THE USE OF JUDICIAL REVIEW IN THE AREA OF ENVIRONMENTAL JUSTICE is the basis of this submission.

Further, I am resident in Northern Ireland where there are issues particular to this locality given that we are a post-conflict society with specially structured legislative and executive institutions following from the Good Friday Agreement. My submission should be considered in that context.

Nevertheless, environmental justice in the context of the urgent issues of climate change and failing biodiversity has application across all 4 of the governmental institutions in Scotland, Wales, England and Northern Ireland.

The proper and effective discharge of central and local governmental functions is essential for the protection of our citizens and their environment. The main mechanism available to the citizen in this area is judicial review, especially when all other avenues arising as issues work their way through government processes have failed.

From experience at the grassroots level in Northern Ireland, there are very few citizens who willingly embrace the idea to instituting judicial reviews proceedings in a court of law. Individuals and groups cannot afford the cost for one thing! Rather, it is with great trepidation, angst and major (sometimes lifelong) disturbance and inconvenience that they will reluctantly proceed, having no other options left open to them. I meet people whose physical, mental, social and economic circumstances had suffered terribly, ranging from the loss of viable businesses, property, land, mental health and family life because of public interest litigation.

That is before we even get to consider the mammoth task of protecting our environment in a society which, heretofore, gave scant consideration to the simple and basic human fact of life on earth which is - OUR CITIZENS CANNOT LIVE WITHOUT CLEAN AIR, CLEAN WATER AND CLEAN SOIL. Failing biodiversity is the result of damage to our soil and the ecosystems therein. Climate Change is not helped and is surely caused by damage to our air and water systems. This crisis created by global heating and the serious loss of biodiversity will have serious consequences for certain sectors of the human population due to rising levels of inequality, poverty and other social injustices.

In Northern Ireland at the moment we do not have a legal/court structure assigned specifically to deal with environmental justice. Such cases are dealt with in the main system that deals with all other cases. We do not have specific legal mechanisms, courts or judges assigned to deal with environmental cases. These cases are growing in number and will continue to do so, due to the developments and proposals for developments we are seeing in Northern Ireland today. We hear our citizens calling for Climate Change legislation. Is this sufficient to deal with this great emergency? What exactly does it mean? We have not examined how this legislation will be operated, implemented and/or interpreted?

1. In your experience, and making full allowance for the importance of maintaining the rule of law, do any of the following aspects of judicial review seriously impede the proper or effective discharge of central or local governmental functions? If so, could you explain why, providing as much evidence as you can in support?

Environmental Justice Responses:

a. judicial review for mistake of law

essential to maintain access to justice in compliance with international conventions such as Aarhus and Espoo Conventions and Human Rights

b. judicial review for mistake of fact

ditto as per "a" above

c. judicial review for some kind of procedural impropriety (such as bias, a failure to consult, or failure to give someone a hearing)

ditto as per "a" above

d. judicial review for disappointing someone's legitimate expectations

ditto as per "a" above

e. judicial review for Wednesbury unreasonableness

ditto as per "a" above

f. judicial review on the ground that irrelevant considerations have not been taken into account

If they are irrelevant why would they be taken into account but then who, where and how is it decided that they are irrelevant considerations? That maybe the ground for judicial review

g. any other ground of judicial review

Depends on what any other ground would be

h. the remedies that are available when an application for judicial review is successful

essential to maintain access to justice in compliance with international conventions such as Aarhus and Espoo Conventions and Human Rights

i.rules on who may make an application for judicial review

ditto as per "h" above and in fact, the current scope of who can make an application (standing) needs to be substantially widened to cover the fundamental aspects of environmental justice as many people way beyond the initial source of the issue or cause of action can be affected by the consequences.

j. rules on the time limits within which an application for judicial review must be made

ditto as per "h" above and the current time limits need to be substantially widened as very often it is individuals in the community or community groups that have to make these applications. They are often not accustomed with the legal system and it may take time for them to realize what is happening and then to be in a position to mount a cohesive response.

k. the time it takes to mount defences to applications for judicial review

ditto as per "h" above. The time taken to mount a defence to judicial review is no more and no less than the time taken to institute and bring a case for judicial review. Furthermore, those mounting defences are usually have a multitude of resources available to them to do so. Very often the "playing field" is severely imbalanced in favour of those mounting the defences. In fact, if the processes of government were functioning with fairness, equality, transparency and accountability, then, it is likely there would be a reduction in applications in the environmental field. Sadly, the civic authorities in Northern Ireland leave a great deal to be desired in the day-to-day handling of these type of matters.

