



**NICRE SUBMISSION**

**TO**

**NORTHERN IRELAND OFFICE**

**ON**

**ADDRESSING THE LEGACY OF  
NORTHERN IRELAND'S PAST**

**October 2018**

## **1 Introduction**

- 1.1 NICRE was officially set up on 27 February 2017 when the previous NICEM, the Northern Ireland Council for Ethnic Minorities was under voluntary administration on 7 November 2017 due to cash-flow crisis. Ethnic minority groups strongly feel that the loss of NICEM is a setback on the policy work gained over the last two decades. After reflections and meetings, they are determined to continue the policy work previously by NICEM.
- 1.2 The establishment of NICRE is also in the context of Brexit. Northern Ireland is moving towards more uncertainty in terms of political, economic and social context. Brexit as result of Referendum on EU membership creates a new constitutional crisis. The judgment of the Supreme Court on Millar and others, in a joint case with the reference from the Attorney General for Northern Ireland on Agnew and others Judicial Review, declared the death of the Belfast Agreement (also known as the Good Friday Agreement) which is not recognised under the current constitutional law of the UK.
- 1.3 Brexit also has a tremendous negative impact on ethnic minority community in Northern Ireland, whether you are migrants, particularly EU migrants, asylum seekers or refugees, or settled ethnic minority. The uncertainty of all the existing EU migrant whether they have the right to stay or repatriate back to their country of origin. This issue also applies to all UK citizens who are currently living and working in the Union. Brexit is also a destabilising factor on our future border arrangement and the constitutional crisis of the GFA in which no Executive Government for the last two years.
- 1.4 We welcome the publication of “Addressing the Legacy of Northern Ireland’s Past”, in particular clause 63 and Schedule 18 extend the current prisoner accelerated release scheme to members of the security forces. Although it is long overdue, it is an action to define our shared future. The current approach on the legacy of our past is not working which failed to deliver for victims and survivors about the truth, justice, reparation and their needs. We also believe that the Stormont House Agreement which is not perfect, is the only compromise to address this issue as the starting point. The fundamental question, in this consultation, is: Does the Legacy Framework could deliver the principles set out in the Stormont House Agreement which are promoting reconciliation; upholding the rule of law; acknowledging and addressing the suffering of victims and survivors; facilitating the pursuit of justice and information recovery; human rights compliance; and to be balanced, proportionate, transparent, fair and equitable?

## **2 Background**

- 2.1 During the Troubles ethnic minority people in Northern Ireland contributed enormously to our society. When the time no one would like to risk their life to work in our National Health Service, overseas doctors and nurses came to our shore to

show their bravery and encouragement to serve our community during the dark years. Our Chinese and Indian community, in particular, created jobs to benefit to our economy and society through their entrepreneurship. Of course, we also paid “racketeering” during the period until the Good Friday Agreement. This part of our history is long forgotten!

2.2 Ethnic minority were overwhelmingly voted for the GFA that based on the assumption on the cessation of communal violence in Northern Ireland with a new hope of human rights protection and equality for all. We took the risks as we also witnessed the upsurge of racist attacks since the Provisional IRA declared cease fire in 1994, ethnic cleansing against the Chinese people who were living in Donegal Pass of South Belfast in 1996. Ethnic minority has become the new victim of the post-GFA.

2.3 This April marked the 20<sup>th</sup> anniversary of the Belfast Agreement, also known as the Good Friday Agreement, which aims to the cessation of the communal violence in Northern Ireland<sup>1</sup>. Has “peace” made us the Race Hate Capital of the World? The Guardian in January 2004 described Northern Ireland which is 99% white, is fast becoming the “Race-Hate Capital of Europe”<sup>2</sup>.

2.4 The recorded hate incidents and crime over the last 3 year’s figures are follow: 2014/15 (1,356 incidents & 920 crimes), 2015/16 (1,221 incidents & 853 crimes), 2016/17 (1,054 incidents & 660 crimes). Although the number is pretty small in comparison with the rest of the UK. But when population is considered, Northern Ireland is higher than the equivalent rate in England and Wales in terms of reported hate crime (5.94 per 100K in Northern Ireland; 5.47 in England and Wales)<sup>3</sup>.

