



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

**Submission to the Executive Office's  
Consultation on the New Strategy for Victims  
and Survivors**

**April 2024**

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## Summary of Recommendations

- 2.4 The NIHRC recommends that the Executive Office revisits the human rights impact assessment with a view to examining the full range of human rights standards identified in Annex 1 as directly relevant to the draft strategy.
- 2.12 The NIHRC recommends that the Executive Office revisit the Human Rights Impact Assessment and consider Windsor Framework Article 2. It should incorporate within its consideration the minimum standards in relevant EU law relating to victims' rights.
- 2.13 The NIHRC recommends that the Executive Office build consideration of Windsor Framework Article 2 into the development and implementation of any and all policy on victims and survivors.
- 2.19 The NIHRC recommends that the Executive Office adopts a human rights based approach to the whole of the strategy and that it must include the full range of internationally accepted human rights standards, including Windsor Framework Article 2 and the relevant EU law minimum standards. This approach should incorporate corresponding State obligations relating to victims and survivors of serious human rights abuses. This should also ensure specific actions and time-bound measures are provided that demonstrate contribution towards each high level outcome.
- 2.25 The NIHRC recommends that the Executive Office establishes a system to oversee, monitor, evaluate, and report on the provision of redress measures and services to victims under the strategy. This includes data collection that is disaggregated, regular, comprehensive and comparable.
- 2.30 The NIHRC recommends that the Executive Office secures ring-fenced, multi-year funding that extends across the lifespan of the strategy.
- 3.3 The NIHRC recommends that the Executive Office ensures that the fundamental concerns with the NI Troubles (Legacy and Reconciliation) Act 2023 are addressed to the greatest extent possible within the strategy, including adopting human rights based and victim-centred mitigation strategies that protect victims' and survivors' access to justice, redress and rehabilitation. Victims and survivors and their representative organisations should be meaningfully involved in designing, implementing and evaluating the mitigation measures taken.

- 3.16 The NIHRC recommends that the Executive Office considers and makes explicit provision for the diverse needs of a broad range of victims and survivors, particularly but not limited to those from marginalised groups and/or individuals experiencing intersectional discrimination.
- 3.26 The NIHRC recommends that the Executive Office considers and reports on how the strategy intersects with other government strategies and what specific actions will be taken to ensure a holistic approach is taken to issues affecting victims and survivors. This should include, by way of example, the Social Inclusion Strategies; the Tackling Paramilitarism Programme; the Modern Slavery and Human Trafficking Strategy; the Domestic Abuse and Sexual Violence Strategy; and the Co-operating to Safeguard Children and Young People Strategy.
- 3.27 The NIHRC recommends that the Executive Office sets out how the strategy is raising awareness of and giving effect to the rights contained in the EU Victims' Directive including by reducing the risk of victimisation and the specific and targeted measures being undertaken to protect victims against secondary and repeat victimisation, intimidation and retaliation.
- 3.28 The NIHRC recommends that the Executive Office includes within the strategy specific measures to ensure the best interests of the child are the primary consideration.
- 3.29 The NIHRC recommends that the Executive Office includes within the strategy the measures that will be taken to avoid discrimination in delivery and to meet victims' specific needs.
- 3.36 The NIHRC recommends that the Executive Office includes specific measures to address the delay in the Victims' Payment Scheme so that it offers fair, adequate, and prompt compensation to all who are eligible.
- 3.37 The NIHRC recommends that the Executive Office includes measures targeted at addressing the risk of re-traumatisation. This should include ensuring that specialised support is available, accessible and securely funded throughout an applicant's journey.
- 3.40 The NIHRC recommends that the Executive Office provides within the strategy for the appropriate training of practitioners and officials likely to

come into contact with victims. This should be aligned to the minimum standards set out in the EU Victims' Directive. At the very least it must enable officials to recognise victims and to treat victims in a respectful, professional, impartial and non-discriminatory fashion.

## 1.0 Introduction

- 1.1 The Northern Ireland Human Rights Commission (the NIHRC), pursuant to section 69(1) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland (NI). The NIHRC is also required, by section 78A(1) of the Northern Ireland Act 1998, to monitor the implementation of Article 2 of the Windsor Framework, to ensure there is no diminution of rights protected in the “Rights, Safeguards and Equality of Opportunity” chapter of the Belfast (Good Friday) Agreement 1998 as a result of the UK’s withdrawal from the EU.<sup>1</sup> In accordance with these statutory duties the following advice is submitted to the Executive Office in response to its consultation on the New Strategy for Victims and Survivors.
- 1.2 The NIHRC bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), as incorporated by the Human Rights Act 1998, and the United Nations (UN) system and treaty obligations of the Council of Europe (CoE) and United Nations (UN). The relevant regional and international treaties in this context include:
- European Convention on Human Rights 1950 (ECHR);<sup>2</sup>
  - UN Convention on the Elimination of Racial Discrimination 1965 (UN CERD);<sup>3</sup>
  - UN International Covenant on Civil and Political Rights 1966 (UN ICCPR);<sup>4</sup>
  - UN Convention on Elimination of Discrimination against Women 1981 (UN CEDAW);<sup>5</sup>
  - UN Convention against Torture 1984 (UN CAT);<sup>6</sup>
  - UN Convention on the Rights of the Child 1989 (UN CRC);<sup>7</sup>

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<sup>1</sup> The Windsor Framework was formerly known as the Protocol on Ireland/Northern Ireland to the UK-EU Withdrawal Agreement and all references to the Protocol in this document have been updated to reflect this change. See Decision No 1/2023 of the Joint Committee established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023 laying down arrangements relating to the Windsor Framework.

<sup>2</sup> Ratified by the UK 1951.

<sup>3</sup> Ratified by the UK 1969.

<sup>4</sup> Ratified by the UK 1976.

<sup>5</sup> Ratified by the UK 1986.

<sup>6</sup> Ratified by the UK 1988.

<sup>7</sup> Ratified by the UK 1989.

- UN Convention on the Rights of Persons with Disabilities 2006 (UN CRPD);<sup>8</sup>
- CoE Convention on Protection of Children against Sexual Exploitation and Sexual Abuse 2007 (CoE Lanzarote Convention);<sup>9</sup> and
- CoE Convention on Preventing and Combating Violence against Women 2011 (CoE Istanbul Convention).<sup>10</sup>

1.3 In addition to these treaty standards, the following declarations and principles provide further guidance in respect of specific areas:

- UN CAT Committee General Comment No 2;<sup>11</sup>
- UN Special Rapporteur on promotion of truth, Pablo de Greiff's report;<sup>12</sup>
- UN CAT Committee General Comment No 3;<sup>13</sup>
- UN Human Rights Committee Concluding Observations on the UK;<sup>14</sup>
- UN Special Rapporteur on the promotion of truth, Pablo de Greiff, report on the UK;<sup>15</sup>
- UN CEDAW Committee General Comment No 35;<sup>16</sup>
- UN CAT Committee Concluding Observations on the UK;<sup>17</sup>
- UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims;<sup>18</sup>
- UN Basic Principles of Justice for Victims of Crime and Abuse of Power;<sup>19</sup>

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<sup>8</sup> Ratified by the UK 2009.

<sup>9</sup> Ratified by the UK in 2018.

<sup>10</sup> Ratified by the UK in 2022.

<sup>11</sup> CAT/C/GC/2, 'UN CAT Committee General Comment No 2: Implementation of Article 2 of the UN CAT by State Parties', 24 January 2008.

<sup>12</sup> A/HRC/21/46, 'Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, Pablo de Greiff', 9 August 2012.

<sup>13</sup> CAT/C/GC/3, 'UN Committee against Torture General Comment No 3: Implementation of Article 14 of the UN CAT by State Parties', 13 December 2012.

<sup>14</sup> CCPR/C/GBR/CO/7, 'UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and NI', 17 August 2015.

<sup>15</sup> A/HRC/34/62/Add.1, 'Report of the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, Pablo de Greiff on his Mission to the UK of Great Britain and NI', 17 November 2016.

<sup>16</sup> CEDAW/C/GC/35, 'UN CEDAW Committee General Comment No 35: Gender Based Violence Against Women Updating General Comment No 19', 14 July 2017.

<sup>17</sup> CAT/C/GBR/CO/6, 'UN Committee against Torture Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 7 June 2019.

<sup>18</sup> UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 16 December 2005.

<sup>19</sup> A/RES/40/34, 'United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power', 29 November 1985.

- CoE Committee of Ministers Recommendation to Member States on rights, services and support for victims of crime;<sup>20</sup>
- UN Special Rapporteur on promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli'.<sup>21</sup>

1.4 The NIHRC further advises on the compatibility of this consultation with the UK Government's commitment, in Windsor Framework Article 2(1), to ensure there is no diminution of rights, safeguards and equality of opportunity in the relevant section of the Belfast (Good Friday) Agreement as a result of the UK's withdrawal from the EU. This is given effect in UK law by section 7A of the EU (Withdrawal) Act 2018. In addition, Section 6 of the Northern Ireland Act 1998 provides that the NI Assembly is prohibited from making any law which is incompatible with Windsor Framework Article 2. Section 24 of the 1998 Act also provides that all acts of the Department should be compatible with Windsor Framework Article 2. The relevant EU law in this context is:

- EU Victims' Directive.<sup>22</sup>
- EU Trafficking Directive;<sup>23</sup>
- EU Child Sexual Exploitation Directive;<sup>24</sup> and
- EU Charter of Fundamental Rights.