2. In relation to your decision making, does the prospect of being judicially reviewed improve your ability to make decisions? If it does not, does it result in compromises which reduce the effectiveness of decisions? How do the costs (actual or potential) of judicial review impact decisions?

In my experience judicial review proceedings usually succeed because a decision has not been legally correct and in line with the several factors of such reviews. It is not a question of improving or dis-improving decision-making, it is a question of complying with the law. In the area of environmental justice, costs are capped as a result of the Costs Protection (Aarhus Convention) Regulations (NI) 2013 which put an Aarhus PCO on a statutory footing. Similar provisions were adopted in the UK and Scotland.

3. Are there any other concerns about the impact of the law on judicial review on the functioning of government (both local and central) that are not covered in your answer to the previous question, and that you would like to bring to the Panel's attention?

In environmental justice, the scope of judicial review requires to be broadened in several respects to allow the citizen to exercise the basic rights of participation in decision-making.

From this, we would appreciate your response to the following questions:

1.Are there any comments you would like to make, in response to the questions asked in the above questionnaire for government departments and other public bodies?

Review of the whole system of dealing with environmental justice in Northern Ireland where we don't even have an independent environmental protection agency unlike the UK and furthermore, we don't even have third party rights of appeal against planning and environmental decisions. However, these comments will also have a certain applicability UK wide as well, especially in the light of Brexit and the chat of US trade deals, etc. Climate change is not happening in Northern Ireland only!!

2. In light of the IRAL's terms of reference, are there any improvements to the law on judicial review that you can suggest making that are not covered in your response to question (1)?

An issue that has been brought to my attention from a litigant who took a judicial review in an environmental matter as a lay litigant, is the inefficiency of court hearings. Litigants having to travel to courthouses at some distance from their local area, for hearings that don't go ahead and rather are often adjourned to a later date. That is a comment that could be applied beyond the area of environmental law. We are in an era of new technology coming to the fore since the coming of this

pandemic. We need to look at ways of making the administration of the court system more efficient and user friendly to enhance access to justice for members of the public.

Section 2 – Codification and Clarity

3. Is there a case for statutory intervention in the judicial review process? If so, would statute add certainty and clarity to judicial reviews? To what other ends could statute be used?

Well, it all depends on the wording, drafting and interpretation (clarity) of the statute!

4. Is it clear what decisions/powers are subject to Judicial Review and which are not?

Should certain decision not be subject to judicial review? If so, which? I believe in widening the breadth of judicial review and even re-modelling it to accommodate the new and urgent issues arising in relation to climate change, biodiversity, the environment generally and the protection of the rights of nature and all of us (the human race) who depend on nature for our continued existence.

5. Is the process of i) making a Judicial Review claim, ii) responding to a Judicial Review claim and/or iii) appealing a Judicial Review decision to the Court of Appeal/ Supreme Court clear?

There is always room to ensure greater clarity (communication is the weakest human link!) but there is a particularly great need for clarity and education of ordinary people to enable them to ensure the protection of our environment without which we cannot exist.

Section 3 - Process and Procedure

6. Do you think the current Judicial Review procedure strikes the right balance between enabling time for a claimant to lodge a claim, and ensuring effective government and good administration without too many delays?

As stated above, there is not near enough time for ordinary people and communities to institute these type of proceedings and indeed, to engage in the course of the proceedings due to the length of time and manner in which court cases are processed through the courts all of which I have referred to above.

7. Are the rules regarding costs in judicial reviews too lenient on unsuccessful parties or applied too leniently in the Courts?

