

As bishops of those dioceses with parishes in Northern Ireland, and having liaised with our Northern Ireland Catholic Council on Social Affairs (NICCOSA), we write to you in response to the Northern Ireland Affairs Committee's call for evidence with regard to its inquiry into 'Addressing the Legacy of Northern Ireland's past: The UK Government's New Proposals'. As you will be aware, we have written to the Secretary of State outlining our concerns regarding this new approach and we now write to this Committee in order to offer our views for consideration in its inquiry into this matter. We welcome this inquiry into this significant new departure in UK Government policy with regard to addressing the past in Northern Ireland and we wish the Committee every success with its hearings on this important matter. In this letter, we wish to lay before the Committee some of our views on this issue given its intrinsic importance to the pursuit of justice and of peace in Northern Ireland.

### **Dealing with the Past.**

Throughout the Scriptures the administration of justice is linked to wisdom. We learn from the Scriptures that wise and prudent rulers seek and administer justice for all. The result of the fair and equal access to justice is peace and harmony among peoples. The Christian understanding of justice is closely linked to themes of reconciliation, restoration and rebuilding relationships. Justice should be pursued not least because a just society is a society of peace. For victims who do not feel justly treated, the wounds of the past may never fully heal. We support victims who wish to pursue appropriate criminal, legal and civic justice.

As a society, we need to deal with legacy issues in a respectful, ethical way. The Good Friday Agreement provided an inclusive, international framework that serves as an important counter-balance to the politics of '*us*' and '*them*'. An emphasis on the responsibility of the State can be viewed as hostile by communities that feel particularly attached to the State. This is a global issue and is not unique to the Northern Ireland context. However, it should be remembered that holding the State accountable for its responsibility to protect life makes all citizens safer. We note that in the past, there were abuses of human rights by both paramilitaries and State actors. Accordingly, both should be held accountable for such actions.

We acknowledge and are acutely aware that for those who were injured or bereaved through violence, nothing can ever replace what they have lost. We know that justice alone is not enough to lead to healing, peace or renewed relationships. In dealing with the legacies of the past in Northern Ireland, and in thinking about our vision for the future, we must strive to try to reconcile the principles of justice and mercy, in the actual circumstances of the community in which we live. Whilst the policies and legislative framework put in place by the State is a vital mainstay in this process, all citizens of Northern Ireland have a role to play. Churches too must play their part and in this regard we assure the Committee of our ongoing commitment to peace and reconciliation in Northern Ireland and, in particular, to witnessing to Christian unity and peace with our fellow Christian churches.

Since the Good Friday Agreement, huge strides have been made in developing a more peaceful and reconciled society. However, we must continue to strive to truly create one society working together in solidarity for the Common Good and with a shared understanding of what that means. This includes working together to create a shared vision of the future for

Northern Ireland, as well as addressing the unresolved problems of the past if we are to move forward. We believe unless we honestly, justly and critically deal with the legacy of the Troubles, in all its complexity, society in Northern Ireland will remain, to a significant degree, imprisoned by its past.

### **Written Statement regarding the UK Government's position on Addressing the Legacy of the Past in Northern Ireland.**

Moving more specifically to the issue under inquiry, we wish to express our deep concern at the Secretary of State's statement of 18 March 2020 regarding the UK Government's proposed approach to dealing with the legacy of the past in Northern Ireland. When the Northern Ireland Office (NIO) launched its public consultation in May 2018, *Addressing the Legacy of Northern Ireland's Past*, it was based on the Stormont House Agreement Framework that had been agreed by both Governments and the political parties. Determined to offer constructive feedback to the public consultation, NICOSSA submitted a response. One theme emphasised by the NIO throughout the consultation, and which NICOSSA positively endorsed, was that victims should finally be given priority as the focal point of any response to addressing the legacy of the past. A primary principle of the 'Addressing the Legacy of the Past' public consultation was that justice would be pursued, where possible, regardless of the identity of the perpetrator.

Having considered the statement of 18 March 2020, it is deeply concerning to us that the UK Government has departed from this fundamental principle and has moved away from the position of equal access to justice for all. A key principle of the NICOSSA response was that any approach to dealing with the past in Northern Ireland should commit to providing support and options for victims.

In particular, NICOSSA stated;

"If we trivialise or ignore a history of suffering, or call on those who have suffered to forget or overlook their suffering, we are in fact continuing to perpetuate an oppressive situation. Reconciliation can only come about if the nature of the violence perpetrated is acknowledged, and conditions for its recurrence are removed. Real reconciliation means that we cannot forget the past. We must face the past, no matter how costly or painful that encounter may be, before real reconciliation can flourish. Victims and survivors have paid the highest price for the fragile peace we all enjoy today. For too long their voices have been marginalised in our society, and their needs neglected".

