



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Submission to Consultation on Supporting
Victims and Survivors**

March 2019

Table of Contents

| | |
|--|-----------|
| Summary of Recommendations | 3 |
| 1.0 Introduction | 7 |
| 2.0 Redress..... | 10 |
| Compensation | 12 |
| Rehabilitation | 14 |
| Duty to Provide Reasons..... | 18 |
| Accessibility | 20 |
| 3.0 Effective Participation..... | 22 |
| 4.0 Additional Considerations | 28 |
| Remit..... | 28 |
| Training..... | 33 |

Summary of Recommendations

The Northern Ireland Human Rights Commission (NIHRC):

- 1.7 recommends that consideration is given to whether the NI Commissioner for Children and Young People has a role in this context. If so, what that role is needs to be considered, particularly given the absence of a NI Assembly and the time that it would take to establish a new Commissioner for Survivors of Institutional Childhood Abuse. This requires consulting with victims and survivors and their representative organisations on the options available. It should also entail consideration of the experiences of the Independent Inquiry on Child Sexual Abuse in England and Wales, the Commission to Inquire into Child Abuse in Ireland, the ongoing Scottish Child Abuse Inquiry, and the respective victims and survivors organisations based in these jurisdictions.**
- 2.12 welcomes the establishment of the Historical Institutional Abuse Redress Board and the Commissioner for Survivors of Institutional Childhood Abuse, including their role in ensuring victims and survivors falling within the remit of the Hart Inquiry are compensated. The Commission recommends that effective steps are taken to ensure that these mechanisms are effectively implemented. This includes ensuring that, in practice, they are accessible, capable of providing enforceable redress in respect of the complaint and offer a reasonable prospect of success.**
- 2.24 recommends that support and services promoted by the Commissioner for Survivors of Institutional Childhood Abuse are specialised in offering support and advice to victims and survivors of historical abuse and are effectively resourced. The Commission suggests consulting with and drawing from good practices in other jurisdictions, including England, Wales, Scotland and Ireland.**
- 2.25 recommends that, in conducting its role, the Commissioner for Survivors of Institutional Childhood Abuse ensure that its advice and information on services is specialised and provided promptly to victims and survivors. In addition, consideration should be given to whether the already**

established NI Commissioner on Children and Young People could provide the required advice and information in the interim.

- 2.34 welcomes the requirement in clause 7(9) of the Historical Institutional Abuse Redress Board Bill that the Board “must notify the applicant in writing of its determination and must briefly give reasons for its determination”. The Commission also welcomes the stipulation in clause 11(6) of the Bill that this section also applies to the appeals process.**
- 2.36 recommends that it is expressly stated within the Schedule of the Historical Institutional Abuse Redress Board the term of office of the Board members and any renewal mechanism.**
- 2.39 recommends that it is expressly stated within clause 8(1) of the Commissioner for Survivors of Institutional Childhood Abuse Bill that the arrangements for publicising the role of the Board are fully accessible and provision is made for reasonable accommodation of a victim or survivors’ needs. These arrangements should also include effective and accessible outreach and awareness-raising of the existence and role of the Board.**
- 2.42 recommends that the Historical Institutional Abuse Redress Board Bill is amended to include an express requirement to make reasonable accommodation where required, with reference to the Equal Treatment Bench Book, and ensure that the application and appeals process is accessible to all victims and survivors and their family members.**
- 2.44 recommends that it is expressly stated within clause 6 of the Commissioner for Survivors of Institutional Childhood Abuse Bill that the relevant services for victims and survivors are accessible and make provision for reasonable accommodation of an individual’s needs.**
- 3.9 recommends that clause 4 of the Commissioner for Survivors of Institutional Childhood Abuse Bill is amended to include a requirement to effectively consult with victims and survivors on advice on matters concerning the interests of victims and survivors provided to the Executive Committee of the Assembly or to a person providing services to victims and survivors.**

- 3.11 recommends that clause 3 of the Commissioner for Survivors of Institutional Childhood Abuse Bill is amended to ensure that it is guided by the principle of effective participation, which requires victims and survivors to be effectively included at every stage of the process and for their views to be taken on board.**
- 3.12 recommends that clause 3 of the Commissioner for Survivors of Institutional Childhood Abuse Bill is amended to include the aim of the effective participation of all victims and survivors. This could include creating an obligation on the Advisory Panel to effectively consult with such individuals and their organisations. Such an aim should be effectively resourced.**
- 3.14 recommends that it is ensured that implementation of clause 3(4) of the Commissioner for Survivors of Institutional Childhood Abuse Bill reflects any reasonable accommodation that may be required by individual panel members to enable their effective participation.**
- 3.16 recommends that the list in clause 6(2) of the Commissioner for Survivors of Institutional Childhood Abuse Bill is amended to include a clause stating “other relevant services to meet the needs of victims and survivors”. Any additional relevant services should be subject to consultation with victims and survivors and their representative organisations.**
- 4.18 recommends that effective steps are taken to ensure the victims of historical abuses outside the remit of the Historical Institutional Abuse Inquiry have an effective remedy, including access to thorough and effective independent investigations that offer effective redress (including compensation) and are subject to public scrutiny and meaningful victim participation. This includes historical abuse in private settings and by the clergy, Magdalene laundries and mother and baby homes.**
- 4.23 recommends that an appropriate body or organisation is identified, through effective consultation with victims and survivors and their representative organisations, to train staff on interacting and working with victims and survivors of historical abuse. In addition, effective steps should be taken to ensure all staff and officials, including administrative and security staff,**

involved in the implementation of the resulting Bills are appropriately trained and equipped to work with victims and survivors. The training body and subsequent training should be effectively resourced.

1.0 Introduction

1.1 The Northern Ireland Human Rights Commission (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 accordance with this function, the following statutory advice is submitted to the Executive Office in response to its consultation on supporting victims and survivors.