2.5 The hike of these figures is directly related to the Flag Protest in which created a pattern of organised attacks targeting local ethnic minorities when we had the political stalemate over the last 2 decades. At first, it is Drumcree in resulting “**ethnic cleansing**” against Chinese, who were living in Donegal Pass of the south Belfast, alongside the PUL community before the GFA. It is not uncommon at that time the loyalist people came to your house asking for the key of your cars which used to block the road by burning it.

2.6 A substantial of these racist attacks were contributed by the loyalist paramilitary. The now defunct Independent Monitoring Commission (IMC) acknowledged in numerous reports<sup>4</sup> that the UDA and UVF were ‘targeting ethnic minorities’.<sup>5</sup>(see

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<sup>1</sup> <http://www.thedetail.tv/articles/racism-the-good-friday-agreement-and-northern-ireland-s-new-minority>

<sup>2</sup> <https://www.theguardian.com/uk/2004/jan/10/northernireland.race>

<sup>3</sup> Hate Crime – an inspection of the Criminal Justice System’s response to hate crime in Northern Ireland, Criminal Justice Inspection Northern Ireland, December 2017, p. 6

<sup>4</sup> Tenth report (March 2006), Thirteen Report (January 2007), Fifteen Report (April 2007), Seventeen Report (November 2007), Twenty-Second Report (November 2009), Twenty-Third Report (May 2010), Twenty-Fifth Report (November 2010)

<sup>5</sup> The IMC Report which monitors threat assessment and normalisation, as well as on paramilitary activities analysis), can be downloaded in the following link:  
<http://www.independentmonitoringcommission.org/index.cfm>

also “Racist war of the loyalist street gangs”<sup>6</sup>) Ethnic minority became the new “Victims” of paramilitarism.

2.7 Little known is about ethnic minority people’s involvement in paramilitary in the dark years. During Drumcree stand-off, the previous director of NICEM received requested from Dr. Paisley to deal regarding an Asian Loyalist who were in illegal protest outside a Catholic church in Dunloy in 1998, was locked up by the police with racist remarks made which was the issue of the complaint.

2.8 As a matter of fact, we have the notorious “Shoukri brothers”, the so-called “Egyptian brothers” of the alleged to have taken over the North Belfast Ulster Defence Association (UDA) leadership in 2002. We also have Manmohan “Johnny” Sandhu who was convicted of inciting loyalist terrorists to murder with 10 years jail sentence in 2009. The last case is the most recent one in which William Wong, a 22 years old Malaysian Chinese, was convicted of having a pipe bomb with intent to endanger life. William Wong was a member of dissident republican. Their harm inflicts the victims and survivor in our society in which we need to acknowledge it as part of our dark history.

2.9 During the Trouble we only witnessed a real victim, Mrs. Selina Lee, a Chinese woman running her Takeaway shop in North Belfast. On the night her taxi driver off-sick, she was forced to deliver the order in which the awaited paramilitary shot her a few times. She was survived with the full support from the medical team at the Mater Hospital in North Belfast in 1997. Since then Mrs. Lee recovered both physically as well as mentally through her engagement with the Chinese Women Group “Oi Kwan” and became the Chair of the group. She became a remarkable leader within the Chinese community. Unlike Mrs. Selina Lee, most of the victims and survivors during the Trouble had a very traumatic experience as result of their loved one being murdered or severely wounded.

2.10 For the victims and survivors of the Troubles they have been suffered physically, economically, socially and mentally. Their trauma and scars could not easily be healed unless practical needs and suffering are acknowledged and addressed. One of the overarching principles is to have an acceptable definition of victims and survivors in the legal text in which no hierarchy of victimhood. The prime question is whether the victims and survivors have confident to the proposed institutions in which under the principles of independent, impartial and accountability with oversight bodies to hold them accountable on one hand, the actions of these institutions are balanced, proportionate, transparent, fair and equitable on the others.

2.11 During the Troubles most of the victims were men as well as the perpetrators. It left women and children to pick up the pieces. UK government must be implemented in full of the UN Security Council Resolution 1325 to Northern Ireland in acknowledgement the roles and experiences of women and to ensure that due

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<sup>6</sup> <https://www.theguardian.com/uk/2004/jan/10/northernireland.race>

consideration for victims and survivors must be integrated into every aspect of the legacy bodies, mechanism and procedures.