We feel impelled to reiterate these words. As a society, we must face up to the reality of the past. We must consider the actions of all involved. State and non-State actors must be equally accountable before the law. Otherwise no authentic reconciliation can be achieved. The NICOSSA response also held that the search for truth must be pursued unflinchingly. Accordingly, NICOSSA cannot support any legislation that substantially undermines the foundational work of the 2018 process and provides that State-actors would not be equally subject to the rule of law.

The participants to the Stormont House Agreement agreed that:

‘As part of the transition to long-term peace and stability the participants agree that an approach to dealing with the past is necessary which respects the following principles:

- promoting reconciliation;
- upholding the rule of law;
- acknowledging and addressing the suffering of victims and survivors;
- facilitating the pursuit of justice and information recovery;
- is human rights compliant; and
- is balanced, proportionate, transparent, fair and equitable’.

As the UK Government has committed to ensuring the equal treatment of veterans who served in Northern Ireland with those who served overseas, we are deeply concerned that many of the provisions of the Overseas Operations (Service Personnel & Veterans) Bill do not honour these principles, in particular the human rights compliance provision, the commitment to uphold the rule of law, the commitment to facilitate the pursuit of justice, and the pledge to devise a modality that is *inter alia*, transparent, fair and equitable.

The Secretary of State has said it is the Government’s view that;

“...to best meet the needs of all victims and of wider society, we need to shift the focus of our approach to the past. While there must always be a route to justice, experience suggests that the likelihood of justice in most cases may now be small, and continues to decrease as time passes. Our view is that we should now therefore centre our attention on providing as much information as possible to families about what happened to their loved ones - while this is still possible”.

We should be interested to know the empirical basis leading to this conclusion. NICOSSA is equally concerned that very little information was appended to the statement as to the detail of how proposed new approaches to dealing with the past will operate. This is unfortunate given the detailed information regarding the proposed operation of, for example, the Historical Investigations Unit, in the suite of consultation documents entitled, ‘*Addressing the Legacy of Northern Ireland’s Past*’.

Moreover, we have concerns about the proposals regarding investigations, particularly the requirements needed to pursue investigations. These are manifestly onerous and contrary to the normal procedure for the investigation and prosecution of crime. Manifestly, the proposals do not represent fair and open access to the pursuit of justice for all. In fact, these approaches would self-evidently discriminate against victims of Troubles’ related crimes in Northern Ireland, and would therefore be a breach of Article 14 of the European Convention as provided by the first Schedule to the Human Rights Act 1998.

In his statement of 18 March, the Secretary of State declared that;

“The Government believes that this approach would deliver a fair, balanced, and proportionate system that is consistent with the principles of the Stormont House Agreement and deliver for all those who have been affected by the events of the past; striking a balance in enabling criminal investigations to proceed where

necessary, while facilitating a swift transition to an effective information recovery mechanism before this information is lost forever”.

With the information available to us at present, we vehemently disagree with this statement and do not believe it is consistent with the principles of the Stormont House Agreement or will deliver for all affected by the events of the past.

### **Overseas Operations (Service Personnel and Veterans) Bill.**

Turning to the Overseas Operations (Service Personnel and Veterans) Bill, we read with particular concern many of the provisions of the Bill, *inter alia*, with regard to the presumption against prosecution and the provision of a duty to consider derogating from certain rights in the European Convention on Human Rights. As stated above, whilst we understand that this Bill relates to overseas activities, we note that the Secretary of State at the Ministry of Defence, the Rt Hon Ben Wallace MP, has outlined in a letter of 18 March to Members of Parliament that;

“Addressing the legacy of Northern Ireland’s past – delivering reconciliation whilst also ensuring that veterans who served in Northern Ireland are treated no less fairly than those who served overseas – will form the basis of separate legislation to be brought forward by the Northern Ireland Office. The legislation will deliver on the Government's commitment to legislate on this issue in the "New Decade, New Approach" deal. This will be brought forward in a timeframe which is broadly in line with the key stages of the passage of the Overseas Operations (Service Personnel and Veterans) Bill”.

Notwithstanding the assertion by Minister Walker on behalf of the Secretary of State in a letter to us of 27 April that ‘this Bill does not apply to those who served in Northern Ireland, and we will deliver a separate package of measures on legacy issues’, it is our view that the position of the UK Government on this issue is far from clear. In fact, since the Secretary of State has confirmed the UK Government’s intention to ensure equal treatment of veterans who have served in Northern Ireland with those who served overseas, we are alarmed by the provisions of this Bill and wish to strongly assert our opposition to many of its Articles.