1.2 The Commission bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights, as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe (CoE), European Union (EU) and United Nations (UN) systems.¹ The relevant regional and international treaties in this context include:

- European Convention on Human Rights 1950 (ECHR);²
 - UN International Covenant on Civil and Political Rights 1966 (ICCPR);³
 - UN Convention on the Elimination of Discrimination against Women 1979 (UN CEDAW);⁴
 - UN Convention against Torture 1984 (UN CAT);⁵
 - UN Convention on the Rights of the Child 1989 (UN CRC);⁶
 - UN Convention on the Rights of Persons with Disabilities 2006 (UN CRPD);⁷
 - Charter of Fundamental Rights of the European Union 2007;⁸
 - Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse 2010 (Lanzarote Convention);⁹
- and

¹ The NI Executive is subject to the obligations contained within the specified regional and international treaties by virtue of the United Kingdom (UK) government's ratification. In addition, the NI Act 1998, Section 26(1) provides that "if the Secretary of State considers that any action proposed to be taken by a Minister or NI department would be incompatible with any international obligations... [s]he may by order direct that the proposed action shall be taken". The NIHRC further recalls that the NI Act 1998, Section 24(1)(a) states that "a Minister or NI department has no power to make, confirm or approve any subordinate legislation, or to do any act, so far as the legislation or act... is incompatible with any of the Convention rights".

² Ratified by the UK in 1951.

³ Ratified by the UK in 1976.

⁴ Ratified by the UK in 1986.

⁵ Ratified by the UK in 1988.

⁶ Ratified by the UK in 1991.

⁷ Ratified by the UK in 2009.

⁸ Ratified by the UK in 2000.

⁹ Ratified by the UK in 2018.

- European Union Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime.¹⁰

1.3 In addition to these standards, there exists a body of 'soft law' developed by the human rights bodies of the CoE and UN. These declarations and principles are non-binding but provide further guidance in respect of specific areas. The relevant standards in this context include:

- UN Human Rights Committee, General Comment No 6;¹¹
- United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;¹²
- UN Economic and Social Council, Resolution 1989/65;¹³
- UN CEDAW Committee General Recommendation No 19: Violence against Women;¹⁴
- UN Human Rights Committee, General Comment No 20;¹⁵
- OHCHR, Istanbul Protocol;¹⁶
- Report of the Independent Expert to Update the Set of Principles to Combat Impunity, Diane Orentlicher;¹⁷
- UN General Assembly, Resolution 60/147;¹⁸
- Study on the Right to the Truth: Report of the Office of the United Nations High Commissioner for Human Rights;¹⁹
- UN CAT Committee: General Comment No 2;²⁰
- UN CAT Committee General Comment No 3;²¹

¹⁰ Directive 2012/29/EU, 'European Union Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

¹¹ UN Human Rights Committee, 'General Comment No 6: Article 6 (The Right to Life)', 30 April 1982.

¹² A/RES/40/34, 'United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power', 29 November 1985.

¹³ UN Economic and Social Council, 'Resolution 1989/65: Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions', 24 May 1989.

¹⁴ A/47/38, 'UN CEDAW Committee General Recommendation No 19: Violence against Women', 1992.

¹⁵ UN Human Rights Committee, 'General Comment No 20: Article 7', 30 September 1997.

¹⁶ Office of the High Commissioner of Human Rights, 'Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (UN, 2004).

¹⁷ E/CN.4/2005/102/Add.1, 'Report of the Independent Expert to Update the Set of Principles to Combat Impunity, Diane Orentlicher', 8 February 2005.

¹⁸ UN General Assembly, 'Resolution 60/147: 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.

¹⁹ 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.

²⁰ CAT/C/GC/2, 'UN CAT Committee: General Comment No 2', 24 January 2008.

²¹ CAT/C/GC/3, 'UN CAT Committee General Comment No 3: Implementation of Article 14 by States Parties', 19 November 2012.

- UN CAT Committee, 2013 Concluding Observations of the United Kingdom;²²
- UN CEDAW Committee, 2013 Concluding Observations of the United Kingdom;²³
- UN CRPD Committee, General Comment No 2;²⁴
- OHCHR, The Revised Minnesota Protocol on the Investigation of Potentially Unlawful Death;²⁵
- Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, Pablo de Greiff;²⁶
- UN Human Rights Committee, General Comment No 36;²⁷
- UN CEDAW Committee General Recommendation No 35.²⁸

1.4 The Commission welcomes the opportunity to respond to the consultation on the draft legislation on the Commissioner for Survivors of Institutional Childhood Abuse, the Historical Institutional Abuse Redress Board and the Compensation Scheme. However, the Commission recommends that both Bills require revision to ensure that they are comprehensively human rights compliant. This includes including amendments that effectively address the raised issues concerning remit, training, support for victims, effective participation and redress.

1.5 The Commission notes that the Commissioner for Children and Young People (NI) Order 2003, Articles 3(6) and 3(8), provide the Commissioner with the powers to give support to victims of historical institutional child abuse. Drawing from Article 3(7) particularly:

where this paragraph applies in relation to an adult, then –

²² CAT/C/GBR/CO/5, 'UN CAT Committee Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 24 June 2013.

²³ CEDAW/C/GBR/CO/7, 'UN CEDAW Committee Concluding Observations on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 30 July 2013.

²⁴ CRPD/C/GC/2, 'UN CRPD Committee General Comment No 2 – Article 9: Accessibility', 22 May 2014.

²⁵ Office of the High Commission for Human Rights, The Minnesota Protocol on the Investigation of Potentially Unlawful Death: The Revised UN Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions' (OHCHR, 2016).

²⁶ A/HRC/34/62/Add.1, 'Report of the 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.

²⁷ UN Human Rights Committee, 'General Comment No 36 on Article 6 of the ICCPR, on the Right to Life: Revised Draft Prepared by the Rapporteur', July 2017.

