to ECHR and other international obligations? Could it challenge the United Kingdom on this in a European court or in an international body?



Alyson Kilpatrick: It certainly has the power to and it has previously. Hannah might be able to tell you more about the actual process of that, but certainly the Republic of Ireland could challenge, absolutely.

Q393 **Ian Paisley:** Whether it wants to or not would be a different matter, obviously.

Alyson Kilpatrick: That is something that I am not even going to speculate on. I talked about Kenova earlier. When I was doing a review of Kenova, one thing I drew attention to was the underuse of article 2 across jurisdictions and how article 2 applied both to Ireland and to the UK. That imposed on the Republic of Ireland an obligation to comply and provide information, as well as carrying out its own article 2 investigations, which are within its jurisdiction. There is an obligation under the convention for it to comply with Northern Irish investigations. That is underused and often misunderstood. It is not for it to agree to provide information. It should, under article 2 of the convention. That is something else that would be lost here, as well as all the other more specific things you drew attention to.

To absolutely make the point, I was trying to find the precise wording. The Belfast/Good Friday agreement said that the British Government will complete incorporation into Northern Ireland law of the European convention with direct access to the courts and remedies for a breach of the convention, including power for the courts to overrule Assembly legislation on the grounds of inconsistency. If that is not undermined by this Bill, I do not know what would be.

Q394 **Ian Paisley:** Finally, this is about another international aspect of this. We have also carried out an investigation, and indeed an ongoing running investigation, with the Foreign Office and the Treasury, about Libyan sponsored terror, which led to horrendous deaths not only in Northern Ireland but across the mainland as well. Do you think that, for those international events and internally sponsored events, any serious investigation and support for those victims is now thoroughly undermined by this action by the Government?

Alyson Kilpatrick: I cannot see a route for progressing those investigations. I think that I know what you are referring to. None of those has reached a stage at which this Bill would protect them, even if you read it very generously. Expressly, yes, it is going to see an end to that, in terms of all that criminality.

There is one other thing I might add. This is often equated with prisoner release under the Good Friday agreement. That was wholly different. There was an investigation. There was a conviction and a sentence. That was democratically endorsed through a referendum. There is no precedent for this.

Q395 **Ian Paisley:** I suppose that the only similarity is the travesty of it all.



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Alyson Kilpatrick: As I say, I deliberately stay out of politics in this role, either way. I do not want to say anything that could be seen to be political. That is for others who are much better placed to say that.

Whatever you think about it, and a lot of people were not happy with that, it had a whole process of consultation, agreement, referendum et cetera. This has none of that and this would, in my view, drive a coach and horses through commitments to the public to investigate murder and other very serious crimes.

The very basis for this Bill is to protect veterans. I have not met any military personnel or a veteran who thinks that to apply for an amnesty would be honourable conduct. I do not know that this even achieves the purpose for which the Government have said that they are putting it forward. It does not protect anyone, other than those who would want immunity from prosecution. Those are the only people it protects. That being the case, it is such a significant departure. The staff at the commission and I looked at all different angles to see how we could work with this to improve it and we simply could not. We kept saying, "Go back to the whiteboard", I am afraid.

Q396 **Joanna Cherry:** I have a quick follow-up there. You read out the part of the Belfast/Good Friday agreement that says that the UK Government make a commitment to complete incorporation into Northern Ireland law of the European Convention on Human Rights with direct access to the courts and remedies for breach of the convention. The Stormont House agreement model Bill team has said that this Bill will directly limit the ability of people in Northern Ireland to challenge alleged breaches of the convention either in coronial courts, by way of inquest, or in the civil courts. That prohibition on civil actions is going to be, effectively, retrospectively backdated to 17 May, last month. Do you agree with the Stormont House agreement model Bill team there?

Alyson Kilpatrick: Yes.

Q397 **Joanna Cherry:** If that is so, this Bill is in breach of the UK Government's commitment to afford people direct access to the courts to realise their ECHR rights. If this Bill becomes law, what could people in Northern Ireland do about that? If they are prohibited access to the domestic courts in Northern Ireland, how could they bring an action to have a court recognise that their human rights have been breached?

Alyson Kilpatrick: You are going to have find people or organisations and the commission has power to bring its own case in its own name in relation to some of this. It may be knocked back at first or second instance, but you have to find cases that will go through the process, ultimately to the UK Supreme Court and maybe the European Court of Human Rights. As I said in answer to Mr Paisley, the European Court of Human Rights is not an appeal mechanism, so that would not necessarily change anything.