1.5 The NIHRC welcomes the opportunity to consider and provide advice on the proposed New Strategy for Victims and Survivors of the Troubles. The NIHRC welcomes the approach of the Executive Office to developing the draft strategy, which has involved collaborative design and partnership working with the Commission for Victims and Survivors and the Victims and Survivors Service.<sup>25</sup> The NIHRC also welcomes the victim-centred and trauma-informed approach taken by the Executive Office, which is consistent with EU minimum standards and advice from international

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<sup>20</sup> CM/Rec(2023)2, 'CoE Committee of Ministers to Member States on Rights, Services and Support for Victims of Crime', 15 March 2023, at Article 3(3).

<sup>21</sup> A/78/181, 'Report of the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, Fabián Salvioli', 14 July 2023.

<sup>22</sup> Directive 2012/29/EU, 'Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

<sup>23</sup> Directive 2011/36/EU, 'EU Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims', 5 April 2011.

<sup>24</sup> Directive 2011/92/EU, 'Directive of the European Parliament and of the Council on Combatting the Sexual Abuse and Sexual Exploitation of Children and Child Pornography, and Replacing Council Framework Decision 2004/68/JHA, 13 December 2011.

<sup>25</sup> The Executive Office, 'Public Consultation: Strategy for Victims and Survivors of the Troubles/Conflict' (TEO, 2023), at 26.

human rights bodies. However, there are some additional points that the Executive Office may wish to consider in order to ensure full compliance with international human rights standards.

## 2.0 General Comments

### Human rights impact assessment

- 2.1 The NIHRC welcomes the inclusion of a human rights impact assessment and commends the Executive Office for its consideration of human rights in its draft strategy. It is encouraging that “the need to ensure the rights of victims and survivors are respected and protected” is acknowledged.<sup>26</sup> Despite that, the draft strategy does not set out the full range of international human rights standards that relate to victims and survivors of human rights abuses. Moreover, the human rights impact assessment does not consider key protections under the ECHR, as required by the Human Rights Act 1998, or other international treaties ratified by the UK Government. Further, no consideration appears to have been given to relevant EU minimum standards in accordance with Windsor Framework Article 2.
- 2.2 Policies designed to address the needs of victims and survivors should contribute to securing the State’s compliance with its binding obligations arising from treaty commitments.<sup>27</sup> The UK Government has ratified several relevant UN and CoE treaties, by which it has agreed to be bound by the obligations contained within.<sup>28</sup> General Comments and Concluding Observations attached to these treaties provide guidance and best practice standards. These should be acknowledged and examined within a human rights impact assessment. Thus, in addition to those set out above, Annex 1 provides a summary of key international standards and principles that should be considered in relation to the draft strategy and accompanying impact assessments.
- 2.3 The NIHRC notes that Article 2 of the ECHR (right to life), Article 8 of the ECHR (right to private and family life) and Article 14 of the ECHR (prohibition of discrimination) are determined to be ‘not relevant’ to the draft strategy. That appears to be the reason for a failure to consider

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<sup>26</sup> Ibid, at 9.

<sup>27</sup> NI Human Rights Commission, ‘Submission to Consultation on Supporting Victims and Survivors’ (NIHRC, 2019).

<sup>28</sup> Article 14, Vienna Convention on the Law of Treaties 1969.

Article 13 of the ECHR (right to an effective remedy).<sup>29</sup> The NIHRC considers these provisions to be directly relevant and should have been analysed. Further, Article 3 of the ECHR (prohibition of torture) and Article 6 of the ECHR (right to a fair trial) appear to be acknowledged only as 'indirectly' relevant, which is not the case. These provisions are directly relevant. In any event, even indirectly relevant provisions should be assessed and any potential impact acknowledged. That will also alert policy makers to the risks of human rights infringements that may follow from the draft.<sup>30</sup> As a result, there has been no consideration, at least not in sufficient detail, of safeguards or specific mitigations that are already in place or are required.

**2.4 The NIHRC recommends that the Executive Office revisits the human rights impact assessment with a view to examining the full range of human rights standards identified in Annex 1 as directly relevant to the draft strategy.**

## **Windsor Framework Article 2**

2.5 Windsor Framework Article 2 requires the UK Government to ensure that no diminution of rights, safeguards and equality of opportunities contained in the relevant part of the Belfast (Good Friday) Agreement 1998 occurs as a result of the UK's withdrawal from the EU. This includes an obligation to "keep pace" with any changes made to the six Annex 1 equality directives<sup>31</sup> which improve the minimum levels of protection available, after 1 January 2021.<sup>32</sup>

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<sup>29</sup> The Executive Office, 'Human Rights Act Impact Assessment - Strategy for Victims and Survivors of the Troubles/Conflict' (TEO, 2023).

<sup>30</sup> Ibid, at 2.

<sup>31</sup> These are the Racial Equality Directive (Directive 2000/43/EC, 'Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin', 29 June 2000); the Employment Equality (Framework) Directive (Directive 2000/78/EC, 'Council Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation', 27 November 2000); the Gender Goods and Services Directive (Directive 2004/113/EC, 'Council Directive on Implementing the Principle of Equal Treatment between Men and Women in the access to and supply of goods and services', 13 December 2004) Gender Equality (Employment) Directive (Directive 2006/54/EC, 'Directive of European Parliament and of the Council on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation (Recast)', 5 July 2006); the Self-Employment Equality Directive (Directive 2010/41/EU, 'Directive of the European Parliament and of the Council on the Application of the Principle of Equal Treatment between Men and Women Engaged in an Activity in a Self-employed Capacity', 7 July 2010); and the Equality in Social Security Directive (Directive 79/7/EEC, 'Council Directive on the Progressive Implementation of the Principle of Equal Treatment for Men and Women in Matters of Social Security', 19 December 1978.)

<sup>32</sup> Article 13, Windsor Framework to the UK-EU Withdrawal Agreement.

- 2.6 For other EU obligations which underpin the rights, safeguards and equality of opportunity in Windsor Framework Article 2, the UK Government commitment to ensure 'no diminution' is measured by the relevant EU standards as they were on the 31 December 2020.<sup>33</sup>
- 2.7 The rights, safeguards and equality of opportunity chapter of the Belfast (Good Friday) Agreement was not an exhaustive statement of rights protections. Rather, the parties affirmed their "commitment to ... the civil rights and religious liberties of everyone in the community" before affirming "in particular" a non-exhaustive list of rights and safeguards.<sup>34</sup>
- 2.8 The section of the relevant chapter of the Belfast (Good Friday) Agreement headed 'Human Rights' includes the UK Government's commitment to the incorporation of the ECHR with direct access to the courts and remedies for breach.<sup>35</sup> It includes reference to victims' rights and a section on economic, social and cultural issues. The High Court recently adopted a purposive approach to interpretation of the relevant chapter of the Belfast (Good Friday) Agreement.<sup>36</sup> The High Court held that, "a narrow interpretation of 'civil rights' undermines the forward-facing dimension of the non-diminution commitment in article 2(1)".<sup>37</sup> It is the NIHRC's considered opinion that the chapter represents a broad (i.e. wide-ranging) commitment to civil, political, economic, social and cultural rights and equality of opportunity.<sup>38</sup>
- 2.9 The High Court also concluded that fundamental human rights of victims are engaged under the relevant part of the Belfast (Good Friday) Agreement. They "are encompassed within the notion of 'civil rights' and are protected though the commitment to victims at paragraph 11" of the Agreement.<sup>39</sup> These rights include the right to life, the right to be free from

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<sup>33</sup> UK Government, 'UK Government Commitment to No-diminution of Rights, Safeguards and Equality of Opportunity in Northern Ireland' (NIO, 2020), at para 13.

<sup>34</sup> Belfast (Good Friday) Agreement, 10 April 1998, Part 6 on Rights, Safeguards and Equality of Opportunity. See also UK Government, 'UK Government commitment to no-diminution of rights, safeguards and equality of opportunity in Northern Ireland', (NIO, 2020); *In the matter of an application by Martina Dillon and others for Judicial Review* [2024] NIKB 11, at para 540.

<sup>35</sup> Belfast (Good Friday) Agreement, 10 April 1998, Part 6 on Rights, Safeguards and Equality of Opportunity.

<sup>36</sup> *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NIKB 11, at para 547.

<sup>37</sup> *Ibid*, at para 554.

<sup>38</sup> NI Human Rights Commission and Equality Commission for NI, 'Working Paper: The Scope of Article 2(1) of the Ireland/ Northern Ireland Protocol', (NIHRC and ECNI, 2022).

<sup>39</sup> *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NIKB 11, at para 561.

torture, cruel, inhuman or degrading treatment, the right to access a court, the right to be free from discrimination and the right to dignity.<sup>40</sup>

- 2.10 Relevant EU law which underpins this part of the Belfast (Good Friday) Agreement includes EU Victims' Directive, which reinforces existing national laws; and EU minimum standards on victims' rights and support and protection for victims of crime.<sup>41</sup> Some provisions of the EU Trafficking Directive<sup>42</sup> and the EU Child Sexual Exploitation Directive<sup>43</sup> are also relevant in terms of the specific measures for victims of human trafficking and child victims of sexual exploitation. As confirmed by the NI High Court, "the [EU] Charter of Fundamental Rights remains enforceable in Northern Ireland and falls within the ambit of Article 2(1) of the [Windsor Framework]".<sup>44</sup>
- 2.11 The current draft strategy does not include any apparent consideration of Windsor Framework Article 2. The Human Rights Impact Assessment accompanying the strategy should consider Article 2 including consideration of civil rights, which at a minimum must include rights set out in the ECHR, and the minimum standards contained in relevant underpinning EU law.
- 2.12 **The NIHRC recommends that the Executive Office revisit the Human Rights Impact Assessment and consider Windsor Framework Article 2. It should incorporate within its consideration the minimum standards in relevant EU law relating to victims' rights.**
- 2.13 **The NIHRC recommends that the Executive Office build consideration of Windsor Framework Article 2 into the development and implementation of any and all policy on victims and survivors.**

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<sup>40</sup> Ibid, at para 561.