²⁸ CEDAW/C/GC/35, 'UN CEDAW Committee General Recommendation No 35: Gender-based Violence Against Women, Updating General Recommendation No 19', 26 July 2017.

- a) Anything which is required or authorised by this Order to be done by a child or young person may be done by the adult if it relates to any action taken in relation to him at a time when he was a child or young person; and
- b) Anything which is required or authorised by this Order to be done by the Commissioner in relation to a child or young person may be done in relation to the adult if it relates to any action taken as mentioned in sub-paragraph (a).

1.6 The Commission recognises there are arguments in favour of a specific focused Commission for Survivors of Institutional Childhood Abuse, rather than adding to an existing portfolio of another Commissioner. We also recognise that the absence of the NI Executive and Assembly means a continuing delay in setting up a focused Commission into institutional childhood abuse. There may be a case for some work to be resourced through the NI Commissioner for Children and Young People.

1.7 The Commission recommends that consideration is given to whether the NI Commissioner for Children and Young People has a role in this context. If so, what that role is needs to be considered, particularly given the absence of a NI Assembly and the time that it would take to establish a new Commissioner for Survivors of Institutional Childhood Abuse. This requires consulting with victims and survivors and their representative organisations on the options available. It should also entail consideration of the experiences of the Independent Inquiry on Child Sexual Abuse in England and Wales, the Commission to Inquire into Child Abuse in Ireland, the ongoing Scottish Child Abuse Inquiry, and the respective victims and survivors organisations based in these jurisdictions.

2.0 Redress

2.1 The ECHR, Article 13, provides for the right to an effective remedy. The ECtHR elaborates 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.²⁹

2.2 The UN CAT, Article 14(1), states “each State party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible”. Article 14(2) continues that Article 14(1) shall not “affect any right of the victim or other persons to compensation which may exist under national law”.

2.3 The UN Committee against Torture (UN CAT) elaborated that:

the terms ‘redress’ in Article 14 encompasses the concepts of ‘effective remedy’ and ‘reparation’. The comprehensive reparative concept therefore entails restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition and refers to the full scope of measures required to redress violations under the Convention.³⁰

2.4 The reparation “must be adequate, effective and comprehensive”.³¹ When determining:

redress and reparative measures provided or awarded to a victim of torture or ill-treatment, the specificities and circumstances of each case must be taken into consideration and redress should be tailored to the particular needs of the victim and be proportionate in relation to gravity of the violations committed against them.³²

2.5 The reparation should have “an inherent preventive and deterrent effect in relation to future violations”.³³ Measures include providing training and establishing effective monitoring mechanisms.³⁴

²⁹ *Bitiyeva and Others v Russia* (2009) ECHR 672, at para 121; *Akhmadova and Akhmadov v Russia* (2008) ECHR 869, at para 103.

³⁰ CAT/C/GC/3, ‘UN CAT Committee General Comment No 3: Implementation of Article 14 by States Parties’, 19 November 2012, at para 2.

³¹ *Ibid*, at para 6.

³² *Ibid*, at para 6.

³³ *Ibid*, at para 6.

³⁴ *Ibid*, at para 19.

Compensation

2.6 Restitution is defined as “a form of redress to re-establish the victim in his or her situation before the violation of the Convention was committed, taking into consideration the specificities of each case”.³⁵ The UN CAT Committee affirmed “the provision of only monetary compensation is inadequate” and that:

the right to prompt, fair and adequate compensation for torture or ill-treatment under Article 14 is multi-layered and compensation awarded to a victim should be sufficient to compensate for any economically assessable damage resulting from torture or ill-treatment, whether pecuniary or non-pecuniary. This may include: reimbursement of medical expenses paid and provision of funds to cover future medical or rehabilitative services needed by the victim to ensure as full rehabilitation as possible; pecuniary and non-pecuniary damage resulting from the physical and mental harm caused; loss of earnings and earning potential due to disabilities caused by the torture or ill-treatment; and lost opportunities such as employment and education. In additions, adequate compensation awarded by States parties to the victim of torture or ill-treatment should provide for legal or specialised assistance, and other costs associated with bringing a claim for redress.³⁶

2.7 The UN CAT Committee’s General Comment No 3 clarifies that: where State authorities or others acting in their official capacity committed, knew or have reasonable grounds to believe that acts of torture or ill-treatment had been committed by non-State officials or private actors and failed to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors in accordance with the Convention, the State bears responsibility to provide redress for the victims.³⁷

³⁵ Ibid, at para 7.

³⁶ Ibid, at para 10.

³⁷ Ibid, at para 7.

2.8 The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power reiterates that:

when compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:

- a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;
- b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimisation.³⁸

2.9 It continues:

the establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.³⁹

2.10 To ensure redress is effectively available and implemented there must be effective mechanisms for complaints and investigations, access to mechanisms for obtaining redress, effective action to address obstacles to the right to redress, and an effective monitoring process.⁴⁰

2.11 Drawing from these provisions, in its 2013 concluding observations concerning the UK, the United Nations Committee against Torture recommended:

that the State party... ensure that, where possible and appropriate, perpetrators are prosecuted and punished, and

³⁸ 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 12.

³⁹ Ibid, at Principle 13.

⁴⁰ CAT/C/GC/3, 'UN CAT Committee General Comment No 3: Implementation of Article 14 by States Parties', 19 November 2012, at paras 19-46.

that all victims of abuse obtain redress and compensation, including the means for as full as possible rehabilitation, in accordance with the Committee's General Comment No 3 on the implementation of Article 14 of the States parties.⁴¹

2.12 The Commission welcomes the establishment of the Historical Institutional Abuse Redress Board and the Commissioner for Survivors of Institutional Childhood Abuse, including their role in ensuring victims and survivors falling within the remit of the Hart Inquiry are compensated. The Commission recommends that effective steps are taken to ensure that these mechanisms are effectively implemented. This includes ensuring that, in practice, they are accessible, capable of providing enforceable redress in respect of the complaint and offer a reasonable prospect of success.