As it stands, owing to the fact that prospective prosecutions of State-actors in NI appears to require the consent of both the Attorney General and the Advocate General for NI, it is clear that the measures proposed in the Bill have a particular impact on Northern Ireland. In our view this is manifestly prejudicial to those in NI who may make a complaint of an alleged offence committed by State Forces in NI that could lead to a prosecution and therefore appears to be in contravention on Article 14 of the European Convention. In addition, the proposed five-year time limit on bringing prosecutions against soldiers and veterans, except in exceptional circumstances (not clearly specified or delineated at present), would also be manifestly prejudicial to citizens of Northern Ireland where, as we understand it, Troubles-related incidents involving the British Armed Forces have all occurred more than five years ago.

As a High Contracting Party to the European Convention, the United Kingdom has affirmed its “profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political

democracy and on the other by a common understanding and observance of the Human Rights upon which they depend". The provisions which have now been suggested by the Secretary of State for Northern Ireland run contrary to these established commitments, leaving us to wonder if the UK Government is retreating from the belief that the foundation of justice and peace in the world is best maintained by a common understanding and observance of Human Rights. The Overseas Operations (Service Personnel and Veterans) Bill proposes a different observance, understanding and application of these rights to the actions of the British Armed forces overseas. In essence, the Bill provides an inversion of the normal principle that every citizen is subject equally to the rule of law. It provides a presumption against prosecution. The effect of this is the way in which the British Armed forces can behave overseas differs to the standard of behaviour to which they may be held when on home soil. We fundamentally disagree with this proposition as it may relate to Northern Ireland, as well as any other country. Derogation from the European Convention is strictly limited to the provisions of Article 15. For the avoidance of doubt, with NICOSSA, it our **view** is that the provisions of Article 15 of the Convention did not and do not apply in respect of the conduct of the British Armed Forces in Northern Ireland.

**Comment [EC]:** Should this be 'our view is that ...' instead of NICCOSSA's?

#### **Time delays and expectations raised.**

More broadly speaking we wish to raise an objection on principle to the changing of position regarding a new approach, once again, to addressing the legacy of the past in Northern Ireland. For so long, and for too long, victims and wider society in Northern Ireland have been informed and consulted time and again with regard to new approaches and policies which would attempt to deal with the legacy of the past in Northern Ireland and time and again, they have experienced significant delays and little appreciable results. In 2014, the Stormont House Agreement (SHA) was agreed by the main political parties in the North and the two Governments after detailed and arduous negotiation. Four years later, in 2018, the detailed public consultation based on the SHA was published. Over 17,000 individuals and organisations took the time to respond to this consultation. These responses represent significant time and resource commitments by all respondents. Meetings were held and, for many, old wounds resurfaced as respondents examined in good faith the detailed proposals to address the legacy of the past through the four institutions proposed by the SHA. We are therefore dismayed and frustrated that it now appears that this engagement will be hastily swept aside to embark on a new path without consultation or agreement with political parties or the Irish Government, not to mention other important civic society organisations including victims' groups. This proposed new approach, six years after the SHA, leaves many victims feeling betrayed and fatigued by constant Government promises to properly address the past only to be disappointed by the recurring failure to make good on these promises. Constant examination of new proposals to address the legacy of the past, in particular for victims, ensures that these past issues remain current for all concerned. Without recourse to certainty, to justice and to truth, we can never move on as a society.

We also wish to express our dismay and disappointment with regard to the delays to the victims' pension scheme which was due to commence on 29 May 2020. We urge the Committee to recommend that this scheme be rolled out immediately for victims. Addressing their needs has too often been delayed or ignored and, as time passes, the benefit of this scheme will not be realised for many victims. This scheme must become operational as soon as possible if it is to positively affect the lives of victims and we urge the Committee to raise this matter in its hearings on the legacy of the past and its subsequent report to Government.

## **‘Vexatious’ claims**

We note that the terms of reference of the committee include ‘What legislative steps the Government can take to address what have been described as vexatious claims against veterans.’ The word ‘vexatious’, particularly when used in a legal context and by national governments, should only be used in exceptional circumstances where absolutely appropriate and prudent to do so. We do not agree that the painful and traumatic legacy of the past in Northern Ireland represents one of those circumstances and we strongly feel that the use of the term ‘vexatious’ should not be used when discussing the legacy of the past in Northern Ireland. It is particularly inappropriate and hurtful to certain victims as it is usually only used to describe claims against the actions of former British soldiers who served in Northern Ireland.