### 3 General comments

- 3.1 The State of UK and Ireland should acknowledge and address that victims of our legacy are not just Irish and British or Catholic and Protestant, it is also ethnic minorities who were always being caught in these cross-fire. Furthermore, the State of UK and Ireland should also acknowledge and address the contributions of ethnic minorities during the Troubles as well as ethnic minority involvement with paramilitary as part of our shared history!
- 3.2 This could help to demystify the fact and history of ethnic minorities who were working and living in Northern Ireland to our current and future generation which promotes reconciliation and rule of law in the context of Brexit date which will be on 29 March 2019 and the incitement of racial and religious hatred of the far-right groups such as Britain First<sup>789</sup> in Northern Ireland. Moreover, far-right groups are used to have strong link with the loyalist paramilitary, such as the British National Party (BNP) which is now replaced by the Britain First.
- 3.3 Although racist violence on post-GFA is outside this consultation, the State of UK and Ireland should acknowledge and address the pain and suffering of the racist violence, in particular loyalist paramilitary orchestrated attacks, in Northern Ireland. WE request the Secretary of State for Northern Ireland to extend the powers and functions of the Fresh Start Panel to review and to make recommendations to the racist violence in Northern Ireland.
- 3.4 The draft Bill are not fully human rights compliant in law and practice which must be remedied. The draft Bill should include a provision to ensure that all the mechanisms are adequately resourced in order to expediently and effectively perform their tasks. And the consensus on the final detail of the proposed mechanisms, including their operation and outcomes, is human rights compliant. Moreover, the timeline of each institution set out in the draft Bill should be in line with the tasks to be delivered, in particular the Historical Investigation Unit, in a reasonable way. Therefore, the draft Bill should have a provision to reflect the legal effect of extension of the unfinished tasks.
- 3.5 Moreover, due to lack of devolved government for almost two years, the draft Bill could not be effective without the Lord Chief Justice's plans for addressing outstanding legacy inquests. This means that NIO should fund this important and parallel processes in the absence of the Executive Government.

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<sup>7</sup> <https://www.facebook.com/OfficialBritainFirstNorthernIreland/>

<sup>8</sup> <https://www.facebook.com/search/top?q=britain%20first>

<sup>9</sup> [https://en.wikipedia.org/wiki/Jim\\_Dowson](https://en.wikipedia.org/wiki/Jim_Dowson)

3.6 Mental Trauma Service should be adequately resourced and must be ring-fenced to enable the service to meet the needs of victims and survivors as a form of effective remedy. We also welcome the commitment to establish a pension for those severely physically injured victims. We would like to urge to implement it without any further delay. Provision is made for appropriate rehabilitation to those who do not fall within the pension or mental trauma service, or whom another or additional form of reparation is more appropriate to ensure that the obligations to provide an effective remedy. Any specific advocate counsellor or other additional provision to support victims and survivors should be realized without further delay.

3.7 The draft Bill is amended to include the Implementation and Reconciliation Group as having a role in making recommendations in respect of statements of acknowledgement which would be directed to the governments of UK and Ireland. Safeguards should be in place to ensure that the continued lack of a devolved government should not negatively impact the operations and resourcing of the relevant mechanism.

## **4 Historical Investigation Unit**

4.1 HIU is established for the purpose of fulfilling the Article 2 ECHR obligation that all Troubles-related deaths are effectively investigated. This includes considering the structural and systemic dimension of violence and rights violations and abuses. For the HIU to be appropriate for undertaking investigations into “Troubles-related deaths” it must operate in line with the minimum human rights requirements established by the ECHR jurisprudence and this should be reflected within the wording of clause 7. An assessment of all HET, Police Ombudsman and LIB cases is conducted by the HIU to determine if they are human rights compliant or not. For those case is not Article 2 compliant under all HET, Police Ombudsman and LIB, should be reopened and subject to an expedient and effective investigation by HIU. This will have resource implications.

4.2 Schedule 6, paragraph 3 is amended to enable the HIU to conduct, at a minimum, a targeted consultation on the procedure, including HIU has a duty to be accessible to members of the public who wish to provide evidence relating to a death. Clause 5(6) is amended to include acts of violence or force allegedly linked to the Northern Ireland conflict.

4.3 Clause 9(4)-9(8) are removed and that clause 9 is redrafted to ensure that where there are concerns that a human rights compliant investigation has not yet been conducted into a death, the Director must authorize an investigation by the HIU. Clause 8(2) and 8(3) ensure compliance with the overriding obligation to ensure effective Article 2 compliant investigations into all deaths, this include cases completed by the HET, the Police Ombudsman and LIB.