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The ability to challenge this is so limited—the Bill itself, but also, if this Bill was passed and came into effect, once it is in effect challenging the operation of this is going to be almost impossible.

Q398 Joanna Cherry: It is going back to the bad old days before the Human Rights Act, is it not? People are going to have to go through the domestic courts, get knocked back at every stage and then eventually, after years have passed, get a hearing in the European Court of Human Rights in Strasbourg. That is right, is it not?

Alyson Kilpatrick: I am trying very hard not to speak in headlines or bullet points, but it seems to me that the only people who are prevented from claiming their human rights are those who have been affected by serious conflict-related crime. Victims, family and survivors of murder, kidnap, torture et cetera cannot access their remedies under the Human Rights Act directly in their local courts. Somebody else can.

If I am denied access to a public service because I am female, I can access my local court and use a human rights ground to do that. If I am denied a right to make a representation in relation to an application for immunity from prosecution for somebody who murdered my father, I do not have a right to go to the court under the Human Rights Act to challenge that. That is an extraordinary situation and I do not think that I have overstated it.

It is easy to get lost in the general wording: “Get over yourself. You need to get on and reconcile”. This is not going to do that. This is going to push people apart even further and distinguish between people.

The other point relevant to this is something I said to Mr Paisley as well. The purpose is not made out in the evidence, but it is also ignoring those victims and families who were serving military and police. They do not want this either. The only people who seem to be supporting so far are veterans who may have access to an application for grant of immunity from prosecution for a serious Troubles-related offence about which the family members have nothing to say.

You will know from previous briefings, for example in Operation Kenova, which has put forward a number of files to the DPP, that there are a range of murders including but by no means limited to state actors, including Jean Smyth-Campbell, the murder of two police officers et cetera. That is what you are stopping. I have not heard anybody saying that they want those people to be allowed to walk away. Given that the Human Rights Act protects those victims and relatives from having to stomach that, there should at the very least be access to your local courts to try to show why, in your individual case, your rights were not upheld.

Q399 Chair: Forget what the “it” is for the moment. Do you think that the Government are to be commended or applauded for facing in to trying to find—I am loath to use the phrase “solution”—something that works?



Would they just be better to leave things as they are and let the current systems run their imperfect and not totally satisfying course?

Alyson Kilpatrick: It depends on what you are trying to achieve. If you are trying to achieve reconciliation and community betterment, you can do that lots of ways separately to and in parallel with the criminal process, the civil courts or the inquest systems—things that can work if they are supported. I would laud them for making those processes work, so providing the information they say they will provide further down the line, providing that information to civil claims or criminal investigations, funding the courts and the inquest system, allowing those processes to do their job.

When people say that things have been tried and failed, I struggle to see what has been tried. I see many things that have begun but not been allowed to complete. You will hear from the victims, I suspect, that they are actually getting quite a bit from the current processes, more than is acknowledged.

I am afraid that I do not laud this attempt, because everything before this draft Bill recognised the importance of victims, relatives and the rule of law and stuck, it said, to Stormont House agreement principles at least, if not the actual agreement. This came out of the blue. It departs entirely from all that. Unless there is a very good justification, I am afraid that I cannot support even the attempt, because the attempt flies in the face of what those people who are hurting most want.

Q400 **Chair:** You have referenced Stormont House on a couple of occasions during the session this morning. Would you encourage all the parties in Northern Ireland, now they have seen what they agreed, i.e. Stormont House, and what is on the table, i.e. this Bill, to do a compare and contrast and work out which may be the lesser of two evils, if that might be an acceptable phrase?

Alyson Kilpatrick: Yes, if those were the only two options, but the options are not limited in that way. An option is also to fund the current process. There are cases that are required to be investigated criminally or claims that are required to be heard in the courts or inquests. Let them do their job by giving them the money and the information they ask for. That is the first option. If you are talking about dealing with the past, I never quite understand what dealing with the past means. I think that that is something more general and societal.

The only people who can answer that are the people in Northern Ireland who are most affected. There are some concerns with the Stormont House agreement too. It was not wholeheartedly applauded, but it could be worked with. There was a measure of agreement and it could be improved. This, I am afraid, just does not hit the starting point. I regret saying that. I am not enjoying being so negative. I promised to be objective and constructive, and I have tried, but I am afraid I cannot in relation to this.



