Dear Mr Hoare,

Re: Consultation on implementation of the Stormont House Agreement – Supplementary Written Evidence to Northern Ireland Affairs Committee by the Committee on the Administration of Justice

I am writing to you following the supplementary written evidence to the Northern Ireland Affairs Committee submitted by the Committee on the Administration of Justice in response to my previous letter sent to you, dated 12 September 2019.

The Committee on the Administration of Justice has expressed its support for the existing ‘interpretation’ of victim and survivor contained in Article 3 of the Victims and Survivors (Northern Ireland) Order 2006 and its opposition to the definition of victim of terrorism proposed by the Ulster Human Rights Watch.

Article 3 of the Victims and Survivors (Northern Ireland) Order 2006 under the title ‘Interpretation: “victim and survivor”’ reads as follows:

“3. —(1) In this Order references to "victim and survivor" are references to an individual appearing to the Commissioner to be any of the following—
(a) someone who is or has been physically or psychologically injured as a result of or in consequence of a conflict-related incident;
(b) someone who provides a substantial amount of care on a regular basis for an individual mentioned in paragraph (a); or
(c) someone who has been bereaved as a result of or in consequence of a conflict-related incident.

(2) Without prejudice to the generality of paragraph (1), an individual may be psychologically injured as a result of or in consequence of—
(a) witnessing a conflict-related incident or the consequences of such an incident; or
(b) providing medical or other emergency assistance to an individual in connection with a conflict-related incident.”

Therefore this ‘interpretation’ applies to any individual who, whether a victim of crime or the perpetrator of the crime, has been bereaved or injured physically or psychologically as a result of a violent incident occurring in or after 1966 in connection with the affairs of Northern Ireland.

It is important to note that the terminology used in the Order is ‘interpretation’ of ‘victim and survivor’, not definition of victim and survivor.

Article 27 of the Directive under the title “Transposition” states:

“1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 16 November 2015.
2. When Member States adopt those provisions they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such a reference is to be made.”

The Directive provides in Article 2 under the title ‘Definitions’ a definition of a ‘victim of crime’ which reads as follows:

“(a) ‘victim’ means:
(i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;
(ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person’s death;
(iii) ‘family members’ means the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim.”

As stated in the transposition note relating to the Directive (attached as an Annex to the Explanatory Memorandum to the Victim Charter (Justice Act (Northern Ireland) 2015) Order (Northern Ireland) 2015), the definition provided by the Directive has been implemented in Section 29 of the Justice Act (Northern Ireland) 2015.

The ‘definition’ of the Directive has been further implemented in the Victim Charter, which is a Charter for victims of criminal conduct, which was drawn up in compliance with Section 28 of the Justice Act (Northern Ireland) 2015. It was laid before the Northern Ireland Assembly on 14th September 2015 under section 31(2) of the Act and makes reference in paragraphs 18 to 22 to the definition of a ‘victim’ as mentioned in the EU Directive (2012/29/EU).

It therefore clearly appears that the ‘interpretation’ of ‘victim and survivor’ provided in the Victims and Survivors (Northern Ireland) Order 2006 does not comply with the definition of victim of crime provided by the EU Directive (2012/29/EU).

This ‘interpretation’ would consequently need to be reviewed so that ‘victim and survivor’ designates only an individual who is a victim of crime, not a perpetrator of crime(s), in order to comply with the ‘definition’ provided in EU Directive 2012 (2012/29/EU) that has already been implemented in the Justice Act (Northern Ireland) 2015 and in the Victim Charter.

In view of the above, the definition of victim of terrorism proposed by the Ulster Human Rights Watch aims to address the particular circumstances of Northern Ireland due to intense and sustained terrorist activities over a prolonged period of time. It seeks to cover all events
connected with terrorist actions, which fall within the interpretation of terrorism provided in Section 1 of the Terrorism Act 2000, and have resulted in deaths and injuries caused to innocent people, including children. It clearly excludes perpetrators of terrorist acts who were killed or injured as a result of engaging in terrorism.

The Ulster Human Rights Watch submit that the ‘interpretation’ of victim and survivor in the Victims and Survivors (Northern Ireland) Order 2006 must urgently be reviewed and replaced with a definition of victim of terrorism, compliant with the definition of victim of crime that has already been enshrined in the legislation in Northern Ireland.

I would be most grateful if you could bring the content of this letter to the attention of your colleagues on the Committee and take every possible measure to resolve this fundamental issue so as to bring about a proper and lawful definition of victim and survivor.

Yours sincerely,

Axel Schmidt
Advocacy Support Manager
Ulster Human Rights Watch Advocacy Service