Rehabilitation

2.13 The UN CAT Committee has confirmed that rehabilitation:

refers to the restoration of function or the acquisition of new skills required by the changed circumstances of a victim in the aftermath of torture or ill-treatment. It seeks to enable the maximum possible self-sufficiency and function for the individual concerned, and may involve adjustments to the person's physical and social environment. Rehabilitation for victims should aim to restore, as far as possible, their independence, physical, mental, social and vocational ability; and full inclusion and participation in society.⁴²

2.14 This includes adopting "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".⁴³

⁴¹ CAT/C/GBR/CO/5, 'UN CAT Committee Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 24 June 2013, at para 24.

⁴² CAT/C/GC/3, 'UN CAT Committee General Comment No 3: Implementation of Article 14 by States Parties', 19 November 2012, at para 11.

⁴³ Ibid, at para 13.

2.15 The UN CAT Committee provides:

these should include: a procedure for the assessment and evaluation of an individual's therapeutic and other needs, based on, among others, the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol); and may include a wide range of interdisciplinary 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. Confidential services should be provided as required.⁴⁴

2.16 These services should take "into account victims 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".⁴⁵

2.17 The United Nations Committee on the Elimination of Discrimination against Women states in General Comment No 35 that:

States should provide specialised women's support services, such as gratis helplines operating around the clock and sufficient numbers of safe and adequately equipped crisis, support and referral centres and adequate shelters for women, their children and other family members, as required.⁴⁶

2.18 The UN CEDAW Committee also confirmed that States should:

⁴⁴ Ibid, at para 13.

⁴⁵ Ibid, at para 15.

⁴⁶ 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(a)(iii).

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 provided irrespective of residency status or ability or willingness to cooperate in legal proceedings against the alleged perpetrator.⁴⁷

2.19 The UN CEDAW Committee further requires States to:

allocate appropriate human and financial resources at the national, regional and local levels to effectively implement law and policies for the prevention of all forms of gender-based violence against women, provision of protection and support to victims/survivors, investigation of cases, prosecution of perpetrators and provision of reparations to victims/survivors, including support to women's organisations.⁴⁸

2.20 The UN CRPD, Article 5(3) clarifies that "in order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided". The UN Committee on the Rights of Persons with Disabilities' General Comment No 2 elaborates that the duty to provide reasonable accommodation "is enforceable from the moment an individual with an impairment needs it in a given situation".⁴⁹ The aim is to ensure "accessibility for an individual with a disability in a particular situation".⁵⁰ Thus, "a person with a rare impairment might ask for accommodation that falls outside the scope of any accessibility standard".⁵¹

2.21 The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power states that "victims should receive the

⁴⁷ Ibid, at para 31(b).

⁴⁸ Ibid, at para 34(f).

⁴⁹ CRPD/C/GC/2, 'General Comment No 2 – Article 9: Accessibility', 22 May 2014, at para 26.

⁵⁰ Ibid, at para 26.

⁵¹ Ibid.

necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means".⁵² It also states, "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"⁵³ 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".⁵⁴

2.22 The Lanzarote Convention, Article 11(1), provides "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".

2.23 The consultation document states that support services are offered to victims and survivors of historical institutional abuse through Advice NI and Wave Trauma Centre. The Commission has engaged with victims and survivors of historical institutional abuse and the Wave Trauma Centre as part of its work in relation to the UN CAT Committee's forthcoming examination of the United Kingdom. During this engagement, a number of issues were raised concerning the available support. Victims and survivors reported a lack of expert support in facilitating meetings and, as a result, felt that they were left to support each other.⁵⁵ It was reported that Advice NI offers generalised, not specialised support, which victims and survivors believed to be inadequate.⁵⁶ The Wave Trauma Centre confirmed it offers space to host meetings, but it has not been contracted to, nor does it have the budget to offer specialised support.⁵⁷

2.24 The Commission recommends that support and services promoted by the Commissioner for Survivors of Institutional Childhood Abuse are specialised in offering support and advice to victims and survivors of historical abuse and are effectively resourced. The

⁵² 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.

⁵³ Ibid, at Principle 17.

⁵⁴ Ibid, at Principles 3 and 17.

⁵⁵ Roundtable discussion with civil society representatives, November 2018.

⁵⁶ Ibid.

⁵⁷ Roundtable discussion with civil society representatives, January 2019.

Commission suggests consulting with and drawing from good practices in other jurisdictions, including England, Wales, Scotland and Ireland.

2.25 The Commission recommends that, in conducting its role, the Commissioner for Survivors of Institutional Childhood Abuse ensure that its advice and information on services is specialised and provided promptly to victims and survivors. In addition, consideration should be given to whether the already established NI Commissioner on Children and Young People could provide the required advice and information in the interim.

Duty to Provide Reasons

2.26 The ECHR, Article 6, provides for the right to a fair trial. This right can apply regarding criminal and civil matters.⁵⁸ Article 6(1) 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 is applicable in cases relating to compensation for ill-treatment.⁵⁹

2.27 The ECtHR has confirmed that an authority not classified as one of the courts of a State may nonetheless, for the purposes of the ECHR, Article 6(1), come within the concept of a ‘tribunal’ in the substantive sense of the term.⁶⁰ A tribunal’s function should be “to determine matters within its competence on the basis of rules of law, following proceedings conducted in a prescribed manner”.⁶¹ The ECtHR further elaborates that:

for the purposes of Article 6(1) a tribunal need not be a court of law integrated within the standard judicial machinery. It may... be set up to deal with a specific subject matter which can be appropriately administered outside the ordinary court system.⁶²

⁵⁸ *Ferazzini v Italy* (2001) ECHR 464, at para 30; *Ramos Nunes De Carvalho e Sá v Portugal* (2016) ECHR 555, at para 121.