The Troubles were a deadly conflict that cost many lives and damaged physically and psychologically many more. For many years victims have been denied the full truth of what happened as well as accessible routes for the pursuit of justice. As a result there are incidents and crimes that have never been properly investigated or brought through the judicial process many years later. However - we must be unequivocal here - this does not mean that new claims against State or non-State actors are flippant or vexatious. In reality, it means that victims’ access to the pursuit of justice has for many years failed them. The passage of time should not mean that a legitimate investigation should not be conducted or that justice should not be pursued and it should certainly not mean that such claims are deemed vexatious simply because they are brought against former members of the British Armed Forces. The use of the term serves to denigrate victims’ experiences, prejudices their claims before any proceedings have begun, is clearly meant to have a chilling effect on victims’ pursuit of claims, tends to vitiate a victim’s credibility, militates against confidence in pursuing justice, and is prejudicial against usually one set of victims only. The credibility or otherwise of allegations of a criminal nature are already taken into account by the policing investigators as well as the judicial process. There is manifestly therefore no need and no place for politicians, heads of State, or otherwise, to use the term and certainly not in a generalised manner to cover claims against British Army veterans who served in Northern Ireland. We ask that the Committee seek the Government’s assurance that this term, along with others of a similarly insensitive nature such as ‘witch-hunt’, will not be used again with regard to the legacy of the past in Northern Ireland. We urge the Committee to recommend to the UK Government that the language used in any discussion regarding the Troubles in Northern Ireland must be appropriate, measured and sensitive and we strongly discourage the use of such inflammatory terms.

## **Conclusion.**

Whilst we do not wish to outline all of our detailed concerns on this issue at present, we wish to express our alarm and disappointment at the new position which the UK Government is taking to address the legacy of the past in Northern Ireland, and specifically its departure from the understanding inherent in the Stormont House Agreement to which all parties signed up to with good-will.

In addition, we wish to draw your attention to the serious implications of even partly undoing existing Agreements, treaties and Conventions. The timing of the announcement was

unfortunate, to say the least, coming at a time when our citizens, and people across the world, are dealing with the serious impact of the global Coronavirus pandemic. The implications of the proposals are therefore not receiving the widespread scrutiny they might otherwise receive.

We also caution that any similar proposed legislation to the Bill referred to in this letter, which would make specific provisions for Northern Ireland, could destabilise the Executive and other institutions which are only recently operational and currently exist on a fragile equilibrium. Any such legislation would undoubtedly provoke significant political and public reaction as a time when a strong and unified Executive, focussed on delivering the best outcomes for the health of citizens in NI, is needed more than ever.

Finally, people living on the island of Ireland need a common vision of how we want to live together into the future, whatever that may bring. We need to find ways to commit ourselves to each other within our own space, to defend each other, to understand each other, and impart a better vision of the future to the next generation. What we have in common is much greater than what divides us. We need to recognise this and to work together for that common future. That, more than anything, would help us as a society to heal.

We commend the Committee for commencing an inquiry into this new departure in policy and look forward to reading the findings of the Committee in its final report on this subject.

### **Summary of Written Submission**

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For victims who do not feel justly treated, the wounds of the past may never fully heal. We support victims who wish to pursue appropriate criminal, legal and civic justice. As a society we need to work together to create a shared vision of the future for Northern Ireland, as well as addressing the unresolved problems of the past if we are to move forward. We believe that unless we honestly, justly and critically deal with the legacy of the Troubles, in all its complexity, that society in Northern Ireland will remain, to a significant degree, imprisoned by its past.

#### **New Approach.**

We are deeply concerned at the Secretary of State's statement of 18 March 2020 regarding the UK Government's proposed approach to dealing with the legacy of the past in Northern Ireland. In particular:

- State and non-State actors must be equally accountable before the law. Otherwise no authentic reconciliation can be achieved. NICOSSA cannot support any legislation that substantially undermines the foundational work of the 2018 process and provides that State-actors would not be equally subject to the rule of law;
- It is deeply concerning that the proposed legislation for Northern Ireland, which is stated to mirror the provisions of the Overseas Operations (Service Personnel & Veterans) Bill, will not honour some of the principles of the Stormont House Agreement, in particular the human rights compliance provision, the commitment to uphold the rule of law, the commitment to facilitate the pursuit of justice, and the pledge to devise a modality that is *inter alia*, transparent, fair and equitable;

- No information was appended to the statement as to the detail of how proposed new approaches to dealing with the past will operate. There was also no empirical evidence given that a change of approach was required;
- The proposals regarding investigations, particularly the requirements needed to pursue investigations, are manifestly onerous and contrary to the normal procedure for the investigation and prosecution of crime. Manifestly, the proposals do not represent fair and open access to the pursuit of justice for all. In fact, these approaches would self-evidently discriminate against victims of Troubles' related crimes in Northern Ireland, and would therefore be a breach of Article 14 of the European Convention as provided by the first Schedule to the Human Rights Act 1998;
- With the information available to us at present, we do not agree that the proposed new approach is consistent with the principles of the Stormont House Agreement or will deliver for all affected by the events of the past.