Dr Russell: In terms of that comparison, the 2018 iteration of this Bill was the opportunity to do that, because you could see the Stormont House agreement elements in there. They were imperfect and there was a possibility to do that compare and contrast, and to get it up to EHRC compliance. We do not have that opportunity with this Bill.

Q401 **Stephen Farry:** I wanted to follow on from what the Chair raised there and ask a two-part question in relation to the article 2 issue. First, Alyson, an argument that has often been made is that the prospects of prosecutions for Troubles-related offences are so limited that this revised approach somehow rationalises that. Could you confirm for us that what is important in terms of article 2 compliance is the discipline of the process that has the potential to lead to a prosecution, but does not necessarily need to lead to a prosecution to be article 2 compliant? It is the nature of the interrogation of evidence and the challenge that is crucial. Is that your understanding of what is at the heart of this?

Alyson Kilpatrick: Yes. The way it is often put is that it is not an obligation of result but of means. You do not fail to comply with article 2 if you do not secure a successful prosecution or you do not even try to prosecute for another reason, but that has to be justified. A proper investigation, an article 2-compliant investigation, includes testing evidence and speaking to witnesses. It cannot be a desktop exercise. If you have excluded those functions, it is very difficult to see how this could be any sort of effective investigation. It is the first hurdle. It does not meet that first test, which is an effective investigation.

The fact that there are few prosecutions is true, but there are not no prosecutions. I understand that Jon Butcher has given evidence that there are at least 31 files relating to a number of murders that have been sent to the DPP awaiting decision. He talks about the 50,000 pages of evidence he has gathered that was not there before. The only way he got that information was by using his criminal powers of investigation as part of a police investigation.

If he is asked in the future about the difference, ask him about the difference between Kenova as a criminal investigation and the Glenanne review, and the ability to get disclosure quickly and seize material et cetera in one and not the other. That will tell you how this may work in practice. There are prosecutions that are possible. Even if there were not, there has to be the investigation.

I have one very last point, if I may, so I give a clear account of what I have learned over the years. When people say to me that they are not interested in prosecution, what they usually end up saying at the end of the conversation is that the reason they are not interested in prosecution or any of those sorts of outcomes is that they have given up all hope and do not want to be dragged, all these years later, through a messy process of cross-examination. If you ask them, "If there was evidence against a perpetrator who killed your father, would you want that to go to court?", I have not yet met one who said that they did not want it to go



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to court. It is a relative thing when people say that they are not interested in prosecutions.

Q402 **Stephen Farry:** Could you say a few words on any concerns you have around the level of power for the Secretary of State to set guidance and intervene at different levels around the process and what that means in terms of article 2?

Alyson Kilpatrick: I could talk for at least an hour on this Bill and independence. I am afraid that it would fail any test in relation to independence. The Secretary of State, who is, essentially, representing one of the potential state actors in some of these reviews, has the final decision in relation to an awful lot that happens. He will also set guidance, which must be taken into account. He will set regulations. He will decide in a lot of cases about disclosure.

Saying that, ultimately, a person could challenge in court a decision by the Secretary of State or guidance is putting a lot of emphasis on a victim or family member, in all these individual cases, to run off to court, to get the funding to do it, to have the courage and strength to do it, to probably be knocked back, certainly for a year or two. It is unconscionable, really. It is certainly not article 2 independent. I am absolutely sure about that.

Q403 **Sir Robert Goodwill:** Some key elements of my line of questions have been covered, insofar as your view, Alyson, is that immunity would be an interference with the rule of law and not human rights compliant. We have been talking in the main about securing prosecutions. While the state has a duty to investigate crimes and produce evidence for potential prosecutions, in many of these cases, as Stephen Farry said, the trail is very cold and it is unlikely that new evidence would come along. I wondered whether these measures being brought forward might help to recover information.

Let us say that a body has never been recovered. Somebody knows where the body is. They may be one of the perpetrators. Maybe they know that the perpetrator is dead. In terms of the family's wish to have closure and to know what happened, would, in some ways, granting an immunity to that person who gave the information, who maybe dug the grave and disposed of the body, but did not kill the person, not be some way at least of getting some closure and making some progress? The likelihood is that many prosecutions will not be forthcoming and, where they are, some of them may not be successful anyway, as you have seen.