<sup>41</sup> Directive 2012/29/EU, 'Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

<sup>42</sup> Directive 2011/36/EU, 'EU Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims', 5 April 2011.

<sup>43</sup> Directive 2011/92/EU, 'Directive of the European Parliament and of the Council on Combatting the Sexual Abuse and Sexual Exploitation of Children and Child Pornography, and Replacing Council Framework Decision 2004/68/JHA, 13 December 2011.

<sup>44</sup> *In the Matter of an Application by Aman Angesom for Judicial Review* [2023] NIKB 102, at para 94.

## Human rights based approach

- 2.14 The draft strategy includes an intention to measure whether, and if so how, victims and survivors enhance their knowledge of rights as a result of the support they receive.<sup>45</sup> Such monitoring and measurement are essential to assessment of the success or otherwise of the strategy. As it stands however the draft strategy does not include sufficient detail of the support that will be offered for the NIHRC to assess its likely effectiveness. It should be remembered that there are specific obligations, for example in the EU Victims' Directive, to raise awareness of the rights contained in a Directive. It is advised therein that victims and survivors are collaborated with directly and through civil society organisations.<sup>46</sup> This approach should be adopted throughout.
- 2.15 There are several guiding principles to a human rights based approach. They are participation, accountability, non-discrimination, empowerment and legality.<sup>47</sup> Taking a human rights based approach throughout the strategy will provide further clarity, while contributing to improvements in victims and survivors' awareness of their rights and entitlements. For example, anchoring each strategic objective and high level outcome to human rights would better empower victims and survivors (rights-holders) to access adequate service provision and appropriate care. The inclusion of corresponding State obligations as potential indicators would then support the Executive Office (duty-bearers) in the discharge of their obligations while ensuring continuous improvement.
- 2.16 The NIHRC welcomes the Executive Office's approach to developing the draft strategy by collaborative design and partnership working with the Commission for Victims and Survivors and, the Victims and Survivors Service.<sup>48</sup> It is important to commit to ongoing monitoring and evaluation with victims, survivors and representative organisations in terms of the impact and effectiveness of any draft strategy. Such an approach is consistent with the EU Victims' Directive which encourages ongoing

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<sup>45</sup> The Executive Office, 'Human Rights Act Impact Assessment - Strategy for Victims and Survivors of the Troubles/Conflict' (TEO, 2023), at 17.

<sup>46</sup> Article 26 and Recital 62, Directive 2012/29/EU, 'Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

<sup>47</sup> European Network of National Human Rights Institutions, 'Human Rights-Based Approach'. Available: [Human Rights-Based Approach - ENNHRI](#).

<sup>48</sup> The Executive Office, 'Public Consultation: Strategy for Victims and Survivors of the Troubles/Conflict' (TEO, 2023), at 26.

monitoring and evaluation of the impact of measures to support and protect victims of crime.<sup>49</sup>

- 2.17 The NIHRC welcomes that “all Departments are collectively responsible” for delivery of the strategy “in their respective departmental and policy areas”.<sup>50</sup> It might be helpful however to designate responsibility for progress on each action. Further, while there is a commitment to review the strategy at a mid-way point, the draft strategy does not define a timeframe for delivery. Therefore, it is difficult to assess whether this commitment will be sufficient. It is also not clear from the draft strategy how such a review will be conducted or by whom it will be conducted.
- 2.18 The EU Victims’ Directive provides that the rights of victims must apply without discrimination, as delineated in Article 1, including with respect to residence status.<sup>51</sup> This encompasses interactions with victim support services, restorative justice services, and competent authorities within criminal proceedings. Recital 9 of the EU Victims’ Directive provides further clarification on the prohibition of discrimination based on an array of grounds, ranging from race and ethnicity to gender identity, sexual orientation, and residence status.<sup>52</sup> This encompasses a broad spectrum of personal characteristics and circumstances that might otherwise lead to discrimination in victim support services or legal proceedings.
- 2.19 **The NIHRC recommends that the Executive Office adopts a human rights based approach to the whole of the strategy and that it must include the full range of internationally accepted human rights standards, including Windsor Framework Article 2 and the relevant EU law minimum standards. This approach should incorporate corresponding State obligations relating to victims and survivors of serious human rights abuses. This should also ensure specific actions and time-bound measures are provided that demonstrate contribution towards each high level outcome.**

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<sup>49</sup> Article 26 and Recital 62, Directive 2012/29/EU, ‘Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime’, 25 October 2012.

<sup>50</sup> The Executive Office, ‘Public Consultation: Strategy for Victims and Survivors of the Troubles/Conflict’ (TEO, 2023), at 28.

<sup>51</sup> Article 1, Directive 2012/29/EU, ‘Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime’, 25 October 2012.

<sup>52</sup> Recital 9, Directive 2012/29/EU, ‘Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime’, 25 October 2012.

## Research and data collection

- 2.20 The draft strategy contains a commitment to "carry out research to maintain and develop our understanding of the current needs of victims and survivors and conduct, as necessary, further research into the impact of transgenerational and intergenerational trauma to ensure adequate services and support are available".<sup>53</sup>
- 2.21 In 2023, the CoE Committee of Ministers issued a recommendation to Member States on rights, services and support for victims of crime.<sup>54</sup> It recommends that Member States should, "promote, support and, to the extent possible, fund or facilitate fund-raising for victimological research, including comparative research by researchers from within or outside their own territory".<sup>55</sup> It underlines the importance of taking research into consideration in "developing evidence-based policies towards victims".<sup>56</sup>
- 2.22 Additionally, the UN CAT Committee advises that States must "establish a system to oversee, monitor, evaluate, and report on their provision of redress measures and necessary rehabilitation services to victims of torture or ill-treatment".<sup>57</sup> This requires "data disaggregated by age, gender, nationality, and other key factors regarding redress measures" in order to meet the obligation "to provide continual evaluation of [the State's] efforts to provide redress to victims".<sup>58</sup> Accordingly, the UN CAT Committee specifically recommended that the UK and NI Governments:

compile and publish comprehensive disaggregated statistical information relevant to all complaints and reports received of torture or ill-treatment – including information on whether such complaints led to investigations and, if so, by which authority, whether the investigations resulted in the imposition of disciplinary

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<sup>53</sup> The Executive Office, 'Public Consultation: Strategy for Victims and Survivors of the Troubles/Conflict' (TEO, 2023), at 24.

<sup>54</sup> CM/Rec(2023)2, 'CoE Committee of Ministers to Member States on Rights, Services and Support for Victims of Crime', 15 March 2023.

<sup>55</sup> Ibid, at Article 25(1).

<sup>56</sup> Ibid, at Article 25(3).

<sup>57</sup> CAT/C/GC/3, 'UN Committee against Torture General Comment No 3: Implementation of Article 14 of the UN CAT by State Parties', 13 December 2012, at para 45,

<sup>58</sup> Ibid, at para 45; CAT/C/GC/2, 'UN CAT Committee General Comment No 2: Implementation of Article 2 of the UN CAT by State Parties', 24 January 2008.

measures and/or prosecutions and whether the victims obtained redress.<sup>59</sup>

- 2.23 The EU Victims Directive recognises that the collection of systematic and adequate statistical data is an essential component of effective policy-making, particularly in respect of victims' rights.<sup>60</sup> Such data should include data recorded by law enforcement agencies, the courts, administrative data compiled by healthcare and social welfare service and other organisation working with victims of crimes.<sup>61</sup> The Directive further provides that Member States should take appropriate action through research and education programmes to ensure that the minimum standards in the Directive are met, including where appropriate in cooperation with relevant civil society organisations and other stakeholders.<sup>62</sup>
- 2.24 The Executive Office's commitment to further research is welcomed,<sup>63</sup> however there is no mention of data collection or analysis in relation to the services provided under the strategy. That is a missed opportunity. It is important to collate reliable and disaggregated data to continually improve understanding of the needs of victims and survivors, and to establish whether redress measures are available and appropriate.
- 2.25 **The NIHRC recommends that the Executive Office establishes a system to oversee, monitor, evaluate, and report on the provision of redress measures and services to victims under the strategy. This includes data collection that is disaggregated, regular, comprehensive and comparable.**

## Funding

- 2.26 The draft strategy recognises that the provision of funding through the PEACE IV programme (2017-2022) was instrumental in delivering many

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<sup>59</sup> CAT/C/GBR/CO/6, 'UN Committee against Torture Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 7 June 2019, at para 15.

<sup>60</sup> Recital 62, Directive 2012/29/EU, 'Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

<sup>61</sup> Recital 64, Directive 2012/29/EU, 'Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

<sup>62</sup> Article 26, Directive 2012/29/EU, 'Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

<sup>63</sup> The Executive Office, 'Public Consultation: Strategy for Victims and Survivors of the Troubles/Conflict' (TEO, 2023), at 24.

services and initiatives in relation to victims and survivors.<sup>64</sup> The strategy also notes that PEACEPLUS (2021-2027) is the successor programme to PEACE IV.<sup>65</sup> However, it does not set out clearly what funding will be available for the duration of the strategy. That would be critical to enable a realistic cost estimate of its programmes and initiatives to ensure full and effective implementation. It is disappointing that this information was not be provided during the public consultation process.