⁵⁹ *Wos v Poland* (2006) ECHR 608, at para 76.

⁶⁰ *Sramek v Austria* (1984) ECHR 12, at para 36.

⁶¹ *Ibid.*

⁶² *Rolf Gustafson v Sweden* (1997) ECHR 41, at para 45.

- 2.28 The ECtHR continued “the power to give a binding decision which may not be altered by a non-judicial authority to the detriment of an individual party is inherent in the very notion of a ‘tribunal’, as is confirmed by the word ‘determination’”.⁶³
- 2.29 Bodies that have been recognised by the ECtHR as having the status of a tribunal within the meaning of the ECHR, Article 6(1) include a criminal damage compensation board.⁶⁴ Arguably, the Historical Institutional Abuse Redress Board would fit within this definition. The ECtHR is clear that in instances where a body can be defined as a tribunal within the remit of Article 6, “what is important to ensure compliance with Article 6(1) are the guarantees, both substantive and procedural, which are in place”.⁶⁵
- 2.30 Under the ECHR, Article 6(1), a tribunal must offer a “fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”. The ECtHR has elaborated that:

Article 6 also requires the domestic courts to adequately state the reasons on which their decisions are based. Without requiring a detailed answer to every argument put forward by a complainant, this obligation nevertheless presupposes that a party to judicial proceedings can expect a specific and express reply to those submissions which are decisive for the outcome of the proceedings in question.⁶⁶

- 2.31 The ECtHR has confirmed that:

a proper examination of the submissions, arguments and evidence adduced by the parties and adequately stating the reasons on which decisions are based are relevant aspects under the civil limb of Article 6(1). The Court considers that this applies equally, if not more, when imputing civil responsibility for damage arising out of criminal acts due to

⁶³ *Van de Hurk v the Netherlands* (1994) ECHR 14, at para 45.

⁶⁴ *Rolf Gustafson v Sweden* (1997) ECHR 41.

⁶⁵ *Ibid*, at para 45.

⁶⁶ *Ramos Nunes De Carvalho e Sá v Portugal* (2016) ECHR 555, at para 185.

the harsh consequences which may ensue from such findings.⁶⁷

2.32 The ECtHR further elaborates that a tribunal should establish the length of the terms of office of its members.⁶⁸

2.33 The ICCPR, Article 14, also provides for the right to a fair and public hearing with similar requirements to those set out in the ECHR, Article 6 for criminal and civil matters.⁶⁹

2.34 The Commission welcomes the requirement in clause 7(9) of the Historical Institutional Abuse Redress Board Bill that the Board “must notify the applicant in writing of its determination and must briefly give reasons for its determination”. The Commission also welcomes the stipulation in clause 11(6) of the Bill that this section also applies to the appeals process.

2.35 Clause 3 of the Schedule of the Historical Institutional Abuse Redress Board Bill provides for the appointment of the President of the Board and its other members. This clause does not stipulate how long members can sit on the Board and whether their term can be renewed and for how long.

2.36 The Commission recommends that it is expressly stated within the Schedule of the Historical Institutional Abuse Redress Board the term of office of the Board members and any renewal mechanism.

Accessibility

2.37 The UN CRPD, Article 9 requires that appropriate measures are taken to “enable persons with disabilities to live independently and participate fully in all aspects of life”.⁷⁰

2.38 Ensuring accessibility requires State parties to make reasonable accommodation for persons with disabilities, in line with the UN CRPD,

⁶⁷ *Carmel Saliba v Malta* (2016) ECHR 1058, at para 73.

⁶⁸ *Gurov v Moldova* (2010) ECHR 1420, at para 36; *Coëme and Others v Belgium* (2000) ECHR 250, at para 99.

⁶⁹ CCPR/C/GC/32, ‘Human Rights Committee, General Comment No 32: Right to Equality before Courts and Tribunals and to a Fair Trial’, 9-27 July 2007.

⁷⁰ Article 9(1), UN CRPD.

Article 5(3), and the UN CRPD Committee's General Comment No 2.⁷¹ This approach is not limited to persons with disabilities, but as set out in the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, "attention should be given to those who have special needs" in providing services and assistance to victims and survivors.⁷²

2.39 The Commission welcomes that clause 4(2) of the Historical Institutional Abuse Redress Board Bill requires the establishment of the Board to be advertised. The Commission also welcomes that clause 8(1) of the Commissioner for Survivors of Institutional Childhood Abuse Bill requires the Commissioner to "make arrangements for publicising the role of the Historical Institutional Abuse Redress Board". However, the Commission wishes to stress that accessible formats should be readily available and reasonable accommodation should be made, where required.

2.39 The Commission recommends that it is expressly stated within clause 8(1) of the Commissioner for Survivors of Institutional Childhood Abuse Bill that the arrangements for publicising the role of the Board are fully accessible and provision is made for reasonable accommodation of a victim or survivors' needs. These arrangements should also include effective and accessible outreach and awareness-raising of the existence and role of the Board.

2.41 The Commission welcomes the application and right of appeal processes, as set out in clauses 9-14 of the Historical Institutional Abuse Redress Board Bill. However, the Commission stresses that the focus on written submissions, particularly in clause 11, does not adequately take into account accessibility and reasonable accommodation requirements. The Commission notes that the Equal Treatment Bench Book, which was revised in February 2018, includes practical guidance on reasonable adjustments.

2.43 The Commission recommends that the Historical Institutional Abuse Redress Board Bill is amended to include an express requirement to make reasonable accommodation where required, with reference to the Equal Treatment Bench Book, and ensure that

⁷¹ CRPD/C/GC/2, 'General Comment No 2 – Article 9: Accessibility', 22 May 2014, at para 26.

⁷² 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.

the application and appeals process is accessible to all victims and survivors and their family members.