Alyson Kilpatrick: It is not just criminal prosecutions. It is inquests. It is civil claims. It is every other route to getting information. You would be relying on somebody willingly coming forward to ask for immunity, which may trigger a review, and they do not really have to be held to account for the information they give. It seems unlikely to me, all these years later, when the information has not been forthcoming to this stage, that this is going to make a difference, especially since the stick, as it were,



has been removed. The police will not be investigating any more. There will only be reviews, and only when requested by a member of the family, for example. It is difficult to see what this will achieve.

In relation to new evidence, the Kenova cases are also interesting in this respect. Even just on the publicly accessible website, they talk about all the evidence they have recovered recently, new evidence that was never available before, that the families were very pleased to hear about and that has given a possibility for prosecutions. It is not just about prosecutions and convictions. It is about evidence. It is about the information. It is difficult to know what incentive there is in this Bill for somebody to come forward and say, "I committed a murder".

Q404 Sir Robert Goodwill: Yes, unless they themselves have guilt and want to relieve themselves of that, possibly, or maybe these sorts of people do not have that sort of guilt. Maybe they do not feel remorse.

Alyson Kilpatrick: If that is the motivation relied upon, I think that those people would have come forward already. There have been so many opportunities. There has also been, do not forget, the commission for the disappeared. Other people can talk to you about how successful that was. Opportunities were there. I understand when people say, "We have to find a way to move forward", but this is not it. The people who are most affected say that this is not it.

The very last thing I would like to say is that this presupposes that the people who need to be reconciled are the people most affected by the Troubles—the victims. That is simply not true and it is unfair. I want to make that clear. The people most affected by the Troubles have gone to extraordinary lengths to reconcile and accept numerous things over the years, which they would not necessarily have had to. To suggest that this is for them is disingenuous.

If that is the basis upon which these radical steps are being taken and that basis is incorrect, the Government need to rethink. That would be a basic judicial review challenge in itself, if it is contrary to its own stated intention, based on inaccurate reading of the facts and information. That is a judicial review challenge just there. That applies just the same in relation to consideration of these provisions. Ask the people to whom you are directing it. If they are saying, "No, it will not achieve the purpose for which it is intended", you have to listen or come up with a really good reason why they are wrong.

Q405 Sir Robert Goodwill: The Government seem to have the view that giving immunities could be complaint with human rights legislation. They have said that they can be justified "as a proportionate means of achieving and facilitating truth recovery and reconciliation in Northern Ireland, taking into account current ECtHR case law in relation to amnesties". Are there cases before the court, is there case law that they can use to back that up, or are they looking at a case when this is challenged and they can, they hope, make those points?



Alyson Kilpatrick: All I can go on is their own memorandum, which was as recent as 24 May or 25 May. They cite two cases, which are on very different facts and in very different circumstances, which do not go as far as condoning an amnesty. Neither involved amnesties, so they are not good comparators. All the other cases are against these sorts of amnesties.

If I am taking the memorandum as being the conclusion of their analysis and explanation, I have to, respectfully, disagree with them that those cases lend any support for the proposition that this is compliant with article 2. I will be dealing with that in the detailed advice we give as to why the Government's own explanation does not work. I am not going to suggest anything other than that there is a very strong professional disagreement in relation to what those cases say.

Q406 **Sir Robert Goodwill:** You are not going to suggest that they have had some dodgy legal advice that would not stand up in court.

Alyson Kilpatrick: I am not saying that. Maybe they just have not cited everything. I am saying that I disagree with the analysis in the memorandum.

Q407 **Joanna Cherry:** On that point, earlier I think one of you, possibly Hannah, mentioned a decision of the European Court of Human Rights from 2014, which you said indicated that an amnesty in relation to serious offences would not be ECHR compliant. Can I ask whether that is the case for *Marguš v Croatia*?

Dr Russell: It is. I suppose that I should add a bit of clarification there as well. They were very clear around the gross violations and that amnesties would not be permissible in such situations. They alluded to the fact that, in certain exceptional circumstances, if there is a process of reconciliation involved, it may be permissible, but it was in very exceptional circumstances. Looking at the premise on which this Bill is based, those exceptional circumstances do not apply in this case.