2.27 In 2023, the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli, published a report on the financing of reparation for victims of serious violations of human rights law.<sup>66</sup> The UN Special Rapporteur emphasised that, “for reparations programmes to be strategic, transformative and more impactful in preventing the recurrence of large-scale human rights violations, reparations planning and funding should aim to address the causes and consequences of those violations”.<sup>67</sup> The UN Special Rapporteur recommended that:

funding for reparations should encompass long-term planning and financial support across the design, budgeting and implementation cycle of reparations programmes to ensure that reparation programmes address the needs of victims and transform the conditions of marginalization, inequality and gender disparity that led to the violations in the first place.<sup>68</sup>

2.28 Moreover, the UN Human Rights Committee,<sup>69</sup> the UN CAT Committee,<sup>70</sup> the UN CEDAW Committee<sup>71</sup> and the UN CRC Committee<sup>72</sup> have each highlighted the importance of ensuring the provision of adequate resources

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<sup>64</sup> Ibid, at 10 and 19.

<sup>65</sup> Ibid, at 4.

<sup>66</sup> A/78/181, 'Report of the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, Fabián Salvioli', 14 July 2023.

<sup>67</sup> Ibid, at para 92.

<sup>68</sup> Ibid, at para 93.

<sup>69</sup> CCPR/C/GBR/CO/7, 'UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and NI', 17 August 2015.

<sup>70</sup> CAT/C/GC/3, 'UN Committee against Torture General Comment No 3: Implementation of Article 14 of the UN CAT by State Parties', 13 December 2012, at para 12 and 30.

<sup>71</sup> CEDAW/C/GC/35, 'UN CEDAW Committee General Recommendation No 35 on Gender-based Violence Against Women, updating General Recommendation No 19', 26 July 2017, at para 34(f).

<sup>72</sup> CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Periodic Reports of the UK of Great Britain and NI', 22 June 2023, at para 33.

to services for victims, including for those specifically related to redress for conflict-related violations in NI.<sup>73</sup>

- 2.29 In accordance with the EU Victims Directive, Member States should ensure that victims and their families have access to confidential victim support services, free of charge.<sup>74</sup> States should also take measures to establish confidential specialist support services for victims, free of charge.<sup>75</sup> Article 9 provides that victim support services should include information, advice and support; emotional and, where available, psychological support; and referral to relevant specialist support. Article 25 of the EU Victims Directive also emphasises the importance of funding victim support organisations in order for them to receive adequate training.<sup>76</sup>
- 2.30 **The NIHRC recommends that the Executive Office secures ring-fenced, multi-year funding that extends across the lifespan of the strategy.**

### 3.0 Needs of Victims and Survivors

#### The NI Troubles (Legacy and Reconciliation) Act 2023

- 3.1 The draft strategy includes an acknowledgement that the NI Troubles (Legacy and Reconciliation) Act 2023 is “having a negative impact on victims and survivors”.<sup>77</sup> The NIHRC agrees. In addition, the human rights impact assessment advises that “through this strategy we aim to mitigate as much as possible through advocacy support services”.<sup>78</sup> However, it is disappointing that neither document provides further detail or analysis of the specific safeguards or mitigation measures that aim to address the issues identified.

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<sup>73</sup> CCPR/C/GBR/CO/7, ‘UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and NI’, 17 August 2015.

<sup>74</sup> Article 8(1), Directive 2012/29/EU, ‘Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime’, 25 October 2012.

<sup>75</sup> Article 8(3), Directive 2012/29/EU, ‘Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime’, 25 October 2012.

<sup>76</sup> Article 25, Directive 2012/29/EU, ‘Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime’, 25 October 2012.

<sup>77</sup> The Executive Office, ‘Public Consultation: Strategy for Victims and Survivors of the Troubles/Conflict’ (TEO, 2023), at 16.

<sup>78</sup> The Executive Office, ‘Human Rights Act Impact Assessment - Strategy for Victims and Survivors of the Troubles/Conflict’ (TEO, 2023), at 2.

- 3.2 The 2023 Act changes significantly how Troubles-related offences will be treated. This covers all aspects of the criminal, civil and coronial justice systems. For example, it provides for the cessation of traditional criminal investigations, civil proceedings and inquests/inquiries linked to Troubles-related offences.<sup>79</sup> The High Court of Justice in NI has held that the conditional immunity scheme breaches Articles 2 and 3 of the ECHR, noting that “victims have no role or say in these decisions”.<sup>80</sup> The High Court also found that the removal of the possibility of prosecution was incompatible with the EU Victims Directive and therefore breaches Windsor Framework Article 2.<sup>81</sup> The NIHRC has previously provided comprehensive advice on the 2023 Act.<sup>82</sup> It remains of the view as set out in that advice.
- 3.3 **The NIHRC recommends that the Executive Office ensures that the fundamental concerns with the NI Troubles (Legacy and Reconciliation) Act 2023 are addressed to the greatest extent possible within the strategy, including adopting human rights based and victim-centred mitigation strategies that protect victims’ and survivors’ access to justice, redress and rehabilitation. Victims and survivors and their representative organisations should be meaningfully involved in designing, implementing and evaluating the mitigation measures taken.**

### **Barriers to justice and support**

- 3.4 On several occasions, the draft strategy makes specific reference to providing trauma informed and victim centred services in NI.<sup>83</sup> It also identifies “a trauma informed society that addresses the needs of victims and survivors” as a specific vision of the draft strategy.<sup>84</sup> Furthermore, “victim centred” and “trauma informed” have been identified as guiding principles and values within the draft strategy.<sup>85</sup> Underlining the

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<sup>79</sup> Section 38, NI Troubles (Legacy and Reconciliation) Act 2023, Section 38.

<sup>80</sup> *In the matter of an application by Martina Dillon and others for Judicial Review* [2024] NIKB 11, at para 187.

<sup>81</sup> *Ibid*, at para 608 and 710(ii).

<sup>82</sup> NI Human Rights Commission, ‘Advice on NI Troubles (Legacy and Reconciliation) Bill’ (NIHRC, 2022); Letter from NI Human Rights Commission to Lord Jay, Chair of the European Affairs Sub-Committee on the Protocol on Ireland/Northern Ireland, 30 January 2023; NI Human Rights Commission, ‘Supplementary Briefing: UK Government’s Proposed Amendments to NI Troubles (Legacy and Reconciliation) Bill’ (NIHRC, 2023).

<sup>83</sup> The Executive Office, ‘Public Consultation: Strategy for Victims and Survivors of the Troubles/Conflict’ (TEO, 2023), at 12 and 14.

<sup>84</sup> The Executive Office, ‘Human Rights Act Impact Assessment - Strategy for Victims and Survivors of the Troubles/Conflict’ (TEO, 2023), at 14.

<sup>85</sup> *Ibid*.

importance of providing trauma informed and victim centred services in NI is welcomed. Several international human rights mechanisms recognise that the needs and aspirations of victims, survivors and their families can differ, but that is no reason to exclude their varied involvement.<sup>86</sup>

3.5 In 2023, the CoE Committee of Ministers issued a recommendation reaffirming that justice and support processes should be “designed and delivered in a manner that is sensitive to victims’ needs, autonomy and agency”.<sup>87</sup> Article 3 of the Committee of Ministers’ Recommendation requires States to “investigate barriers, if present, that prevent victims from contacting [competent] authorities or support services...and reduce any such barriers to the largest extent possible”.<sup>88</sup> The Committee of Ministers’ Recommendation also notes that particular attention should be given to:

- a) the right to notify authorities and make a formal complaint (Article 7);
- b) the right to information (Article 6) and information about the case (Article 8);
- c) the right to be heard (Article 10);
- d) the right to protection (Article 15);
- e) the rights of cross-border victims (Article 20).<sup>89</sup>

3.6 Failure to provide the appropriate protection for victims may well be construed as an obstacle to the right to redress.<sup>90</sup> Furthermore, failure to

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<sup>86</sup> CM/Rec(2023)2, ‘CoE Committee of Ministers to Member States on Rights, Services and Support for Victims of Crime’, 15 March 2023; CAT/C/GC/3, ‘UN CAT Committee General Comment No 3: Implementation of Article 14 by States Parties’, 13 December 2012, at para 13; E/CN.4/1997/47, ‘Report of the UN Special Rapporteur on Violence Against Women, Its Causes and Consequences, Ms Radhika Coomaraswamy’, 12 February 1997, at para 22; CEDAW/C/GC/35, ‘UN CEDAW Committee General Recommendation No 35: Gender-based Violence Against Women, Updating General Recommendation No 19’, 26 July 2017, at para 31(b); A/RES/40/34, ‘United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power’, 29 November 1985, at Principle 14; CoE Convention on Protection of Children against Sexual Exploitation and Sexual Abuse 2007 (CoE Lanzarote Convention), at Article 11(1).

<sup>87</sup> CM/Rec(2023)2, ‘CoE Committee of Ministers to Member States on Rights, Services and Support for Victims of Crime’, 15 March 2023.

<sup>88</sup> Ibid, at Article 3.

<sup>89</sup> Ibid, at Article 3(3).