2.43 The Commission welcomes the requirement in clause 6(1) of the Commissioner for Survivors of Institutional Childhood Abuse Bill to “encourage the provision, and the co-ordination of the provision, of relevant services in Northern Ireland to victims and survivors”. However, steps should be taken to ensure the services on this list are accessible.

2.44 The Commission recommends that it is expressly stated within clause 6 of the Commissioner for Survivors of Institutional Childhood Abuse Bill that the relevant services for victims and survivors are accessible and make provision for reasonable accommodation of an individual’s needs.

3.0 Effective Participation

3.1 The UN CAT Committee “emphasises the importance of victim participation in the redress process, and that the restoration of the dignity of the victim is the ultimate objective in the provision of redress”.⁷³

3.2 Drafting of the UN CRPD was guided by the slogan “nothing about us, without us” to reinforce the need for the effective participation of persons with disabilities and their organisations in the drafting of the Convention.⁷⁴ Craig Mokhiber, Chief of Development and Economic and Social Issues Branch of the United Nations Office of the High Commissioner for Human Rights has underlined that slogan should “continue to guide us in implementing the Convention”.⁷⁵ This is an approach that can and should be adopted more broadly across ensuring effective implementation of the full human rights framework at a domestic level.

3.3 In ensuring effective participation, consideration should be given to the specific needs of victims and survivors. The UN CRPD, Article 9(1), states:

⁷³ CAT/C/GC/3, ‘UN CAT Committee General Comment No 3: Implementation of Article 14 by States Parties’, 19 November 2012, at para 4.

⁷⁴ Office of the High Commissioner for Human Rights, ‘Press Release: UN leads the way on disability rights’, 24 September 2012.

⁷⁵ Ibid.

to enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall 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.

3.4 The UN CRPD, Article 9(2) requires States Parties to take appropriate measures:

- a) To develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;
- b) To ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;
- c) To provide training for stakeholders on accessibility issues facing persons with disabilities;
- d) To provide buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;
- e) To provide forms of live assistance and intermediaries, including guides, readers and profession sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;

- f) To promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;
- g) To promote access for persons with disabilities to new information and communications technologies and systems, including the internet;
- h) To promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

3.5 This also requires State parties to make reasonable accommodation for persons with disabilities, in line with the UN CRPD, Article 5(3), and the UN CRPD Committee's General Comment No 2.⁷⁶ This approach is not limited to persons with disabilities, but as set out in the United Nations Declaration of Basis Principles of Justice for Victims of Crime and Abuse of Power, "attention should be given to those who have special needs" in providing services and assistance to victims and survivors.⁷⁷

3.6 The EU Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime provides:

Member States should encourage and work closely with civil society organisations, including recognised and active non-governmental organisations working with victims of crime, in particular in policymaking initiatives, information and awareness-raising campaigns, research and education programmes and in training, as well as in monitoring and evaluating the impact of measures to support and protect victims of crime. For victims of crime to receive the proper degree of assistance, support and protection, public services should work in a coordinated manner and should be involved

⁷⁶ CRPD/C/GC/2, 'General Comment No 2 – Article 9: Accessibility', 22 May 2014, at para 26.

⁷⁷ 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.

at all administrative levels – at Union level, and at national, regional and local level.⁷⁸

3.7 The Lanzarote Convention, Article 9, elaborates on good practice:

- 1) Each Party shall encourage the participation of children, according to their evolving capacity, in the development and the implementation of State policies, programmes or others initiatives concerning the fight against sexual exploitation and sexual abuse of children.
- 2) Each Party shall encourage the private sector, in particular the information and communication technology sector, the tourism and travel industry and the banking and finance sectors, as well as civil society, to participate in the elaboration and implementation of policies to prevent sexual exploitation and sexual abuse of children and to implement internal norms through self-regulation or co-regulation.
- 3) Each Party shall encourage the media to provide appropriate information concerning all aspects of sexual exploitation and sexual abuse of children, with due respect for the independence of the media and freedom of the press.
- 4) Each Party shall encourage the financing, including, where appropriate, by the creation of funds, of the projects and programmes carried out by civil society aiming at preventing and protecting children from sexual exploitation and sexual abuse.

3.8 The Commission welcomes the duty on the Commissioner to “provide advice on matters concerning the interests of victims and survivors to the Executive Committee of the Assembly or a person providing services to victims and survivors”, contained in clause 4(1) of the Commissioner for Survivors of Institutional Childhood Abuse Bill. The Commission stresses that such advice should be developed through effective participation with

⁷⁸ Directive 2012/29/EU, ‘European Union Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime’, 25 October 2012, at para 62.

victims and survivors, for example through the Advisory Panel mechanism, provided for in clause 3 of the Commissioner for Survivors of Institutional Childhood Abuse Bill.

- 3.9 The Commission recommends that clause 4 of the Commissioner for Survivors of Institutional Childhood Abuse Bill is amended to include a requirement to effectively consult with victims and survivors on advice on matters concerning the interests of victims and survivors provided to the Executive Committee of the Assembly or to a person providing services to victims and survivors.**
- 3.10 The Commission welcomes clause 3 of the Commissioner for Survivors of Institutional Childhood Abuse Bill, which requires the Commission to appoint a panel of persons, all of whom are victims or survivors. The Commission further welcomes the requirement within clause 3(3) for the “Advisory Panel to provide a forum for consultation and discussion with victims and survivors”. The Commission stresses that such consultation should be meaningful and effective. This requires creating a space for victims and survivors not on the Advisory Panel to effectively participate in the process.
- 3.11 The Commission recommends that clause 3 of the Commissioner for Survivors of Institutional Childhood Abuse Bill is amended to ensure that it is guided by the principle of effective participation, which requires victims and survivors to be effectively included at every stage of the process and for their views to be taken on board.**
- 3.12 The Commission recommends that clause 3 of the Commissioner for Survivors of Institutional Childhood Abuse Bill is amended to include the aim of the effective participation of all victims and survivors. This could include creating an obligation on the Advisory Panel to effectively consult with such individuals and their organisations. Such an aim should be effectively resourced.**
- 3.13 The Commission welcomes the stipulation in clause 3(4) that “the Commissioner may reimburse each member of the Advisory Panel for such expenses as the member reasonably incurs in acting as such”. However, to

ensure this mechanism is accessible, the Commission stresses that in practice reimbursements should take into account reasonable accommodation required by individual panel members.