Going back to what Alyson had referenced and the discussion around the possibility of prosecution, this Bill removes that entirely, in a backdoor way, but, effectively, in practice, that is what is going to happen, if immunity is granted, or not granted even, given that they are putting an end to all criminal investigations that are not currently underway, civil actions et cetera. Even though there could be a little bit of wriggle room read in in relation to that, I do not think that that applies in relation to this Bill.

Alyson Kilpatrick: Ms Cherry, just so you know, in the explainer, the human rights memorandum—I was trying to find it there—the cases that they rely on are set out from paragraphs 43 onwards. *Marguš* is one of those cases. It says it is applicable in principle to the model of conditional immunity that has been proposed in this Bill. I am afraid that I categorically disagree with that and I do not think that that is simply a



matter of two lawyers disagreeing on interpretation. I do not think that that case does what it is claimed, but those are the cases. You can find it in the thing.

Q408 Joanna Cherry: Can I come back to that? That is interesting. Clearly, you disagree with the Government's human rights memorandum's analysis of Margaš. To look at what Margaš was actually about, it was a case about the intentional killing of civilians and the inflicting of grave bodily injury on a child in Croatia. The court said that granting an amnesty in respect of the killing or ill treatment of civilians would run contrary to the state's obligations under articles 2 and 3 of the convention, since it would hamper the investigation of such acts and necessarily lead to impunity for those responsible. That is what the court said, is it not? That suggests to me that the exceptions that they were envisaging perhaps relate to less serious crimes than the intentional killing of civilians and inflicting of grave bodily injury. Do you think that that is right?

Alyson Kilpatrick: Yes. As a lawyer, I would analyse Margaš and say that it supports an argument of incompatibility, not wriggle room for compatibility. I do not think that there is any margin for compatibility, not in this Bill. That is what I have to keep coming back to, even if you could, theoretically, think of some situation in which an amnesty could be lawful. That is why I prefaced what I said at the start by saying that I do not want to say 100% that you cannot do this, but it is a struggle to find a lawful way of doing it and this Bill is not it. That is the difficulty.

Joanna Cherry: The United Kingdom is subject not just to the European Convention on Human Rights. It is also subject to international law. That is right, is it not? In the Margaš case, the court said that there is a "growing tendency in international law...to see such amnesties as unacceptable because they are incompatible with the unanimously recognised obligation of states to prosecute and punish grave breaches of fundamental human rights". That is a quote from Margaš. We are looking here at this Bill potentially not just breaching the European Convention on Human Rights, but also breaching international law.

Alyson Kilpatrick: Yes. In the earlier submission by the commission, it set out all the various international standards that are relevant and would be breached. You cannot dismiss them by saying that they are not directly incorporated. The European convention is, through the Human Rights Act. Even for these ones that are not directly incorporated, there is plenty of case law that says that a Government should be taken to have meant to comply with something that they sign up to. If they sign a treaty, even if they do not incorporate it, you can assume that they mean to stick to their word.

Chair: That might be a rash assumption for some.

Q409 Ian Paisley: Sometimes, looking at these cases, "for instances" are quite interesting. For instance, say someone had tried to murder or commit a



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serious crime in Northern Ireland in the 1970s, 1980s or 1990s, on bail they fled from our jurisdiction to the Republic of Ireland and therefore evaded justice, and then they fled from there to the United States of America, and evaded justice and evaded a warrant to come home. Would this allow an individual who had done that to come home freely and evade justice? Will this Bill allow for that?

Alyson Kilpatrick: Generally, yes. Yes, I think that it would. It is a wee bit more technical and difficult than that, because you have to look at what it is that they would be applying for immunity in relation to, what it was they fled in relation to, whether there are outstanding convictions, all those sorts of things. To the general thrust of what you are saying, yes, it would enable people to, I suppose, return to the jurisdiction and apply.

Q410 **Ian Paisley:** There are specific cases like that, where people have been given letters of comfort and then told, "You cannot rely on those letters of comfort". They are now living and working in the United States of America. Some are for the attempted murder of soldiers. Some are for possession of arms. They have all been on bail. They have all evaded justice and now they are floating around the States. This is an avenue. This is a mechanism to get them back home out of jail free. Is that correct?