<sup>90</sup> CAT/C/GC/3, ‘UN CAT Committee General Comment No 3: Implementation of Article 14 by States Parties’, 13 December 2012, at para 38.

provide the required support for victims may inhibit victims from making complaints due to the fear of secondary victimisation by the process.<sup>91</sup>

- 3.7 The UN CAT Committee advises that “a long-term and integrated approach and ensure that specialised services for the victim of torture or ill-treatment are available, appropriate and promptly accessible”.<sup>92</sup> It states further that:

these may include a wide range of inter-disciplinary measures, such as medical, physical and psychological rehabilitative services; re-integrative and social services; community and family-orientated assistance and services; vocational training, education etc. A holistic approach to rehabilitation which also takes into consideration the strength and resilience of the victim is of utmost importance... A high priority should be placed on the need to create a context of confidence and trust in which assistance can be provided.<sup>93</sup>

- 3.8 It goes on to record that these services should take “into account a victim’s culture, personality, history and background” and should be “accessible to all victims without discrimination and regardless of the victim’s identity or status within a marginalised or vulnerable group”.<sup>94</sup> The NIHRC agrees.

- 3.9 The UN CEDAW Committee confirmed that States should:

ensure that all legal proceedings, protective and support measures and services concerning victims/survivors respect and strengthen their autonomy. They should be accessible to all women, in particular those affected by intersecting forms of discrimination, take into account any specific needs of their children and other dependants, be available throughout the State party and be

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<sup>91</sup> E/CN.4/1997/47, ‘Report of the UN Special Rapporteur on Violence Against Women, Its Causes and Consequences, Ms Radhika Coomaraswamy’, 12 February 1997, at para 22.

<sup>92</sup> CAT/C/GC/3, ‘UN CAT Committee General Comment No 3: Implementation of Article 14 by States Parties’, 19 November 2012, at para 13.

<sup>93</sup> Ibid, at para 13.

<sup>94</sup> Ibid, at para 15.

provided irrespective of residency status or ability or willingness to cooperate in legal proceedings against the alleged perpetrator.<sup>95</sup>

- 3.10 Article 5(3) of the UN CRPD clarifies that “in order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided”. In addition, Article 9(1) of the UN CRPD requires States to:

take appropriate measures to ensure to persons with disabilities access, on an equal basis to others... to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia... information, communications and other services, including electronic services and emergency services.

- 3.11 The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power states that “victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means”.<sup>96</sup> It also advises that “victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them”. This includes giving attention to “those who have special needs because of the nature of the harm inflicted”<sup>97</sup> or other reasons “such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability”.<sup>98</sup>

- 3.12 Article 11(1) of the CoE Lanzarote Convention provides that “each Party shall establish effective social programmes and set up multidisciplinary structures to provide the necessary support for victims, their close relatives and for any person who is responsible for their care”.

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<sup>95</sup> CEDAW/C/GC/35, ‘UN CEDAW Committee General Recommendation No 35: Gender-based Violence Against Women, Updating General Recommendation No 19’, 26 July 2017, at para 31(b).

<sup>96</sup> A/RES/40/34, ‘United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power’, 29 November 1985, at Principle 14.

<sup>97</sup> Ibid, at Principle 17.

<sup>98</sup> Ibid.

3.13 The EU Victims' Directive requires Member States to ensure that victims are "recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner".<sup>99</sup> Importantly, a person's status as a victim is not dependent on whether an offender is identified, apprehended, prosecuted or convicted.<sup>100</sup> The EU Directive further recognises that:

In all contacts with a competent authority operating within the context of criminal proceedings, and any service coming into contact with victims, ... the personal situation and immediate needs, age, gender, possible disability and maturity of victims of crime should be taken into account while fully respecting their physical, mental and moral integrity.<sup>101</sup>

3.14 The right of victims to access information and the right to choose whether or not to receive such information, and to modify any request, is central to the EU Victims Directive.<sup>102</sup> The EU Directive focuses on the needs of victims and reminds that particular consideration should be given to the needs of vulnerable victims including victims of gender-based violence and domestic violence. It also restates the importance of targeted trauma informed support.<sup>103</sup> It recognises the particular protection required by victims at risk of secondary and repeat victimisation and of intimidation and retaliation. It makes express reference to victims of human trafficking, terrorism, organised crime, violence in close relationships, sexual violence or exploitation, gender-based violence, hate crime, and victims with disabilities and child victims.<sup>104</sup>

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<sup>99</sup> Article 1, Directive 2012/29/EU, 'Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

<sup>100</sup> Recital 19, Directive 2012/29/EU, 'Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

<sup>101</sup> Recital 9, Directive 2012/29/EU, 'Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

<sup>102</sup> Article 6, Directive 2012/29/EU, 'Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime', 25 October 2012.

<sup>103</sup> Article 8 and 9, Recitals 16, 17 and 38, Directive 2012/29/EU, 'Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime', 25 October 2012.

<sup>104</sup> See Articles 18-24, Recitals 57 and 7, 14-16, 34-36, Directive 2012/29/EU, 'Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime', 25 October 2012. See also Directive 2011/36/EU, 'EU Council Directive on preventing and combating trafficking in human beings and protecting its victims', 5 April 2011; Directive 2011/92/EU, 'Directive of the European Parliament and of the Council on combatting the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, 13 December 2011.

3.15 Therefore, the needs-based approach of the draft strategy and the recognition that certain groups face additional barriers in accessing services or support are welcomed. In particular, the NIHRC welcomes the commitments to “improve access to services for rural and socially isolated” individuals and “to review the accessibility of services”.<sup>105</sup> It would be helpful to have more detail and clarity on which specific commitments are to be made to ensure the strategy is as expansive and inclusive as possible. The draft strategy does not include reference to intersectional discrimination, but should consider the impact of intersectional discrimination. The Executive Office may wish to take into account the social inclusion strategies currently underway in the Department for Communities.<sup>106</sup>

**3.16 The NIHRC recommends that the Executive Office considers and makes explicit provision for the diverse needs of a broad range of victims and survivors, particularly but not limited to those from marginalised groups and/or individuals experiencing intersectional discrimination.**

### **Specific protection needs**

3.17 The draft strategy recognises the need to improve understanding of “the different impact that the Troubles/conflict had on men and women, and how the different needs can be met today”.<sup>107</sup> In addition, the draft strategy identifies the importance of acknowledging “the transgenerational trauma often experienced by children and young people” and working “towards breaking the chain of intergenerational trauma”.<sup>108</sup> The NIHRC welcomes such a gender specific and child-sensitive approach.

3.18 The Commission for Victims and Survivors emphasises how the continued presence of paramilitaries in NI affects the well-being of victims and survivors.<sup>109</sup> Independent research also indicates that paramilitary activity

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<sup>105</sup> The Executive Office, ‘Public Consultation: Strategy for Victims and Survivors of the Troubles/Conflict’ (TEO, 2023), at 20.

<sup>106</sup> Department for Communities, ‘Social Inclusion Strategies’. Available at: [Social Inclusion Strategies | Department for Communities \(communities-ni.gov.uk\)](https://www.communities-ni.gov.uk/social-inclusion-strategies)

<sup>107</sup> The Executive Office, ‘Public Consultation: Strategy for Victims and Survivors of the Troubles/Conflict’ (TEO, 2023), at 20.

<sup>108</sup> Ibid, at 22.

<sup>109</sup> Commission for Victims and Survivors, ‘Paramilitarism: Recommendations for Action’ (CVS, 2023), at 3.

has a particular effect on women, who live in fear of such groups.<sup>110</sup> It is recognised that this intimidation (which can include threats to life) can prevent women from accessing funding and from engaging with peace initiatives.<sup>111</sup> It has a particular negative impact on women experiencing violence and domestic abuse when trying to access services. It has a known impact on women’s ability to access social housing.<sup>112</sup>

3.19 Research by the Commission for Victims and Survivors notes that children and young people face an increased risk of intimidation and exploitation by paramilitary and/or criminal groups.<sup>113</sup> Conflict related trauma – transgenerational and contemporary – has been associated with heightened risk of anxiety disorders, post-traumatic stress disorder, self-harm and suicide.<sup>114</sup> It highlights how important it is to provide mental health services that are sensitive and responsive to legacy issues.<sup>115</sup> It also notes with concern the significant issues raised by the NI Commissioner for Children and Young People regarding the adequacy of mental health services for children.<sup>116</sup> Evidence considered during the recent NI Affairs Inquiry reiterates that the failure to eradicate paramilitaries “has continued to re-traumatise innocent victims”.<sup>117</sup>

3.20 The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims provides that “appropriate measures should be

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<sup>110</sup> Jessical Leigh Doyle and Monica McWilliams, ‘Intimate Partner Violence in Conflict and Post-Conflict Settings’ (Ulster University, 2018), at 57.

<sup>111</sup> See House of Commons NI Affairs Committee, ‘The Effect of Paramilitary Activity and Organised Crime on Society in NI’ (NIAC, 2024), at paras 33-36; Caroline Walsh, ‘Consortium for the Regional Support for Women in Disadvantaged and Rural Areas: Policy Prioritisation for Disadvantaged Women – Women’s Perspectives’ (Women’s Support Network, 2017), at 34; Claire Pierson and Katy Radford, ‘Peacebuilding and the Women’s Sector in NI: An Overview of Reports and Programmes’ (Institute for Conflict Research, 2016), at 31; Margaret Ward, ‘Excluded and silenced: Women in NI after the peace process’, *Open Democracy*, 12 June 2013; Roundtable discussions with NI women’s policy groups and NI women’s community groups, October 2017, November 2017, February 2018 and March 2018; National Crime Agency, ‘Press Release: Paramilitary Crime Taskforce launched in NI’, 27 September 2017; Emma Vardy, ‘Adverts bid to end paramilitary-style attacks in NI’, *BBC News*, 18 October 2018; Department of Justice, ‘Executive Programme for Tackling Paramilitary Activity and Organised Crime’. Available at: <https://www.justice-ni.gov.uk/articles/executive-programme-tackling-paramilitary-activity-and-organised-crime>; Jessical Leigh Doyle and Monica McWilliams, ‘Intimate Partner Violence in Conflict and Post-Conflict Settings’ (Ulster University, 2018), at 57.