- 4.4 Schedule 12, Paragraph 3(1) is redrafted to ensure that a coroner has the ability to hold an inquest into a death that is within the HIU remit when this is necessary to ensure an Article 2 compliant investigation is conducted. Schedule 12 should also include effective safeguards to address any direct involvement with a care or unavoidable conflict of interest that arises due to the HIU cooperating with another investigative body. This is required to ensure the independence and impartiality of the HIU's investigative process.
- 4.5 Clause 37(2)(b) is amended to enable repeat year-long extensions, A review process for whether a further extension is required should be established, with the determining factor being whether more time is required to ensure all investigations in the HIU's remit are thorough.
- 4.6 A new provision in the draft Bill to set out the HIU's requirement to take the necessary steps to protect witness, victims and their relatives and persons conducting the investigation from threats, attacks and any act of retaliation or intimidation.
- 4.7 The HIU should have the powers to conduct a thorough investigation, that clause 25 is amended to extend the HIU's powers of compellability to all reasonable lines of inquiry, which includes all relevant public authorities and relevant private individuals. This amendment should include the relevant safeguards required to ensure that the powers are not arbitrarily exercised, for example some form of judicial oversight should be available to allow for a challenge where there is a dispute. This amendment should also include the process for notification of compellability, for example requirement of a warrant. HIU can compel all reasonable written, oral and material evidence through the amended clause 25. It also includes what the penalty is for non-disclosure, only partial disclosure or deliberately misleading disclosure.
- 4.8 The appointment of the Director, officers and appointment panelists must be independent and impartial in line with the ECHR's jurisprudence. To avoid a conflict of interest, Schedule 1, paragraph 3(7) of the draft Bill is amended to require that the attendance of non-committee members at meetings of the committee and sub-committee must have a specific purpose and be reasonable.
- 4.9 Clause 7(2) and 18(3), and Schedule 9 and 10 reflect the principles of necessity, reasonableness, proportionality and legitimate aim to ensure that any restrictions are not arbitrary and that the Secretary of State's decisions are guided by human rights standards. Moreover, Schedule 10, paragraph 5(2) should also be amended to require the Secretary of State to provide reasons for prohibiting the disclosure of international information, unless it is likely to prejudice the national security interests of the UK in line with the principles of the paragraph 16 above.
- 4.10 Clause 21 provides for certain safeguards to ensure the appeals process for non-disclosure decision are effective and accessible, for example that family members can choose their legal counsel from the panel handling the closed

material. Closed material procedure should be used with caution to ensure that it does not create obstacles to ensuring accountability and does not compromise a victim's right to an effective remedy. And the time limit to appeal a non-disclosure of information, as set out in clause 21, is extended to 3 months.

- 4.11 Reasonable support and other assistance should be provided to all family members within clause 22(5). The publication of statements about support and guidance, as set out in clause 23(5), should be guided by human rights obligations, including keeping family members informed. Any close family members with respect to ongoing or pending investigations are specifically listed as 'specified consultees' under clause 37(7).
- 4.12 Detailed guidance is published that set out how the HIU decides when to remove information from public reports on the grounds that it may cause distress to close family members. This guidance should be developed, implemented, monitored and reviewed in consultation with the Commission for Victims and Survivors and the victim sector. The Bill should also require that such guidance should also be considered before the HIU decides on non-disclosure of information on the grounds of distress.
- 4.13 The Bill should contain a requirement on the HIU to publish the annual figures for the number of times information was removed from public reports on the grounds that it may cause distress to close family members. In the draft Bill there should be a provision that where relevant, reasonable accommodation will be made to provide accessible family support and other assistance.
- 4.14 Schedules 15 and 16 should be required that monitoring mechanism and process operate in compliance with human rights. Any complaints and disciplinary mechanisms set out within clause 14(1), 14(2), 31(1), Schedule 13 and Schedule 14 paragraphs 1 and 2 are independent and impartial.
- 4.15 Schedule 14 should be amended to provide the HM Inspectorate of Constabulary and Fire and Rescue Services with the power to inspect the HIU. Schedule 8 should set out requirements for how retained biometric material will be stored and efficient safeguards against misuse and abuse. Moreover, Schedule 8, paragraph 1(5) should be amended to include reference to a "reasonable period of up to [specified number of] years" and "for the purpose of the HIU's investigations".
- 4.16 Schedule should clarify what is permitted regarding the retention of biometric material if the HIU's investigation functions extend beyond five years. This should reflect human rights standards, in line with the general principles set out in clause 1. And an effective and accessible mechanism is in place for individuals to be informed that their biometric material is held, how it is stored, how long it will be stored for and the monitoring body to be contacted to report misuse and abuse.

