**KENOVA INVESTIGATIONS — PROTOCOL ON PUBLICATION OF INTERIM REPORT**

**RESPONSE TO CONSULTATION — DR WILLIAM BEATTIE SMITH**

1. I am writing in a personal capacity as a public policy analyst specialising in the ethics of conflict resolution. I have previously served as a Director in the Northern Ireland Civil Service, Principal Private Secretary to Northern Ireland’s First Minister, member of the Parliamentary Boundary Commission for Northern Ireland and Senior Research Fellow in Governance and Politics at Queen’s University. I have published a detailed analysis of British policies on the conflict in Northern Ireland, *The British State and the Northern Ireland Crisis* (US Institute of Peace, 2011).

1. I am concerned that the proposed publication of an interim report is a deliberate attempt to influence the debate over the Government’s Command Paper *Addressing the Legacy of Northern Ireland’s Past* (July 2021). This would not be an appropriate action for an impartial investigator, and risks undermining the credibility of the entire Kenova operation. Mr Boutcher has already described the Government’s proposals as “a miscalculation”, and has actively encouraged opposition to them from victims’ groups.
2. In charting a way forward on legacy, we should all remember that an effective amnesty has already been in place across the UK and Ireland for IRA terrorists for over two decades; that the majority of informed commentators concede that the prospect of bringing further prosecutions to successful closure is tiny and diminishing; and that the republican movement is engaged in “lawfare”, the aggressive use of legal proceedings to advance a one-sided historical narrative of British injustice while concealing its own blame for murder and mayhem.
3. As former chair of the NI Human Rights Commission’s Audit committee, I would add that futile attempts to deliver perfect justice would never withstand a serious cost/benefit analysis when compared, for example, with the alternative use of the same substantial sums to strengthen our struggling mental health services.
4. I recall the wise words of my Civil Service colleague Maurice Hayes. Speaking to the McGill Summer School in 2014, Senator Hayes said: “[Victims and survivors of the Troubles] deserve what most of them have not had, the best that society can offer by way of material help, psychological counselling and support, and the chance to tell their individual stories and have them recorded, and to hear the narratives of others. They are entitled to hope for as much information as possible about the circumstances in which their loved ones died, but it is surely an added cruelty to raise hopes of certainty of absolute justice and of the successful prosecution and conviction, after so many years, of those thought to have been involved… There is surely a case for drawing a line in the sand and moving on. We cannot mortgage the future to the past.”
5. You have indicated that an interim report will be published only if the Public Prosecution Service and Police Service are both satisfied that this would not prejudice any ongoing criminal proceedings. I trust that they will not be. The PPS in particular must be seen to remain entirely independent in deciding whether to proceed with a prosecution. The publication of the proposed interim report would lead to intense political pressure on the PPS for action against any parties identifiable as having a case to answer. However high level it may be, any examination of overarching themes and issues will necessarily lead to the identification of individuals in key operational roles in the security services at the time. You must respect ECHR rights other than those commonly associated with Article 2, in particular Article 6 on the right to a fair and public hearing by an impartial tribunal.
6. The proposed process confuses two roles which must be kept clearly distinct. The separation of powers between investigator and judge is a long-established and vital principle of our judicial system and must be protected.
7. Given the likelihood of allegations of “collusion” or of the more recent coinage by the Police Ombudsman of “collusive behaviours” by the RUC, it is essential that any Kenova report should clearly define what these terms mean. “Collusion” is not an offence in law.

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**28 October 2021**