<sup>112</sup> Women’s Aid Federation NI, ‘Hear Her Voice’ (WAFNI, 2023), at 19 and 45.

<sup>113</sup> Commission for Victims and Survivors, ‘It Didn’t End in 1998: Examining the Impacts Of Conflict Legacy Across Generations’ (CVS, 2021), at 23.

<sup>114</sup> *Ibid.*, at 17-18.

<sup>115</sup> *Ibid.*

<sup>116</sup> NI Commissioner for Children and Young People, ‘Still Waiting: A Rights Based Review of Mental Health Services and Support for Children and Young People’ (NICCY, 2018); NI Commissioner for Children and Young People, ‘Still Waiting: Monitoring Report’ (NICCY, 2020).

<sup>117</sup> UK House of Commons, ‘NI Affairs Committee: The Effect of Paramilitary Activity and Organised Crime on Society in NI - Second Report of Session 2023-2024’ (HoC, 2024), at 20.

taken to ensure [victims'] safety, physical and psychological well-being" and "that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatisation".<sup>118</sup> This is also supported by the UN CAT Committee,<sup>119</sup> which calls for sensitivity towards marginalised or high risk groups or individuals, particularly women and children,<sup>120</sup> for the purposes of preventing "re-traumatisation and stigmatisation".<sup>121</sup> The CoE Committee of Ministers specifies that measures should be "available to protect, as far as possible, victims and their family members from secondary and repeat victimisation, from intimidation and retaliation and from violations of their privacy and dignity".<sup>122</sup>

3.21 Article 22 of the EU Victims' Directive recognises that individual assessment is necessary to identify victims' needs during their involvement in criminal proceedings.<sup>123</sup> Such assessments should take into account the personal circumstances of the victim and the nature or circumstances of the crime when assessing the specific protection needed by a victim.<sup>124</sup> If a victim is assessed as having specific needs, Article 23 provides for special measures to be made available.<sup>125</sup> It highlights the specific needs of victims who are at a high risk of secondary and repeat victimisation, of intimidation and of retaliation.<sup>126</sup> Article 18 requires States to ensure that measures are available to protect victims and their families, including for their dignity and against emotional or psychological harm. This can be particularly elevated during interview, evidence giving and cross-

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<sup>118</sup> UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 16 December 2005, at Principle 10.

<sup>119</sup> CAT/C/GC/3, 'UN CAT Committee General Comment No 3: Implementation of Article 14 by States Parties', 13 December 2012, at para 21.

<sup>120</sup> Article 3(1) of the UN CRC requires that "the best interests of the child shall be a primary consideration". Furthermore, Article 12(1) of the UN CRC requires that "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child".

<sup>121</sup> CAT/C/GC/3, 'UN CAT Committee General Comment No 3: Implementation of Article 14 by States Parties', 13 December 2012, at para 33, 34 and 36.

<sup>122</sup> CM/Rec(2023)2, 'CoE Committee of Ministers to Member States on Rights, Services and Support for Victims of Crime', 15 March 2023, at Article 15.

<sup>123</sup> Article 22, Directive 2012/29/EU, 'Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

<sup>124</sup> Article 22, Directive 2012/29/EU, 'Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

<sup>125</sup> Article 23, Directive 2012/29/EU, 'Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

<sup>126</sup> Recital 57, Directive 2012/29/EU, 'Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

examination. Importantly, support services should include advice on risk and prevention and ensure provision of interim shelter and accommodation, where necessary.<sup>127</sup>

- 3.22 Article 22(4) and 24 of the EU Victims' Directive sets out specific provisions to safeguard the rights of child victims during criminal proceedings specifically the presumption of vulnerability to secondary and repeat victimisation, to intimidation and to retaliation and the need for individual assessment.<sup>128</sup> The EU Child Sexual Exploitation Directive also requires that the best interests of the child be taken into account when providing assistance, support and protection to child victims of sexual abuse and exploitation.<sup>129</sup>
- 3.23 The draft strategy commits to continued working with delivery partners, such as the Regional Trauma Network and Advocacy Support Network, who provide specialised services for victims and survivors.<sup>130</sup> This is welcomed. However, the draft strategy does not set out the long-term funding arrangements required to support such services. Therefore, it is unclear what specific actions will be taken to ensure the complex needs of victims and survivors will be addressed fully.<sup>131</sup> There is insufficient detail on the commitments regarding the effects of paramilitarism or the need for gender specific and child-sensitive provision. This needs to be addressed specifically.
- 3.24 Recital 37 of the EU Victims Directive requires that support is provided in different media and with a sufficient geographical distribution to better enable victims to access services.<sup>132</sup> Article 8 of the EU Directive requires

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<sup>127</sup> Article 9, Directive 2012/29/EU, 'Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

<sup>128</sup> Article 24, Directive 2012/29/EU, 'Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

<sup>129</sup> Article 18, Directive 2011/92/EU, 'Directive of the European Parliament and of the Council on combatting the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA', 13 December 2011.

<sup>130</sup> The Executive Office, 'Public Consultation: Strategy for Victims and Survivors of the Troubles/Conflict' (TEO, 2023), at 17 and 20.

<sup>131</sup> CM/Rec(2023)2, 'CoE Committee of Ministers to Member States on Rights, Services and Support for Victims of Crime', 15 March 2023.

<sup>132</sup> Recital 37, Directive 2012/29/EU, 'Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

Member States to provide access to support services that are specialised and free of charge.<sup>133</sup>

- 3.25 The draft strategy contains commitments to seek “opportunities for strategic alignment and collaborative working across government” and to “raise awareness of Troubles/conflict-related trauma and the needs of victims and survivors in other service providers and across government”.<sup>134</sup> This is welcomed, however it would be useful for the draft strategy to provide more detail on how it intersects with other government policies or programmes, and what specific actions will be progressed to ensure the rights of victims and survivors are mainstreamed across them. The EU Victims’ Directive recognises that the coordination of public services is essential for victims of crime to receive the proper degree of assistance, support and protection.<sup>135</sup> The NIHRC agrees.
- 3.26 **The NIHRC recommends that the Executive Office considers and reports on how the strategy intersects with other government strategies and what specific actions will be taken to ensure a holistic approach is taken to issues affecting victims and survivors. This should include, by way of example, the Social Inclusion Strategies; the Tackling Paramilitarism Programme; the Modern Slavery and Human Trafficking Strategy; the Domestic Abuse and Sexual Violence Strategy; and the Co-operating to Safeguard Children and Young People Strategy.**
- 3.27 **The NIHRC recommends that the Executive Office sets out how the strategy is raising awareness of and giving effect to the rights contained in the EU Victims’ Directive including by reducing the risk of victimisation and the specific and targeted measures being undertaken to protect victims against secondary and repeat victimisation, intimidation and retaliation.**

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<sup>133</sup> Article 8, Directive 2012/29/EU, ‘Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime’, 25 October 2012.

<sup>134</sup> The Executive Office, ‘Public Consultation: Strategy for Victims and Survivors of the Troubles/Conflict’ (TEO, 2023), at 20 and 24.

<sup>135</sup> Recital 62, Directive 2012/29/EU, ‘Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime’, 25 October 2012.

- 3.28 **The NIHRC recommends that the Executive Office includes within the strategy specific measures to ensure the best interests of the child are the primary consideration.**
- 3.29 **The NIHRC recommends that the Executive Office includes within the strategy the measures that will be taken to avoid discrimination in delivery and to meet victims' specific needs.**

### **Victims' Payments Scheme**

- 3.30 The draft strategy reiterates its commitment to delivering the Victims Payment Scheme in a victim-centred and trauma informed way.<sup>136</sup> This Scheme aims to provide "those living with permanent disablement (either physical or psychological) caused by injury through no fault of their own in a Troubles-related incident with payments primarily in acknowledgement of the harm they have suffered".<sup>137</sup> The Scheme has been operational since February 2021 and is due to run until August 2026.<sup>138</sup>
- 3.31 By December 2023, a total of 6,209 applications had been received by the Victims' Payments Board.<sup>139</sup> Of those, 955 received determinations, 630 were deemed eligible to receive a payment and 325 were deemed ineligible.<sup>140</sup> By 26 February 2024, over £36 million had been paid to victims. There have been 142 appeals lodged against a determination by the Victims' Payments Board.<sup>141</sup>
- 3.32 There has been criticism of the Victims' Payments Board's decision-making process and the length of time it takes.<sup>142</sup> The President of the Victims' Payments Board, Mr Justice McAlinden, has acknowledged the frustrations and advised that the complexity of the Scheme and the information

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<sup>136</sup> The Executive Office, 'Public Consultation: Strategy for Victims and Survivors of the Troubles/Conflict' (TEO, 2023), at 17.

<sup>137</sup> Victims' Payments Board, 'Procedural Guidance' (VPB, 2021), at para 4.

<sup>138</sup> Ibid.

<sup>139</sup> Brendan Hughes, 'Troubles pension: More than 40 applicants die before decisions made', *BBC News*, 4 January 2024.

<sup>140</sup> Ibid.