3.14 The Commission recommends that it is ensured that implementation of clause 3(4) of the Commissioner for Survivors of Institutional Childhood Abuse Bill reflects any reasonable accommodation that may be required by individual panel members to enable their effective participation.

3.15 The Commission welcomes the requirement in clause 6(1) of the Commissioner for Survivors of Institutional Childhood Abuse Bill to “encourage the provision, and the co-ordination of the provision, of relevant services in Northern Ireland to victims and survivors”. However, steps should be taken to ensure this list is reflective of the needs of all relevant victims and survivors, beyond the exhaustive list contained in clause 6(2).

3.16 The Commission recommends that the list in clause 6(2) of the Commissioner for Survivors of Institutional Childhood Abuse Bill is amended to include a clause stating “other relevant services to meet the needs of victims and survivors”. Any additional relevant services should be subject to consultation with victims and survivors and their representative organisations.

4.0 Additional Considerations

4.1 To ensure that all historical institutional abuse in NI is effectively addressed, there are a number of measures that should be considered in addition to those discussed within the consultation document. These additional considerations are set out below.

Remit

- 4.2 The ECHR, Articles 2 (right to life) and 3 (freedom from torture, inhuman or degrading treatment) require that effective investigations are conducted into potential violations of these rights, including where the alleged perpetrator is a non-State actor.⁷⁹ An effective investigation is one that is independent, of the State's own motion, prompt, conducted with reasonable expedition and subject to public scrutiny.⁸⁰
- 4.3 The requirement to protect life by law is also provided for within ICCPR, Article 6(1); UN CRC, Article 6; UN CRPD, Article 10; and Charter of Fundamental Freedoms of the European Union, Article 2. The requirement to prohibit torture, inhuman or degrading treatment or punishment by law is also provided for within ICCPR, Article 7; UN CRC, Article 37(a); UN CAT; UN CRPD, Article 15; and Charter of Fundamental Rights of the European Union, Article 4.
- 4.4 Acknowledging the link between effective investigations and right to redress, the UN Human Rights Committee's Draft General Comment No 36 elaborates that the right to life includes the obligation on State parties "to provide effective remedies and reparation to all victims of violations of the right to life".⁸¹
- 4.5 The UN CAT Committee confirms, in its General Comment No 3, that redress under the UN CAT, Article 14, has procedural elements. To satisfy their procedural obligations:

⁷⁹ *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.

⁸⁰ *Mocanu and Others v Romania* (2014) ECHR 958, at paras 319-325.

⁸¹ UN Human Rights Committee, 'General Comment No 36 on Article 6 of the ICCPR, on the Right to Life: Revised Draft Prepared by the Rapporteur', July 2017, at para 4.

States parties shall enact legislation and establish complaints mechanisms, investigation bodies and institutions, including independent judicial bodies, capable of determining the right to and awarding redress for a victim of torture and ill-treatment, and ensure that such mechanisms and bodies are effective and accessible to all victims.⁸²

4.6 The UN CAT Committee is clear that:

a State's failure to investigate, criminally prosecute, or to allow civil proceedings related to allegations of acts of torture in a prompt manner, may constitute a *de facto* denial of redress and thus constitute a violation of the State's obligations under Article 14.⁸³

4.7 The UN CAT Committee continues that:

securing the victim's right to redress requires that a State party's competent authorities promptly, effectively and impartially investigate and examine the case of any individual who alleges that she or he has been subjected to torture or ill-treatment... Undue delays in initiating or concluding legal investigations into complaints of torture or ill-treatment compromise victim's rights under Article 14 to obtain redress, including fair and adequate compensation and the means for as full rehabilitation as possible.⁸⁴

4.8 The UN Office of the High Commissioner for Human Rights highlights 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

⁸² CAT/C/GC/3, 'UN CAT Committee General Comment No 3: Implementation of Article 14 by States Parties', 19 November 2012, at para 5.

⁸³ Ibid, at para 17.

⁸⁴ Ibid, at para 25.

and should be considered as a non-derogable right and not be subject to limitations.⁸⁵

4.9 In terms of defining a victim, the UN CAT Committee provides that:

victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations of the Convention. A person should be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted, and regardless of any familial or other relationship between the perpetrator and the victim. The term 'victim' also includes affected immediate family or dependants of the victim as well as persons who have suffered harm in intervening to assist victims or to prevent victimisation. The term 'survivors' may, in some cases, be preferred by persons who have suffered harm.⁸⁶

4.10 The ECHR, Article 8 (right to respect of private life) encompasses a person's physical and psychological integrity on the basis that "a person's body concerns the most intimate aspect of private life".⁸⁷ Also in the context of the Article 8 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".⁸⁸ An interference with this right can only be justified when it is "proportionate to the legitimate aim pursued".⁸⁹ This right is also provided for within ICCPR, Article 17; UN CRC, Article 16; UN CRPD, Article 22; and Charter of Fundamental Freedoms of the EU.

⁸⁵ 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.

⁸⁶ CAT/C/GC/3, 'UN CAT Committee General Comment No 3: Implementation of Article 14 by States Parties', 19 November 2012, at para 3.

⁸⁷ *YF v Turkey* (2003) ECHR 391, at para 33.

⁸⁸ *Bensaid v United Kingdom* (2001) ECHR 82, at para 47.

⁸⁹ *Dudgeon v United Kingdom* (1981) ECHR 5, at para 53.