## **5 Independent Commission of Information Retrieval**

- 5.1 Clause 42(5) is amended to provide for an extension to the timeframe for the ICIR in the event of non-completion of its functions. Consideration should be given to how the State will fulfil its human rights obligations in respect of information received that engages other ECHR rights, in particular Article 3, and which is outside the scope of deaths within the remit of the ICIR. Moreover, further detail should be provided in relation to the involvement of the Government of Ireland in the disclosure assessment and how any resulting conflict will be resolved.
- 5.2 The Bill be amended to require the ICIR to inform a family, in advance of receiving a report, that the Secretary of State intends to redact and on what grounds. The draft Bill should provide for an appeal mechanism to allow the decision to redact to be challenged by the family. Any mechanism similar to that under HIU should consider the recommendations made by the Commission on closed materials procedures in Section 3.0 Alternatively, recourse to a judicial review challenge should be possible.
- 5.3 The right to privacy is specially considered in advance of the disclosure of information to a family, in addition to the considerations of national security and risk to life or safety. Further clarity is needed regarding information which may be provided to the ICIR, outside a death within its remit. And finally, Clause 50(3) should be amended to remove the qualifications of for 'close family' and the residency requirement in order for the broadest access to the ICIR. Alternatively, clear policy direction should be provided to the ICIR in order that the process is as inclusive as possible.

## **6 Oral History Archive**

- 6.1 The OHA is empowered to accept collective submissions from groups, organisations and communities to ensure full meaningful participation to all rights holders. And Clause 66 be amended so as to require any secondary legislation or rules to be enacted by way of affirmative resolution in the NI Assembly. Any such rules would also have to cover the situation where information is transferred into the archive from another source, to ensure that the appropriate consent is obtained.
- 6.2 Clause 55 is amended so as to include precise detail as to when an individual's privacy can be overridden and relevant safeguards, such as the ability to challenge the decision. Alternatively, clause 55 could include a legislative requirement that this must be done by way of regulations or another mechanism.
- 6.3 The issue of how information, disclosing other human rights abuses or violations, can be effectively investigated is fully addressed in order that the State complies with its procedural obligations, in particular Article 3. The Bill is amended to specify the nature and scope of any limitation on the release of information from the OHA.

## **7 Implementation and Reconciliation Group**

- 7.1 Huge works have been done in reconciliation over the last four decades within voluntary, community and civil society, in particular the set-up of the Community Relations Council and victims' groups in Northern Ireland. There are a lot of experiences, good as well as bad practice, which are all useful and transferrable to the IRG. We encourage the IRG working in partnership with these groups.
- 7.2 The Bill should be amended to include, in Part 5, a definition of sectarianism in order to assist the IRG in fulfilling its core task of promoting reconciliation and anti-sectarianism. Any definition should be in line with CERD and the Durban Declaration and Programme of Action. Moreover, the meaning of Clause 60(3) clarifies the focused nature of the restriction on the IRG's review and assessment role.
- 7.3 Access to information and materials should not be restricted to the publicly available information listed in clause 61(1) and 62(3), but that fully open access may be provided subject to further limitations that may be required by human rights law. And lastly, an insertion into clause 62 in order to place an obligation on the Secretary of State for NI to lay a copy of the IRG report before Parliament.

## **8 Prisoner Release**

- 8.1 We welcome the proposed amendments to the NI (Sentences) Act 1998 to extend the accelerated release scheme to those serving sentences for related offences committed on or after 1 January 1968 and before 8 August 1973, as set out in clause 64 and Schedule 18. The confirmation within the consultation document that the proposed amendments will ensure anyone convicted of a Troubles-related offence committed between 1 January 1968 and 10 April 1988, including members of the security forces, will be eligible to apply to the accelerated release scheme, provided for by the NI (Sentences) Act 1998 will further promote reconciliation within the community. We welcome this important change.

**Any query about this submission, please contact the Secretary of the Northern Ireland Council for Racial Equality, Mr. Patrick Yu at [patrick@nicre.org](mailto:patrick@nicre.org) for details. Or write to NICRE, 7 Rugby Road, Belfast BT7 1PS**