<sup>141</sup> Victims' Payments Board, 'Statistics'. Available at: [Statistics | Victims' Payments Board \(victimspaymentsboard.org.uk\)](https://victimspaymentsboard.org.uk)

<sup>142</sup> Jayne McCormack, 'Troubles victims' pensions: One third of applicants denied access to scheme', *BBC News*, 28 September 2023; Brendan Hughes, 'Troubles pension: More than 40 applicants die before decisions made', *BBC News*, 4 January 2024; Claudia Savage, 'Could take decade to process applications to Troubles victims' scheme, MPs hear', *Irish News*, 4 December 2023.

retrieval that is needed is contributing to delays.<sup>143</sup> Mr Justice McAlinden recorded that:

the time taken is evidence of the care taken by the board to ensure that every application is dealt with fairly and properly and that every piece of information that can be retrieved is retrieved and carefully scrutinised to ensure that no one falls through the net and is left without an appropriate recognition of a harm they have suffered.<sup>144</sup>

3.33 The UN Basic Principles of Justice for Victims of Crime and Abuse of Power provide that victims should be able to obtain redress through procedures that are “expeditious, fair, inexpensive and accessible”<sup>145</sup> and that “attention should be given to those who have special needs because of the nature of the harm inflicted”.<sup>146</sup> The Victims’ Payments Board is taking steps to prioritise applications from those who are terminally ill or those who are more than 80 years old.<sup>147</sup> However, a recent response to a Freedom of Information Act request revealed that over 40 people who had applied to the Scheme died before a decision was made.<sup>148</sup>

3.34 Article 9 of the EU Victims’ Directive requires that victims should be receiving “information, advice and support relevant to [their] rights”, for instance in terms of accessing “national compensation schemes for criminal injuries”.<sup>149</sup> Further, Recital 62 advises Member States to consider “developing ‘sole points of access’ ... that address victims’ multiple needs when involved in criminal proceedings, including the need to receive information, assistance, support, protection and compensation”.<sup>150</sup>

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<sup>143</sup> UK Parliament Hansard, ‘NI Affairs Committee - Oral Evidence: Victims’ Payments Board, HC 308: The Hon Mr Justice McAlinden’, 4 December 2023.

<sup>144</sup> Ibid.

<sup>145</sup> UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 29 November 1985, at Principle 4.

<sup>146</sup> A/RES/40/34, ‘United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power’, 29 November 1985, at Principle 17.

<sup>147</sup> Victims’ Payments Board, ‘Statistics’. Available at: [Statistics | Victims' Payments Board \(victimspaymentsboard.org.uk\)](https://victimspaymentsboard.org.uk)

<sup>148</sup> Brendan Hughes, ‘Troubles pension: More than 40 applicants die before decisions made’, *BBC News*, 4 January 2024.

<sup>149</sup> Article 9(1), Directive 2012/29/EU, ‘Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime’, 25 October 2012.

<sup>150</sup> Recital 62, Directive 2012/29/EU, ‘Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime’, 25 October 2012.

- 3.35 An independent review of the Victims' Payments Board has commenced with additional measures already underway to improve.<sup>151</sup> The NIHRC remains concerned that victims and survivors are describing the process as "mentally draining" and that it is re-traumatising them because they are having to repeat their story multiple times.<sup>152</sup>
- 3.36 **The NIHRC recommends that the Executive Office includes specific measures to address the delay in the Victims' Payment Scheme so that it offers fair, adequate, and prompt compensation to all who are eligible.**
- 3.37 **The NIHRC recommends that the Executive Office includes measures targeted at addressing the risk of re-traumatisation. This should include ensuring that specialised support is available, accessible and securely funded throughout an applicant's journey.**

### **Training of Practitioners**

- 3.38 The draft strategy anticipates the need for practitioners' training to "help maintain service delivery, standards, and morale".<sup>153</sup> The draft strategy declares that a "wide range of trauma focused training courses aimed at building the capacity of those who deliver support and services to victims and survivors has been delivered."<sup>154</sup> However, there is no detail about what will be provided. The draft strategy promises to "invest in capacity of the sector through training and development to meet national and regional standards, research, and improved regulation",<sup>155</sup> which is welcomed.
- 3.39 Article 25(1) and Recital 61 of the EU Victims' Directive require, as a minimum, that all relevant officials likely to come into contact with a victim, such as police officers and court staff, receive both general and specialist training. Article 25(4) identifies that, subject to the nature and level of the practitioner's contact with victims, "training shall aim to enable the practitioner to recognise victims and to treat them in a respectful, professional and non-discriminatory manner".

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<sup>151</sup> UK Parliament Hansard, 'NI Affairs Committee - Oral Evidence: Victims' Payments Board, HC 308: The Hon Mr Justice McAlinden', 4 December 2023.

<sup>152</sup> Brendan Hughes, 'Troubles pension: More than 40 applicants die before decisions made', *BBC News*, 4 January 2024.

<sup>153</sup> The Executive Office, 'Strategy for Victims and Survivors of the Troubles/Conflict' (TEO, 2024), at 19.

<sup>154</sup> *Ibid.*, at 21.

<sup>155</sup> *Ibid.*

**3.40 The NIHRC recommends that the Executive Office provides within the strategy for the appropriate training of practitioners and officials likely to come into contact with victims. This should be aligned to the minimum standards set out in the EU Victims' Directive. At the very least it must enable officials to recognise victims and to treat victims in a respectful, professional, impartial and non-discriminatory fashion.**

## Annex 1 – Rights of Victims and Survivors

Victims and survivors of serious human rights abuses are protected by various international instruments and standards developed by the United Nations (UN) and the Council of Europe (CoE). The below sets out key human rights and principles emerging from these instruments.

For more detail or a more expansive list, the NIHRC encourages the Executive Office to review the full range of regional and international treaties ratified by the UK, including the declarations and principles developed by corresponding human rights bodies, as well as the NIHRC’s previous advice in this area.<sup>156</sup>

In addition, the UK has committed to ensuring that there should be no diminution of certain rights and safeguards following withdrawal from the EU, including victims’ rights. Details of these minimum standards in respect of victims are included below.

### **The right to life and freedom from torture or inhuman or degrading treatment**

Articles 2 (right to life) and 3 (freedom from torture, inhuman or degrading treatment) of the ECHR require that effective investigations are conducted into potential violations of these rights, including where the alleged perpetrator is a non-State actor.<sup>157</sup> An effective investigation is one that is independent, of the State’s own motion, prompt, conducted with reasonable expedition and subject to public scrutiny.<sup>158</sup> Similar procedural obligations also arise under international human rights standards.<sup>159</sup> While the degree of public scrutiny varies from case to case,<sup>160</sup> non-disclosure of information by the State engages Articles 10 (right to freedom of expression) and Article 8 (the right to respect for private and

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<sup>156</sup> For example, NI Human Rights Commission, ‘Advice on NI Troubles (Legacy and Reconciliation) Bill’ (NIHRC, 2022); NI Human Rights Commission, ‘Submission to the NI Affairs Committee Inquiry into Addressing the Legacy of Northern Ireland’s Past: UK Government’s New Proposals’ (NIHRC, 2020); NI Human Rights Commission, ‘Submission to Consultation on Supporting Victims and Survivors’ (NIHRC, 2019); NI Human Rights Commission, ‘Advice of the Northern Ireland Human Rights Commission to the Northern Ireland Office in respect of the NI (Executive Formation etc.) Act 2019: Victims Payments’ (NIHRC, 2019).

<sup>157</sup> *Ergi v Turkey* (1998), ECHR 59, at para 82; *ROD v Croatia* (2008) ECHR 1048, at Section 1; *Anguelova v Bulgaria* (2002) ECHR 489, at para 137; *Jasinskis v Latvia* (2010) ECHR 1, at para 72; *Assenov and Others v Bulgaria* (1998) ECHR 98, at para 102.

<sup>158</sup> *Mocanu and Others v Romania* (2014) ECHR 958, at paras 319-325.

<sup>159</sup> Articles 6 and 7, UN International Covenant on Civil and Political Rights 1966; Article 2(1), UN Convention against Torture 1984; Articles 6 and 37(a), UN Convention on the Rights of the Child 1989; Articles 10 and 15, UN Convention on the Rights of Persons with Disabilities 2006.

<sup>160</sup> *McKerr v UK* (2001) ECHR 329, at para 115.

family life) of the ECHR.<sup>161</sup> These rights are protected by a range of other human rights treaties.<sup>162</sup>

## **Access to justice**

Access to justice is a fundamental right for all victims and survivors. It is an essential element of the rule of law. It is a substantive right as well as a procedural guarantee, as it allows individuals to enforce their rights and seek redress. Access to justice encompasses several core rights recognised in human rights law: namely, the right to have access to an effective remedy<sup>163</sup> and the right to a fair trial.<sup>164</sup>

UN principles and guidelines set out core elements of access to justice, including equal access to a dispute resolution body, the right to fair proceedings and proper assistance to victims seeking access to justice, and the right to an adequate, effective and prompt remedy for serious human rights violations.<sup>165</sup> States are also responsible for disseminating information to victims, their relatives and the general public on their rights and all available remedies, including “legal, medical, psychological, social, administrative and all other services to which victims may have a right of access”.<sup>166</sup>

## **The right to a fair and public hearing**

Article 6 of the ECHR and Article 14 of the ICCPR provide for the right to a fair hearing. This right applies to both criminal and civil matters.<sup>167</sup> Article 6(1) of the ECHR provides that in “determination of civil rights and obligations... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal”. The ECtHR has made clear that Article 6 of the ECHR is applicable in cases relating to compensation for ill-treatment.<sup>168</sup> The ECtHR has confirmed that an authority not classified as one of the courts of a

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<sup>161</sup> *Leander v Sweden* (1987) ECHR 4, at para 51.