See reference above to the Aarhus Convention and legislation thereunder in relation to capping of costs in environmental cases. An unfortunate consequence of this capping of costs is that it is still difficult for the ordinary citizen to retain expert advice because those experts cannot be paid as much as the costs are capped. So, unfortunately with all the best intentions in the world, it has not necessarily changed that balance in favour of those who need it, namely communities in the (David v Goliath) scenario.

8. Are the costs of Judicial Review claims proportionate? If not, how would proportionality best be achieved? Should standing be a consideration for the panel? How are unmeritorious claims currently treated? Should they be treated differently?

Standing needs to be widened. See my comments at no. 7 in relation to costs.

9. Are remedies granted as a result of a successful judicial review too inflexible? If so, does this inflexibility have additional undesirable consequences? Would alternative remedies be beneficial?

Remedies may need to be examined and again increase flexibility. Environmental law is a newcomer really for all of us. For the first time the pressure is mounting to deal with climate change, people are seeing the effects around them and the message is starting to get through. Going forward, I believe there will be a need for the legal system to give urgent attention of

updating, enhancing and perhaps reforming our laws in order to protect our citizens and their natural environment. When and if the legal system looses touch with society it can have very serious consequences in terms of breakdown in civic society and the growth of direct action. That is not good for any of us. The legal system is central to our democracy in current times.

10. What more can be done by the decision maker or the claimant to minimise the need to proceed with judicial review?

There is a great deal that can be done by the executive, government departments, local authorities in Northern Ireland to reduce the need for ordinary people and communities having to resort to litigation. It is a daunting task for anyone, especially lay litigants and lives have been destroyed by it. However, the authorities in Northern Ireland pay scant attention to their electorate in day-to-ay matters which are not connected with the "orange and green" mantra. They are like a "long-playing record with the needle stuck in it". Daily, we are seeing a total disregard, even contempt for what few laws we do have which are outdated in many ways and where they have recently been updated, have been nothing short of a power grab to the centre-ground in Stormont. We have seen this with the RHI (cash for ash) scandal and a new scandal has just emerged in relation to renewable energy after an initial investigation by the audit office in Northern Ireland. From reports, it seems the English public will be paying anything up to £5 billion over the coming years as a result of the scheme. So, yes there are many, many steps that can be taken to reduce the necessity to resort to litigation and there are some good people emerging across Ireland in an effort to address this who, I am sure would welcome engagement with any work that improve this situation.

11. Do you have any experience of settlement prior to trial? Do you have experience of settlement 'at the door of court'? If so, how often does this occur? If this happens often, why do you think this is so?

Yes, I am in contact with a litigant whose case was settled in their favour and an order of the court was issued in relation to the settlement. It pertained to an application for consent to discharge toxic chemicals and effluent into a waterway which is a protected habitat. It seems to have all been in vain as they have just been advised that once such a consent has been quashed, it re-activates the original application for consent and now there are 3 further and a possible fourth application to do the same thing. The first such application is to vary an existing consent (that existing consent being the one that was quashed by the court order). It looks like this litigant is tied to a never-ending merry-go-round on this issue. Every time the court quashes a consent, does it automatically re-activate the original application which can be used then to vary the quashed consent. This is a real situation and I am not making it up. I have evidence.

12. Do you think that there should be more of a role for Alternative Dispute Resolution (ADR) in Judicial Review proceedings? If so, what type of ADR would be best to be used?

Yes, where appropriate. I am a lawyer and mediator by training. However, each case has to be considered individually as not all cases are suitable for mediation but the option should always be there. The situation described in No. 11 above is a variation on this theme in that a government body conceded and the case did not go to hearing. However, we don't want to end up on the merry-go-round thereafter as described at No. 11.

13. Do you have experience of litigation where issues of standing have arisen? If so, do you think the rules of public interest standing are treated too leniently by the courts?

Yes, but in environmental law they are not wide enough because every human being needs clean air, clean water and clean soil to live on this planet whether you are a janitor or a judge, a poor man/woman or a rich man/woman. Water and air, our environment does not recognize boundaries or borders.