Alyson Kilpatrick: It would allow a person like that to return. As I say, not knowing the detail of it, I cannot be categorical, but, in principle, it would allow a person to return from another jurisdiction to Northern Ireland and claim immunity from prosecution, relying on the fact that they had given a statement at some previous point before they left the jurisdiction and that that was true to the best of their knowledge or belief.

That is all that they have to claim and the request panel has to grant immunity. It could be generally, for all offences. They do not have to have told the truth about all their offending, but they could then get a general immunity from all their potential offending. In principle, yes. I do not see Hannah shaking her head furiously to tell me that I am wrong about that, but I want to double check. That is my reading of the Bill and I have been through it now in some detail. Hannah, do you agree that a person could return?

Dr Russell: I think so, yes. Also, stepping outside of the immunity process, given the approach that has been taken to criminal investigations as well, there is a clause within the Bill that says, irrespective of whether you apply for immunity, all criminal investigations that are currently not open will cease. I suppose that, in that instance, it would depend on whether an investigation had been opened against that person. That may be a way around what Mr Paisley is suggesting, but on the whole I think that that is the case.

If I could go back to a previous question in relation to the involvement of the Republic of Ireland and potential cases there, the extraterritoriality



aspect of this can be quite complex. We will try to put that within our written evidence to tease that out a bit more. There is a potential limiting aspect of that through article 1 of the European convention, which refers to everyone within its jurisdiction. There are aspects to that that are a bit too complex to raise within the time that we have, so we will come back on that in writing.

Alyson Kilpatrick: To finalise on that point, my analysis of why it applies across jurisdictions and borders is in a paper that I did for Kenova, which I believe is already before your Committee. You may or may not have it. If you want it again, I can send it, if you can bear looking at it again. Certainly my analysis is set out. Hannah is quite right: we will make sure that it is developed further.

Q411 **Ian Paisley:** Would you consider doing “what if” scenarios in your evidence back to us? Obviously the case that I have raised is very specific. I am talking about Rita O’Hare’s ability to evade justice. If you were doing a series of reports back to us that said, “Under these circumstances, this would happen”, it might give a very clear picture as to what people have actually supported here and how deadly it is.

Alyson Kilpatrick: I would not agree to comment on specific cases. You will understand why.

Chair: Yes, that would be inappropriate. Some scenario explanation would be helpful.

Alyson Kilpatrick: That I could do.

Q412 **Chair:** Yes, that would be helpful. With regards to those who may have gone offshore who then have the ability to apply for immunity, forgive me, is it implicit or explicit within the Bill that that has to be done within territory, or can it be done offshore?

Alyson Kilpatrick: I do not think that the Bill says, actually. It just says “an application”. The rules in relation to the conduct of decision-making in relation to applications for immunity could follow in regulations or guidance. I do not see anything that answers that.

Q413 **Chair:** Maybe not for now, unless you have the answer readily to your fingertips, but is that something you could advise us on—where there has been any other international example where a process of immunity has been established as part of a peace and/or reconciliation process, whether one has to be within the territory to claim the immunity or what? That would be a very useful point to have some clarity and guidance on.

Alyson Kilpatrick: I think that I can tell you without contradiction that there has not been a process where an immunity or amnesty can be granted without at least public evidence being given in the jurisdiction, so in front of, for example, a truth and reconciliation commission. I do not see how you could make, essentially, a paper application.

Q414 **Chair:** That could be virtual now, could it not?



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Ian Paisley: Or they could go to the British consular office.

Alyson Kilpatrick: It could, of course, but in this Bill there is certainly no indication that a person has to give evidence, in fact the contrary.

Q415 **Chair:** Could you give us in writing your thoughts on that with regards to a best practice approach? Otherwise there is a danger, if it could be done offshore and, ultimately, unsuccessful, that it could make a mockery of the process and cause, probably unintentionally on behalf of the Government, extra distress to those people who saw people applying and then did not get it. They effectively then just put two fingers up at people and go, "There you are. We are here and we are not coming home". If you could do that, that would be great.

Alyson Kilpatrick: I will tease out the legal analysis, but I can tell you that that would be incompatible. I can tell you that now.

Chair: On behalf of the Committee, thank you both very much indeed for your attendance this morning, for taking our questions and for answering as fulsomely as you have. Please feel free to submit to us any further information that comes to mind. We would certainly be very interested to see your analytical submission to the NIO on the proposals. Thank you both very much indeed.