4.11 The United Nations Committee on the Elimination of Discrimination against Women (UN CEDAW Committee) confirmed in its General Recommendation No 19 that discrimination of women includes gender-based violence.⁹⁰ Under, the UN CEDAW, Article 5(1), the State party is obligated to:

take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

4.12 This obligation includes conduct or actions by State and non-State actors.⁹¹ The UN CEDAW Committee also recognises the link between effective investigations and the right to redress, elaborating that a State party should:

take all appropriate measures to prevent acts of gender-based violence against women in cases in which its authorities are aware or should be aware of the risk of such violence, or the failure to investigate, to prosecute and punish perpetrators and to provide reparations to victims/survivors of such acts.⁹²

4.13 Specific to historical institutional abuse in Northern Ireland, in its 2013 concluding observations concerning the UK, the United Nations Committee against Torture recommended:

that the State party conducts prompt, independent and thorough investigations into all cases of institutional abuse that took place in Northern Ireland between 1922 and 1995, including of women over 18 years who were detained in

⁹⁰ A/47/38, 'UN CEDAW Committee General Recommendation No 19: Violence against Women', 1992, at para 6.

⁹¹ 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 paras 22 and 24(1); A/47/38, 'UN CEDAW Committee General Recommendation No 19: Violence against Women', 1992, at para 8.

⁹² 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 24(2).

Magdalene Laundries and equivalent institutions in Northern Ireland.⁹³

4.14 In its 2013 concluding observations concerning the UK, the UN CEDAW Committee urged the State party:

- a) to extend the mandate of the Historical Institutional Abuse Inquiry to include women who entered the Magdalene laundries at the age of 18 years and above;
- b) to provide adequate redress to all victims of abuse who were detained in the Magdalene laundries and similar institutions.⁹⁴

4.15 The Commission welcomes the establishment of the Commissioner for Survivors of Institutional Childhood Abuse, as provided for by the proposed Bill. However, the Commission is concerned at the remit of the Commissioner's focus being limited to residential accommodation for children, as set out in clauses 2(4)-2(8) of the Bill.

4.16 The Commission is also concerned at the limited remit of the Historical Institutional Abuse Board, as set out in clause 2 of the Historical Institutional Abuse Redress Board Bill.

4.17 The Commission understands the premise for this is that the Bills are based on the recommendations of the Hart Inquiry; however, if not included within these Bills, other mechanisms must be developed and effectively implemented to address any incidents of historical abuse that fall outside the remit of the Hart Inquiry.

4.18 The Commission recommends that effective steps are taken to ensure the victims of historical abuses outside the remit of the Historical Institutional Abuse Inquiry have an effective remedy, including access to thorough and effective independent investigations that offer effective redress (including compensation) and are subject to public scrutiny and meaningful

93 CAT/C/GBR/CO/5, 'UN CAT Committee Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 24 June 2013, at para 24.

94 CEDAW/C/GBR/CO/7, 'UN CEDAW Concluding Observations on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 30 July 2013, at para 25.

victim participation. This includes historical abuse in private settings and by the clergy, Magdalene laundries and mother and baby homes.

Training

4.19 The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power provides “police, justice, health, social service and other personnel concerned should receive training to sensitise them to the needs of victims, and guidelines to ensure proper and prompt aid”.⁹⁵

4.20 The Lanzarote Convention, Article 5, states:

- 1) Each Party shall take the necessary legislative or other measures to encourage awareness of the protection and rights of children among persons who have regular contacts with children in the education, health, social protection, judicial and law-enforcement sectors and in areas relating to sport, culture and leisure activities.
- 2) Each Party shall take the necessary legislative or other measures to ensure that the persons referred to in paragraph 1 have an adequate knowledge of sexual exploitation and sexual abuse of children, of the means to identify them and of the possibility mentioned in Article 12, paragraph 1.
- 3) Each Party shall take the necessary legislative or other measures, in conformity with its internal law, to ensure that the conditions to accede to those professions whose exercise implies regular contacts with children ensure that the candidates to these professions have not been convicted of acts of sexual exploitation or sexual abuse of children.

⁹⁵ 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 16.

4.21 As an example of good practice, the EU Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, Article 25, provides:

- 1) Member States shall ensure that officials likely to come into contact with victims, such as police officers and court staff, receive both general and specialist training to a level appropriate to their contact with victims to increase their awareness of the needs of victims and to enable them to deal with victims in an impartial, respectful and professional manner.
- 2) Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall request that those responsible for the training of judges and prosecutors involved in criminal proceedings make available both general and specialist training to increase the awareness of judges and prosecutors of the needs of victims.
- 3) With due respect for the independence of the legal profession, Member States shall recommend that those responsible for the training of lawyers make available both general and specialist training to increase the awareness of lawyers of the needs of victims.
- 4) Through their public services or by funding victim support organisations, Member States shall encourage initiatives enabling those providing victim support and restorative justice services to receive adequate training to a level appropriate to their contact with victims and observe professional standards to ensure such services are provided in an impartial, respectful and professional manner.
- 5) In accordance with the duties involved, and the nature and level of contact the practitioner has with victims, training shall aim to enable the practitioner to recognise victims and to treat them in a respectful, professional and non-discriminatory manner.

4.22 During engagement with the Commission, victims and survivors with experience of the Historical Institutional Abuse Inquiry highlighted the importance of ensuring all staff who interact with victims and survivors of abuse receive appropriate, specialised training.⁹⁶

4.23 The Commission recommends that an appropriate body or organisation is identified, through effective consultation with victims and survivors and their representative organisations, to train staff on interacting and working with victims and survivors of historical abuse. In addition, effective steps should be taken to ensure all staff and officials, including administrative and security staff, involved in the implementation of the resulting Bills are appropriately trained and equipped to work with victims and survivors. The training body and subsequent training should be effectively resourced.

⁹⁶ Meeting with civil society representatives, 30 November 2018; Roundtable discussion with civil society representatives, November 2018.

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