### **Overseas Operations (Service Personnel and Veterans) Bill.**

- Since it is the UK Government's confirmed intention to ensure equal treatment of veterans who have served in Northern Ireland with those who served overseas, we are alarmed by the provisions of this Bill and wish to strongly assert our opposition to many of its Articles, *inter alia*, with regard to the presumption against prosecution and the provision of a duty to consider derogating from certain rights in the European Convention on Human Rights;
- As it stands, owing to the fact that prospective prosecutions of State-actors in NI appears to require the consent of both the Attorney General and the Advocate General for NI, it is clear that the measures proposed in the Bill have a particular impact on Northern Ireland. In our view this is manifestly prejudicial to those in NI who may make a complaint of an offence committed by State Forces in NI that could lead to a prosecution and therefore appears to be in contravention on Article 14 of the European Convention;
- The proposed five-year time limit on bringing prosecutions against soldiers and veterans, except in exceptional circumstances (not clearly specified or delineated at present), would also be manifestly prejudicial to citizens of Northern Ireland where, as we understand it, Troubles-related incidents involving the British Armed Forces have all occurred more than five years ago;
- The Bill provides an inversion of the normal principle that every citizen is subject equally to the rule of law. It provides a presumption against prosecution. The effect of this is the way in which the British Armed forces can behave overseas differs to the standard of behaviour to which they may be held when on home soil. We fundamentally disagree with this proposition as it may relate to Northern Ireland, as well as any other country;
- Derogation from the European Convention is strictly limited to the provisions of Article 15. For the avoidance of doubt, with NICOSSA, it is our view that the provisions of Article 15 of the Convention did not and do not apply in respect of the conduct of the British Armed Forces in Northern Ireland.

### **Time delays and expectations raised.**

More broadly speaking we wish to raise an objection on principle to the changing of position regarding a new approach, once again, to addressing the legacy of the past in Northern Ireland. For so long, and for too long, victims and wider society in Northern Ireland have been informed and consulted time and again with regard to new approaches and policies which would attempt to deal with the legacy of the past in Northern Ireland and time and again, they have experienced significant



delays and little appreciable results. This proposed new approach, six years after the SHA, leaves many victims feeling betrayed and fatigued by constant Government promises to properly address the past only to be disappointed by the recurring failure to make good on these promises. Constant examination of new proposals to address the legacy of the past, in particular for victims, ensures that these past issues remain current for all concerned. Without recourse to certainty, to justice and to truth, we can never move on as a society.

We were dismayed with regard to the delays to the victims' pension scheme which was due to commence on 29 May 2020. We urge the Committee to recommend that this scheme be rolled out immediately for victims. Addressing their needs has too often been delayed or ignored and, as time passes, the benefit of this scheme will not be realised for many victims. This scheme must become operational as soon as possible if it is to positively affect the lives of victims and we urge the Committee to raise this matter in its hearings on the legacy of the past and its subsequent report to Government.

### **'Vexatious' claims.**

We note that the terms of reference of the committee include 'What legislative steps the Government can take to address what have been described as vexatious claims against veterans.' We strongly feel that the use of the term 'vexatious' should not be used when discussing the legacy of the past in Northern Ireland.

The use of the term serves to denigrate victims' experiences, prejudices their claims before any proceedings have begun, is clearly meant to have a chilling effect on victims' pursuit of claims, tends to vitiate a victim's credibility, militates against confidence in pursuing justice, and is prejudicial against usually one set of victims only. The credibility or otherwise of allegations of a criminal nature are already taken into account by the policing investigators as well as the judicial process. There is manifestly therefore no need and no place for politicians, heads of State, or otherwise, to use the term and certainly not in a generalised manner to cover all claims against British Army veterans who served in Northern Ireland.

We ask that the Committee seek the Government's assurance that this term, along with others of a similarly insensitive nature such as 'witch-hunt', will not be used again with regard to the legacy of the past in Northern Ireland. We urge the Committee to recommend to Government that the language used in any discussion regarding the Troubles in Northern Ireland must be appropriate, measured and sensitive and we strongly discourage the use of such inflammatory terms.

*1 June 2020*