<sup>162</sup> Articles 17 and 19, UN International Covenant on Civil and Political Rights 1966; Article 5(d)(viii), UN Convention on the Elimination of All Forms of Racial Discrimination 1965; Articles 12, 13 and 16(1), UN Convention on the Rights of the Child 1989; Articles 21 and 22, UN Convention on the Rights of Persons with Disabilities 2006.

<sup>163</sup> Article 13, European Convention on Human Rights; Article 2(3), UN International Covenant on Civil and Political Rights.

<sup>164</sup> Article 6, European Convention on Human Rights; Article 14, UN International Covenant on Civil and Political Rights.

<sup>165</sup> UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law 2005, at para 12.

<sup>166</sup> UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law 2005, at paras 12 and 24.

<sup>167</sup> *Ferazzini v Italy* (2001) ECHR 464, at para 30; *Ramos Nunes De Carvalho e Sá v Portugal* (2016) ECHR 555, at para 121.

<sup>168</sup> *Wos v Poland* (2006) ECHR 608, at para 76.

State may nonetheless, for the purposes of Article 6(1) of the ECHR, come within the definition of 'tribunal' in the substantive sense of the term.<sup>169</sup> Bodies that have been recognised by the ECtHR as having the status of a tribunal within the meaning of Article 6(1) of the ECHR include a criminal damage compensation board.<sup>170</sup>

## The right to an effective remedy

Article 13 of the ECHR provides the right to an effective remedy. The ECtHR has found that for a remedy to be effective it must be accessible, capable of providing redress in respect of the complaint and offer a reasonable prospect of success.<sup>171</sup> The UN principles and guidelines on the right to a remedy identify several different remedies:

- i. **Restitution** is the restoration of the victim or survivor to the situation before the violation occurred.<sup>172</sup> That is not always possible.
- ii. **Compensation** is the provision of economic redress "as appropriate and proportional to the gravity of the violation and the circumstances of each case".<sup>173</sup>
- iii. **Rehabilitation** is the provision of services which can include medical and psychological care, legal services and social services.<sup>174</sup>
- iv. **Satisfaction** is the provision of measures "aimed at the cessation of continuing violations", "verification of the facts and full and public disclosure of the truth", "judicial and administrative sanctions against persons liable for the violations", public apology, or commemoration.<sup>175</sup>
- v. **Non-repetition** is the remedy that ensures for example "that all civilian and military proceedings abide by international standards of due process,

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<sup>169</sup> *Sramek v Austria* (1984) ECHR 12, at para 36.

<sup>170</sup> *Rolf Gustafson v Sweden* (1997) ECHR 41.

<sup>171</sup> *Bitiyeva and Others v Russia* (2009) ECHR 672, at para 121; *Akhmadova and Akhmadov v Russia* (2008) ECHR 869, at para 103.

<sup>172</sup> UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law 2005, at para 19.

<sup>173</sup> UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law 2005, at paras 19 and 20.

<sup>174</sup> UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law 2005, at para 21.

<sup>175</sup> UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law 2005, at para 22.

fairness and impartiality”, “strengthening the independence of the judiciary”, providing human rights education to law enforcement officials and security forces, and “promoting the observance of codes of conduct and ethical norms... by public servants”.<sup>176</sup>

## **The right to truth and accountability**

The ECtHR recognises the right of a victim or survivor, or relative of either, to the truth. This is of particular importance to them but also to the rule of law in cases of gross human rights violations.<sup>177</sup> The ECtHR has held that this extends “not only for the applicant and his family, but also for other victims of similar crimes and the general public”.<sup>178</sup> In connection with the collective dimension of the right to truth, the ECtHR has recognised that “it is an integral part of freedom of expression [Article 10 of the ECHR] to seek historical truth”<sup>179</sup> and has highlighted the “efforts that every country must make to debate its own history openly and dispassionately”.<sup>180</sup>

The UN Office of the High Commissioner for Human Rights has stated that:

the right to the truth about gross violations and serious violations of human rights law is an inalienable and autonomous right, linked to the duty and obligation of the State to protect and guarantee human rights, to conduct effective investigations and to guarantee effective remedy and reparations. This right is closely linked with other rights and has both an individual and a societal dimension and should be considered as a non-derogable right and not be subject to limitations.<sup>181</sup>

## **The right to respect for private life**

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<sup>176</sup> UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law 2005, at para 23.

<sup>177</sup> Which includes, for example, Article 2 of the ECHR (right to life). See *El-Masri v The Former Yugoslav Republic of Macedonia* (2012) ECHR 2067, at para 191; *Janowiec and Others v Russia* (2013) ECHR 1003, at para 9 of the Joint Partly Dissenting Opinion of Judges Ziemele, De Gaetano, Laffranque and Keller; *Varnava and Others v Turkey* (2009) ECHR 1313, at paras 200-202.

<sup>178</sup> *El-Masri v The Former Yugoslav Republic of Macedonia* (2012) ECHR 2067, at para 191.

<sup>179</sup> *Chauvy and Others v France* (2004) ECHR 295, at para 69; *Fatullayev v Azerbaijan* (2010) ECHR 623, at para 87; *Dzhugashvili v Russia* (2014) ECHR 1448, at para 33.

<sup>180</sup> *Monnat v Switzerland* (2006) ECHR 1206, at para 64; *Chauvy and Others v France* (2004) ECHR 295, at para 69; *Dzhugashvili v Russia* (2014) ECHR 1448, at para 33.

<sup>181</sup> E/CN.4/2006/91, ‘Study on the Right to the Truth: Report of the Office of the United Nations High Commissioner for Human Rights’, 8 February 2006, at Summary.

Article 8 of the ECHR (right to respect for private and family life) includes a person's physical and psychological integrity on the basis that "a person's body concerns the most intimate aspect of private life".<sup>182</sup> Also in the context of the Article 8 of the ECHR right to identity and personal development, and the right to establish and develop relationships with other human beings and the outside world, "preservation of mental stability is... an indispensable precondition to effective enjoyment of the right to respect for private life".<sup>183</sup> An interference with this right can only be justified when it is "proportionate to the legitimate aim pursued".<sup>184</sup> The ECtHR has found that a failure to investigate a serious violation of human rights may violate a State's positive obligations under Articles 3 and 8 of the ECHR.<sup>185</sup> This right is also provided for by Article 17 of the ICCPR; Article 16 of the UN CRC; Article 22 of the UN CRPD; and the Charter of Fundamental Rights of the EU.

## **The right to non-discrimination**

Article 14 of the ECHR prohibits discrimination. Such a right is expressly recognised in all core CoE and UN treaties as a non-derogable right. Non-discrimination is central to ensuring that all individuals, including victims and survivors, are treated with dignity, respect, and equality under the law. Victims and survivors should have equal access to justice mechanisms and support services, regardless of their race, ethnicity, religion, gender, sexual orientation, disability, or any other status. Therefore, States must take appropriate measures to ensure that any barriers to access, such as language or disability, are addressed. This includes ensuring that support services are accessible, culturally sensitive, and tailored to the diverse needs of victims and survivors, such as those from marginalised groups and/or experiencing intersectional discrimination.

## **EU Victims' Directive**

The EU Victims' Directive lays down minimum standards on victims' rights and support and protection for victims of crime.<sup>186</sup> The Directive sets out a number of rights including the right to be understood and to interpretation (Articles 3 and 7); the right to information (Articles 4 and 6); the right to access victim support

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<sup>182</sup> *YF v Turkey* (2003) ECHR 391, at para 33.

<sup>183</sup> *Bensaid v UK* (2001) ECHR 82, at para 47.

<sup>184</sup> *Dudgeon v UK* (1981) ECHR 5, at para 53.

<sup>185</sup> *EG v Republic of Moldova* (2021) ECHR 296.

<sup>186</sup> Directive 2012/29/EU, 'Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

services free of charge and what details about what those services should provide (Articles 8 and 9); the right to be heard (Article 10); and the rights of victims with specific protection needs to recognition and protection (Articles 18-24).

### **EU Trafficking Directive**

The EU Trafficking Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings.<sup>187</sup> The Directive sets out a number of rights and protections, including for the protection of victims of trafficking in human beings in criminal investigation and proceedings, including child victims (Articles 12 and 15) and assistance and support for victims of trafficking, including child victims (Articles 13, 14 and 16). The Directive contains several provisions which are aimed at criminalisation of trafficking offences, non-prosecution and non-application of penalties to victims (Articles 2-7), investigation and prosecution of offences (Articles 9 and 10).

### **EU Child Sexual Exploitation Directive**

The EU Child Sexual Exploitation Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of sexual abuse and sexual exploitation of children.<sup>188</sup> The Directive sets out a number of protections for child victims of sexual abuse and sexual exploitation (Articles 18-20), as well as placing positive obligations on States to prevent and investigate such crimes (Articles 1-17).

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<sup>187</sup> Directive 2011/36/EU, 'EU Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims', 5 April 2011.

<sup>188</sup> Directive 2011/92/EU, 'Directive of the European Parliament and of the Council on Combatting the Sexual Abuse and Sexual Exploitation of Children and Child Pornography, and Replacing Council Framework Decision 2004/68/JHA, 13 December 2011.

## Contact us

Any queries: [Colin.Caughey@nihrc.org](mailto:Colin.Caughey@nihrc.org)  
and [Eilis.Haughey@nihrc.org](mailto:Eilis.Haughey@nihrc.org)

[www.nihrc.org](http://www.nihrc.org) | [info@nihrc.org](mailto:info@nihrc.org) | +44 (0)28 9024 3987  
4<sup>th</sup> Floor, Alfred House, 19-21 Alfred Street, Belfast, BT2 8ED

